IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, Appellant	)	APPELLANT'S BRIEF IN SUPPORT OF CERTIFIED ISSUE
v.	)	Crim. App. Dkt. No. 202400058
Levani J. ENELIKO, Master-at-Arms (E-4) U.S. Navy Appellee	)	USCA Dkt. No. 26-0138/NA

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Issue Presented

DID THE LOWER COURT ERR IN REVERSING THE MILITARY JUDGE ON THE BASIS OF *UNITED STATES V. MOTT*?

Statement of Statutory Jurisdiction

The Entry of Judgment includes a finding of guilty. Appellee timely appealed his case. The lower court had jurisdiction under Article 66(b)(1)(A), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(b)(1)(A). On February 26, 2026, the Judge Advocate General of the United States Navy certified one Issue for review. This Court has jurisdiction under Article 67(a)(2), UCMJ, § 867(a)(2) (2024).

Statement of the Case

A military judge sitting as a special court-martial convicted Appellee, contrary to his pleas, of wrongful use of cocaine in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The Military Judge sentenced Appellee to reduction to E-3. The Convening Authority took no action on the findings or sentence.

On review, the lower court heard oral argument and issued an Opinion on August 28, 2025, reversing the Military Judge's Ruling. *United States v. Eneliko*,

No. 202400058, 2025 CCA LEXIS 41 (N-M. Ct. Crim. App. Aug. 28, 2025). The United States moved for panel and *en banc* reconsideration on May 30, 2025. (J.A. 118.) The lower court denied the Motion on December 30, 2025. (Order Den. Recons., Dec. 30, 2025.)

Statement of Facts

A. The United States charged Appellee with wrongful use of a controlled substance.

The United States charged Appellee with one Specification of "wrongfully us[ing] some amount of cocaine" on or about April 19, 2023. (J.A. 142.)

B. The Military Judge denied Appellee's Motion to Suppress his statements as involuntary.

Appellee moved to suppress statements made to Criminal Investigative Division (CID). (J.A. 176.) Appellee argued that Detective Watson, with knowledge of Appellee's mental health treatment, "capitalized on [his] mindset–the mindset of someone who was seeking help for ongoing mental help crises . . . . by talking to a psychotherapist—and he positioned himself not as an interrogating detective, but as someone who was 'here to try to help.'" (J.A. 181.) Appellee never challenged his confession on grounds that it was not knowing and intelligent. (J.A. 176–81.)

At the beginning of his interview, Detective Watson asked Appellee if he had "an appointment" before coming to the interview; Appellee answered

affirmatively and noted only that the appointment was at "the Brem Hospital." (J.A. 144–45.) In response, Detective Watson replied that he hoped everything was working out for Appellee. (J.A. 144–45.)

Before reading Appellee his rights, Detective Watson asked Appellee, "You know what you're here for?" (J.A. 153.) Appellee responded, "No, not exactly," and was told "Urinalysis." (J.A. 153–54.) Appellee then said, "Okay."

Detective Watson told Appellee: "[J]ust to let you know, we're here to try to help you through this whole thing . . . . and we can't help you if you can't, you know, tell us what happened and you can't, you know, help us out." (J.A. 154.) Detective Watson then read Appellee his rights under Article 31(b), UCMJ. J.A. (153–55.) Appellee initialed the rights advisement form and agreed to speak with law enforcement. (J.A. 155; 237.) He also read aloud that portion of the rights advisement that indicates he was making "this decision freely and voluntarily." (J.A. 155.) Detective Watson again stated he was there to help him navigate through the process and added that there were "no guarantees." (J.A. 158.)

Appellee then made a statement in which he admitted he consumed cocaine in Seattle and credited the decision to his mental state, which had also motivated him to see a psychiatrist and a therapist. (J.A. 159.) He admitted that he was offered cocaine from a stranger at a bar and snorted it with a key. (J.A. 159–60.)

At an Article 39(a) session in which the Military Judge heard argument on

the Motion, he asked Appellee's counsel: "I read your motion to be focused on that sort of psychological impact on the accused during the interrogation and not more of a discreet there was a functional problem with the 31(b) rights or waiver, or there were discreet threats, or inducements, or promises. Is that fair?" (J.A. 271.) Appellee's counsel replied, "Yes, that's fair." (J.A. 271.)

The Military Judge denied the Motion and found Appellee's statements voluntary because his will was not overborne by the interrogation. (J.A. 219.) The Military Judge found that Appellee appeared alert and attentive during the interview, the investigators were professional and not aggressive, and the interview only lasted twenty-seven or twenty-eight minutes. (J.A. 217.) As a result, he concluded that the use of the word "help" was made in context of investigating the source of the drugs, not as a ruse or reference to Appellee's mental health. (J.A. 220–22.) As such, the Military Judge found Appellee made a "knowing, intelligent, and voluntary choice to waive [his rights]—the detective specifically stated '[n]o guarantees.'" (J.A. 221–22.)

C. The Military Judge denied Appellee's Motion to Reconsider.

Appellee moved for reconsideration of the Military Judge's Ruling. (J.A. 223.) He submitted an Affidavit from a Defense Services Office master-at-arms summarizing a phone call with Detective Watson, in which the Detective said when he coordinated Appellee's interview with his command, the command

representative mentioned that Appellee had a medical appointment and "specified it was either a psychiatrist or psychologist appointment." (J.A. 227.)

In response, the United States presented an Affidavit from Detective Watson in which he declared, "At the time of the interview of [Appellee], I knew he was coming from a medical appointment, but I cannot recall whether I knew at that time the medical appointment was related to mental health." (J.A. 231.)

The Military Judge found that Detective Watson "does not recall at the time of the interview of the accused whether or not he knew the accused's appointment was a mental health appointment." (J.A. 284.) The Military Judge, however, found that "even if Detective [Watson] knew . . . there is no evidence that such information was used in a way to result in either an involuntary waiver of rights or an involuntary admission." (J.A. 284.) Further, "there is no evidence that Detective [Watson], even knowing that the accused had come from a [mental health] appointment, used such information to threaten, trick, or cajole his waiver of rights or an admission to an alleged offense." (J.A. 285.) The Military Judge denied the Motion to Reconsider. (J.A 285.)

D. The United States presented expert testimony on the Charge.

In addition to the confession, the United States presented testimony from an Expert Witness who testified that Prosecution Exhibit 7, the initial urinalysis screening report, demonstrated Appellee's sample was a presumptive positive for

cocaine. (J.A. 404.) The Expert Witness could conclude from the test that "the urine contained in the bottle contained . . . cocaine metabolite." (J.A. 413.) It also presented testimony from the urinalysis observer, who testified he always followed standard procedures when running urinalysis collection and that he observed Appellee's sample. (J.A. 319–20.)

E. The Military Judge found Appellee guilty of the Charge.

The Military Judge found Appellee guilty and sentenced him to reduction to E-3. (J.A. 235, 456.)

F. On appeal, Appellee again challenged the voluntariness of the confession.

Appellee filed an appeal at the lower court, claiming the Military Judge abused his discretion by failing to suppress Appellee's statements to law enforcement. (J.A. 10.) He argued: "[Appellee's] rights waiver was not voluntary because unconstitutional trickery and cajoling was used to induce [Appellee] into waiving his rights. (J.A. 24.) Appellee argued this "trickery" was the Detective's pre-rights advisement claim that "we're here to try to help you through this whole thing." (J.A. 27.) Appellee claimed his "will was overborne, and his rights waiver and subsequent statements were involuntary." (J.A. 29.)

Citing *United States v. Mott,* 72 M.J. 319 (C.A.A.F. 2013), the Service Court held that the confession was improperly admitted because the Military Judge "fail[ed] to consider the totality of the circumstances" and "whether [the]

confession was knowing and intelligent," and instead analyzed only whether the confession was voluntary. *United States v. Eneliko*, No. 202400058, 2025 CCA LEXIS 410, at *6, *9 (N-M. Ct. Crim. App. Aug. 28, 2025). The lower court held:

> . . . the military judge did not address the propriety or any impact of Detective [Watson]'s questions preceding Appellant's waiver of his Article 31(b) rights. The military judge also did not analyze the impact of Detective [Watson]'s statement as to the help he could provide [Appellee] if he spoke to them and helped them out on whether [Appellee] was able or did then make a knowing and intelligent waiver of his rights.

Id. at *8.

In a footnote, the Panel observed that with respect to the pre-rights waiver colloquy: "[Appellee] did not specifically challenge these questions either at trial, or on appeal, and so we would review the . . . admission of these statements for plain error, if at all, if it was only [Appellee]'s responses to these questions at issue." *Id*. at n.32.

G. <u>The United States submitted, and the lower court denied, a Motion for Reconsideration</u>.

The United States moved the lower court to reconsider its Opinion. (J.A. 118.) It argued that the lower court's decision conflicted with another decision, where the court found waiver of a voluntariness claim on appeal where the appellant only challenged the knowing and intelligent waiver at trial. (J.A. 121.) *See United States v. Salmon*, No. 202400073, 2024 CCA LEXIS 428 (N-M. Ct. Crim. App. Sept. 9, 2024). It argued that the Service Court misapplied *Mott*,

because the "Military Judge directly addressed the specific prong of the *Edwards* test that Appellant challenged." (J.A. 122.) The lower court denied the United States' Motion.

Summary of Argument

The lower court's ruling is erroneous for three reasons: first, the lower court failed to apply waiver or forfeiture where Appellee made no particularized objection at trial; second, it failed to accord presumptions including deference to the ruling of the Military Judge and in favor of the prevailing party on the Motion; and third, in not applying the Judge's factual findings, which were not clearly erroneous.

As to waiver, Appellee's Motion to Suppress challenged the voluntariness of his Statement but not whether his waiver of rights was knowing and intelligent. Citing *Mott*, the lower court reversed the Military Judge because he "analyzed only whether the confession was voluntary, not whether it was knowing and intelligent." This was error both because the Military Judge did in fact directly find that Appellee's confession was knowing and intelligent, but also because Appellee's written Motion, trial arguments, and pleadings and arguments in the court below attacked the confession only on the question of voluntariness.

Appellee likewise waived challenging the pre-waiver questioning by Detective Watson; even if this court finds forfeiture, there was no prejudice

because the statements were not inculpatory.

The Military Judge's ruling on the Motion to Suppress was not an abuse of discretion because he correctly applied *Mott* and *Edwards*. In *Mott*, the appellant moved to suppress his confession on the grounds that his waiver was not knowing and intelligent. This Court found error because the military judge ruled only on the question of voluntariness and did not analyze whether the waiver was knowing and intelligent—the issue actually raised by appellant in that case. Here, Appellee challenged his statement on the grounds that it was not voluntary. The Military Judge's written ruling addressed precisely and at length the matter raised by Appellee at trial and further found his waiver of rights to be knowing and intelligent.

Argument

AT TRIAL, APPELLEE CONTESTED ONLY THE VOLUNTARINESS OF THE STATEMENT, THEREBY WAIVING APPELLATE REVIEW OF THE ISSUES ON WHICH THE LOWER COURT GRANTED RELIEF. REGARDLESS, CONTRARY TO THE LOWER COURT'S CONCLUSION, THE MILITARY JUDGE CORRECTLY APPLIED *EDWARDS* AND FOUND APPELLEE'S WAIVER KNOWING, INTELLIGENT, AND VOLUNTARY.

A. The standard of review is de novo.

Voluntariness of a confession is a conclusion of law reviewed de novo. *United States v. Lewis*, 78 M.J. 447, 453 (C.A.A.F. 2019). In de novo review, a military judge's findings of fact are not set aside unless they are clearly erroneous, meaning: (1) there was no evidence to support the findings; or, (2) despite the presence of some evidence, the reviewing court has a "definite and firm conviction" that a mistake was made in light of all the evidence in the case. *United States v. Harris*, 78 M.J. 434, 436 (C.A.A.F. 2019). At trial, the government must prove voluntariness of a confession by a preponderance of the evidence. *Lewis*, 78 M.J. at 453. However, "[v]oluntariness of consent and knowing waiver are two distinct and 'discrete inquiries.'" *United States v. Mott,* 72 M.J. 319, 330 (C.A.A.F. 2013) (quoting *Edwards v. Arizona*, 451 U.S. 477, 484 (1981)).

B. Appellee's Motion to Suppress and arguments at trial and on appeal focused exclusively on voluntariness. Appellee waived appellate review of and objection to the admission of his interview on the ground his confession was not knowing and intelligent. Likewise, he waived any argument that his confession was tainted by pre-waiver questioning.

Whether an issue is waived is reviewed de novo. *United States v. Rich,* 79 M.J. 472, 475 (C.A.A.F. 2020).

1. The particularized objection requirement holds that objections not specifically raised at trial are waived.

"A party may claim error in a ruling to admit . . . evidence only if . . . the party . . . states the *specific* ground, unless it was apparent from the context[]". Mil. R. Evid. 103(a)(1)(B) (emphasis added). This Court holds that the particularized objection rule is necessary "so that the government has the opportunity to present relevant evidence that might be reviewed on appeal." *United States v. Perkins*, 78 M.J. at 381, 391 (C.A.A.F. 2019) (citing *United States v. Stringer*, 37 M.J. at 132 (C.A.A.F. 1993)). "A party *is* required to provide sufficient argument to make known to the military judge the basis of his objection and, where necessary to support an informed ruling, the theory behind the objection." *United States v. Datz*, 61 M.J. 37, 42 (C.A.A.F. 2005) (citations omitted) (emphasis in original).

For involuntary statements, "failure to so move or object constitutes waiver" and not forfeiture. Mil. R. Evid. 304(f)(1). And "[w]hen an error is waived . . . the

result is that there is no error at all and an appellate court is without authority to reverse a conviction on that basis." *United States v. Chin*, 75 M.J. 220, 221 (C.A.A.F. 2016) (quotes and citation omitted).

This Court has often found waiver where objections raised on appeal were not made with particularity at trial—even when related issues were raised at trial.[1]

2. The First, Third, Fourth, Fifth, Eighth, and Tenth Circuits find waiver where the error alleged on appeal was not particularly raised at trial—even where appellants objected at trial to related legal issues.

Numerous federal circuits have similarly found waiver where appellants made suppression motions at trial but alleged appellate error on different but related grounds.[2]

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[1] *See United States v. Harborth*, 85 M.J. 469 (C.A.A.F. 2025) (notwithstanding presumption against waiver of constitutional issues, particularized objection required to challenge length of seizure); *Perkins*, 78 M.J. 381 (rubber-stamping objection to CASS); *United States v. Robinson*, 77 M.J. 303 (C.A.A.F. 2018) (motion to suppress seizure of cellphone for involuntary consent not sufficient to preserve appellate argument as to scope of consent to search); *United States v. Ahern*, 76 M.J. 194 (C.A.A.F. 2017) (improper closing argument); *cf. United States v. Blackburn*¸ 80 M.J. 205 (C.A.A.F. 2020) (appellee's argument that good faith unavailable because affiant recklessly disregarded the truth preserved because arguments at trial demonstrated a subtle accusation of reckless CASS request); *United States v. Corraine*, 31 M.J. 102 (C.M.A. 1990) (for preservation of objection to improper testimony, technical precision and formalism not required, but substantial clarity and specificity required).

[2] *See United States v. Horton*, 756 F.3d 569, 574 (8th Cir. 2014); *United States v. Pope*, 467 F.3d 912, 918–19 (5th Cir. 2006) ("[i]f, at trial, the government assumes that a defendant will not seek to suppress certain evidence, the government may justifiably conclude that it need not introduce the quality or quantity of evidence

3. Appellee's Motion to Suppress and pleadings in the court below failed to state with particularity the distinct inquiry related to knowing and intelligent waiver of rights, thus waiving the issue on appeal.

In *United States v. Torres*, 162 F.3d 6 (1st Cir. 1998), the appellant argued at trial that his father's consent to a home search was involuntary because he was inebriated, poorly educated, and police were coercive; on appeal, he argued that parents cannot consent to searches of their adult children's rooms. The First Circuit held that "[a] litigant cannot jump from theory to theory like a bee buzzing from flower to flower . . . when a party fails to raise a theory at the district court level, that theory . . . cannot be advanced on appeal." *Id*. at 11. This rule "applies not only when a defendant has failed altogether to make a suppression motion but also when, having made one, he has neglected to include the particular ground that he later seeks to argue." *Id*.

Like *Torres*, here Appellee filed a Motion to Suppress his confession solely on voluntariness grounds, narrowly claiming that "[the] . . . waiver of Article 31 rights and admission by [Appellee]—who was already in a state of mind that

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needed otherwise to prevail"); *United States v. Banks*, 451 F.3d 721, 727–28 (10th Cir. 2006); *United States v. Lockett*, 406 F.3d 207 (3d Cir. 2005) (where issue of limited consent raised on appeal, court found waiver because limited consent was not alleged in his trial suppression motion); *United States v. Torres*, 162 F.3d 6 (1st Cir. 1998) (capacity to consent objection did not preserve scope of consent argument); *United States v. Wilson*, 115 F.3d. 1185 (4th. Cir. 1997) (waived search warrant execution objection when, at trial, challenged only validity).

would make him susceptible to *coercion*—were *involuntary*." (J.A. 181.) Unlike *Torres,* Appellee did not raise knowing and intelligent waiver for the first time in his merits briefs on appeal. Rather, the first time Appellee made any substantive argument as to knowing and intelligent waiver was in his Reply to the United States' Motion to Reconsider at the lower court; and even then, he made no affirmative argument that his waiver was not knowing and intelligent. (J.A. 133–36); *see also Treesh v. Bagley*, 612 F.3d 424, 434–35 (6th Cir. 2010) ("it is a settled appellate rule that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived").

Because the issues of voluntariness and knowing and intelligent waiver are "distinct inquiries," Appellee's failure to move to suppress at trial or in briefing at the lower court, on grounds that his waiver was not knowing and intelligent, waived appellate review and relief for that issue. *See Moran v. Burbine*, 475 U.S. 412, 421 (1986); *Mott*, 72 M.J. at 330.

4. Moreover, Appellee waived any challenge as to knowing and intelligent waiver by affirmatively declining to raise it at trial.

A forfeiture is basically an oversight; a waiver is a deliberate decision not to present a ground for relief that might be available in the law. *United States v. Campos*, 67 M.J. 330, 332 (C.A.A.F. 2009). The determination of whether there has been an intelligent waiver must depend, in each case, upon the particular facts

and circumstances surrounding that case. *United States v. Elespuru*, 73 M.J. 326, 328 (C.A.A.F. 2014) (internal citations omitted).

In *United States v. Malone*, No. 25-0140, 2026 CAAF LEXIS 62 (C.A.A.F. Jan. 20, 2026), the appellant was charged with three specifications of domestic violence, each occurring at the same time and same place. After entering a plea agreement, the appellant's counsel responded to the military judge's invitation for motions with "no motions." *Id*. at *1. On appeal, the appellant for the first time challenged the charges as multiplicious; the service court applied the presumption against waiver of constitutional rights and found forfeiture because, without a "waive all waivable motions" provision, there was no evidence the appellant knew he was giving up the right to make a multiplicity motion. *United States v. Malone*, 85 M.J. 573, 580 (A. Ct. Crim. App. 2025).

This Court reversed, finding waiver because the record indicated an intentional relinquishment of known rights. *Malone*, 2026 CAAF LEXIS 62, at *13–15. The factors included that the waiver was express, no ineffective assistance of counsel claim was made on appeal, competent counsel would have spotted the obvious issue, and competent counsel would have explained multiplicity to the appellant when discussing the plea agreement. *Id*.

Like *Malone*, a number of factors support that Appellee intentionally relinquished a known right. First, as in *Malone*, Appellee makes no claim now that

his counsel were ineffective, thus this Court should apply the "presumption that defense counsel acted in a competent manner." 2026 CAAF LEXIS 62, at *12. Second, Appellee's Trial Defense Counsel filed a written Motion alleging he was coerced. (J.A. 176–84.) Third, throughout the lengthy arguments before the Military judge on the Motion to Suppress, Trial Defense Counsel (and the responsive arguments of Trial Counsel) addressed issues of voluntariness and coercion, making no reference to whether Appellee's Statement was knowing and intelligent. (J.A. 263–284.) When the Military Judge denied the Motion to Suppress, Appellee's counsel later sought more evidence to show coercion and moved the Military Judge to reconsider, again without particularized reference to whether Appellee's waiver was knowing and intelligent. (J.A. 223–27.) Throughout this, Appellee never alleged the waiver was not knowing and intelligent.

Finally, as in *Malone*, Appellee's waiver was express: when asked by the Military Judge, Trial Defense Counsel agreed that their argument was limited not only to the question of voluntariness, but to the even narrower questions related to "psychological impact during the interrogation," and not "a functional problem" with the waiver, nor "discreet threats, or inducements, or promises." (J.A. 271.) Counsel earlier informed the Judge that, to the extent they believed Appellee might

lack capacity, they believed this applied only at the time Appellee used cocaine. (J.A. 261–62.)

Under these circumstances, and as in *Malone*, the Record indicates a voluntary relinquishment of the right to object on grounds that Appellee did not know the nature of his rights, not a mere failure to make a timely assertion of such a right. *See also United States v. Davis*, 79 M.J. 329, 331 (C.A.A.F. 2020) ("Appellant did not just fail to object and thereby merely forfeited his claim. He affirmatively declined to object to the military judge's instructions and offered no additional instructions. By 'expressly and unequivocally acquiescing' to the military judge's instructions, Appellant waived all objections to the instructions.").

5. Appellee waived appellate review of Detective Watson's pre-waiver questions. Regardless, Appellee's pre-waiver statements were not incriminatory and could not have tainted the post-waiver confession.

Post-warning admissions are not presumptively tainted by prior, non-coerced unwarned statements. *Oregon v. Elstad*, 470 U.S. 298, 314 (1985). *See also United States v. Benner*, 57 M.J. 213 (C.A.A.F 2002) (confession not presumptively tainted, despite following earlier unwarned confession in violation of rules, if taken in compliance with Article 31(b) and Mil. R. Evid. 305).

At trial, Appellee never moved to suppress on grounds that the pre-warning statements, "No, not exactly," and "Okay" tainted the later confession. Nor did Appellee raise that error appeal. And he never raised the issue when responding to

the United States' Motion to Reconsider. (J.A. 129–37.) Thus Appellee waived appellate review of any errors related to the pre-waiver statements "No, not exactly," and "Okay."

As with the "knowing and intelligent" objection, Appellee waived any objection to these questions and their answers. Appellee specifically limited his argument to "psychological impact during the interrogation" and never alleged those questions were violative of Appellee's rights. (J.A. 271.)

Even if this issue were forfeited and the lower court had applied a plain error analysis, it failed to consider *Oregon v. Elstad*, 470 U.S. 298, in determining that the pre-waiver statements could have tainted the subsequent, post-waiver admissions. In *Elstad*, law enforcement asked the appellant "whether he knew why [police] were there to talk with him. He stated no, he had no idea why we were there." *Elstad*, 470 U.S. at 301. The detective then asked if he was aware that a robbery had taken place, and the appellant admitted he was there. *Id.* The statements were made before a rights warning. *Id*. Later, at the police station and before interrogation, police read the appellant his rights, and he signed a written confession admitting he had committed the robbery. *Id.* The appellant's pre-warned statements were suppressed but his later post-*Miranda* statements were admitted. *Id*.

The appellant claimed that he was unable to give a fully informed waiver of his rights because he was unaware that his prior statement could be used against him. *Id.* at 316. The Supreme Court found "there is no warrant for presuming coercive effect where the suspect's initial inculpatory statement, though technically in violation of *Miranda*, was voluntary. The relevant inquiry is whether, in fact, the second statement was also voluntarily made." *Id.* at 318.

Like *Elstad*, here the Detective's pre-warning question—"do you know why you're here"—was not coercive and did not amount to a constitutional violation. Appellee never claimed otherwise. As such, those statements did not presumptively taint Appellee's properly warned statements.

And critically, unlike *Elstad*, here the pre-warning statements "No, not exactly" and "Okay" were not inculpatory. *See* Mil. R. Evid. 304(a)(1); *see also* Mil. R. Evid. 304(a)(1); Mil. R. Evid. 304(a)(2) ("Failure to deny an accusation of wrongdoing is not an admission of the truth of the accusation if at the time of the alleged failure the person was under investigation or . . . arrest, or custody . . . ."). The non-coercive, non-inculpatory statements cannot taint Appellee's later warned statement. Thus, admission of these pre-waiver statements was neither error, nor prejudicial.

6. The lower court erred in finding Appellee forfeited his objection but granting relief as if the issue was properly preserved at trial.

In *Malone*, the lower court was reversed for granting relief on an issue that was waived at trial. 2026 CAAF LEXIS 62, at *17. But in *Malone*, the lower court found forfeiture instead of affirmative waiver and applied the plain error analysis, finding both error and material prejudice to a substantial right. *Malone*, 85 M.J. at 581–82.

Unlike *Malone*, here the lower court reasoned: "[Appellee] did not specifically challenge these questions either at trial or on appeal, and so we would review the military judge's admission of these statements for plain error, if at all, if it was only Appellant's responses to these questions at issue." *Eneliko*, 2025 CCA 41, at *8 n.32. Yet, the lower court faulted the Military Judge, and granted relief, for not addressing "the propriety or any impact of Detective [Watson]'s questions preceding [Appellee]'s waiver of his Article 31(b) rights." *Id*. at *8.

The lower court's Opinion is internally inconsistent. First, it seemingly indicated that, because it was granting relief on Appellee's lack of knowing and intelligent waiver, it was not reaching the question of the pre-waiver statements. *Id*., n.32. Then, it explained that if it did reach that question, it would use plain error analysis, implying it found the issue forfeited. *Id*. And finally, it then faulted the Military Judge for not addressing the pre-waiver statements, *without*

conducting the plain error analysis. In short, the lower court simultaneously declined to consider the issue, found forfeiture and not waiver, failed to determine whether the "error" prejudiced Appellee, then considered the issue in granting relief as if Appellee had properly preserved it. *Id*.

Even if this Court considered the pre-waiver statements to be forfeited and reviewed under plain error, Appellee is entitled to no relief. Under plain error review, Appellee must demonstrate prejudice. *United States v. Harcrow*, 66 M.J. 154, 158 (C.A.A.F. 2008). *See also* 10 U.S.C. § 859 (2025) ("A finding or sentence cannot be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused."). Appellee cannot do so here. The statements "No, not really," and "Okay" were not inculpatory and Trial Counsel never suggested otherwise.

C. The lower court misinterpreted *Mott*; here, Appellee objected that the statement was not voluntary and the Military Judge correctly found the statement was voluntary.

When law enforcement coerces or misleads a suspect into a waiver, that is reviewed under the "voluntary" prong. *See*, *e.g.*, *United States v. Giddins*, 858 F.3d 870 (4th Cir. 2017). When an appellant cannot or does not understand the rights themselves, a waiver may not be knowing and intelligent. *Edwards*, 451 U.S. at 484.

In *Mott*, the military judge, ruling on a confession given by an appellant who was experiencing serious hallucinations, failed to analyze the "knowing and intelligent" prong of the *Edwards* test. *Mott,* 72 M.J. at 331. The *Mott* appellant specifically challenged the confession on the "knowing and intelligent" basis; the military judge discussed only voluntariness. *Id*. In ruling only on voluntariness, the judge failed to incorporate uncontested expert testimony that the appellant was significantly cognitively impaired, so the confession was improperly admitted. *Id.*

But this case is unlike *Mott*, where the military judge never analyzed the prong of the *Edwards* test challenged by the appellant. Rather, here the Military Judge, in responding to the claims made by Appellee at trial, engaged in a colloquy with Trial Defense Counsel aiming to determine if Detective Watson could even have known about Appellee's mental health appointments at the hospital—to determine if the Detective was coercively leveraging a "vulnerable individual." (R. 171–76.) Unlike the military judge in *Mott*, this Military Judge directly addressed the specific prong of the *Edwards* test that Appellee challenged. (J.A. 219–20.)

The Military Judge was not required to separately analyze "knowing and intelligent" because Appellee never "ma[de] known to the military judge the specific basis" for such an objection. *See Datz*, 61 M.J. at 42. No evidence—and no argument from Appellee—indicates that Appellee's mental state "negatively

affected his capacity for free choice or that government overreaching occurred at the time of his…interview." *United States v. Lewis*, 78 M.J. 447, 454–55 (C.A.A.F. 2019). Thus, "no consideration of [any] mental impairment he suffered at the time of his . . . interview, if any, is warranted." *Id*; *see also United States v. Cooper* 78 M.J. 283, 286 (C.A.A.F. 2019) (lower court, relying on *Mott*, was wrong to find waiver of individual military counsel because no evidence indicated he did not understand military judge's colloquy).

D. Regardless, the Military Judge considered the totality of the circumstances, is presumed to know and apply the law correctly, and his findings of fact are given deference on appeal. He was thus correct in finding that Appellee made a knowing, intelligent, and voluntary choice to waive his rights. If this Court were to disagree, the confession was nonetheless voluntary.

Military judges are presumed to know the law and follow it absent clear evidence to the contrary. *United States v. Rapert,* 75 M.J. 164, 170 (C.A.A.F. 2016) (citation omitted). Appellate courts defer to a military judge's factual findings unless they are clearly erroneous or unsupported by the record. *United States v. Sterling,* 75 M.J. 407, 414 (C.A.A.F. 2016) (citation omitted). Military judge's rulings are reviewed on appeal for abuse of discretion, "consider[ing] the evidence in the light most favorable to the prevailing party." *United States v. Katso,* 74 M.J. 273, 278 (C.A.A.F. 2015) (citation and quotes omitted).

Voluntariness of a confession turns on whether an appellant's "will has been overborne." *Id*. (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973)).

"In determining whether a[n appellant]'s will was over-borne in a particular case, [courts] ha[ve] assessed the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." *Bustamonte*, 412 U.S. at 225.

This "anticipate[s] a holistic assessment of human interaction," not "cold and sterile lists of isolated facts." *United States v. Ellis*, 57 M.J. 375, 379 (C.A.A.F. 2002) (citation omitted). "Ploys to mislead a suspect or lull him into a false sense of security do not render a statement involuntary provided they do not rise to the level of compulsion or coercion." *Illinois v. Perkins*, 496 U.S. 292, 297 (1990).

Courts consider: the accused's age, education, and intelligence; whether law enforcement advised him of his rights; the length of detention; the repeated and prolonged nature of the questioning; and the use of physical punishment, such as depriving him of food or sleep. *See Bustamonte*, 412 U.S. at 226.

To find a waiver was knowing and intelligent, a criminal suspect is not required to "know and understand every possible consequence of waiver of the privilege." *Colorado v. Spring*, 479 U.S. 564, 574 (1987) (citing *Moran v. Burbine*, 475 U.S. 412, 422 (1986)); *Oregon v. Elstad*, 470 U.S. 298, 316–17 (1985). Rather, the suspect must know that he may choose not to talk to law enforcement, to talk with counsel present, to discontinue talking at any time, and

that whatever he chooses to say may be used as evidence against him. *Id.* This analysis, too, requires inquiry into the totality of the circumstances, including age, experience, education, background, intelligence, and capacity. *Fare v. Michael C.*, 442 U.S. 707, 724–25 (1979).

1. Nothing in the Record supports the lower court failing to apply the presumption that the Military Judge knew and applied the law correctly, and nothing supports the lower court failing to accord deference to the Judge's Findings of Fact.

In *Hurtado,* the Service Court rejected the United States' argument that the trial judge erred by failing to explicitly recite the *Davis* "reasonable officer" test in granting a motion to suppress at trial. *United States v. Hurtado,* No. 25-0212, 2026 CAAF LEXIS 273 (C.A.A.F. Mar. 23, 2026). This Court reversed the Service Court, holding that despite not explicitly reciting the test, "the military judge expressly cited *Davis,* which sets out the reasonable police officer standard, and nothing in the record overcomes the presumption that he applied the proper test." *Hurtado,* 2026 CAAF LEXIS 273, at *7.

And in *Katso,* this Court found that "by focusing its analysis on Mr. Davenport's trial testimony . . . the CCA did not give adequate deference to the military judge's findings of fact or consider the evidence supporting the ruling 'in the light most favorable to the prevailing party.'" 74 M.J. 278 n.4 (citation omitted).

Here, like in *Hurtado,* the Military Judge expressly cited the correct test, that

Appellee's waiver must also be "made freely, knowingly, and intelligently," and cited the correct caselaw and rule, including Mil. R. Evid. 305(e)(1), *Mott, Edwards v. Arizona, Berghuis v. Thompkins, Colorado v. Spring,* and *United States v. Ruiz.* (J.A. 218.) Despite focusing his Ruling on the voluntariness issue that Appellee raised, the Military Judge concluded by adding that "no evidence . . . suggest[ed]" Appellee was "tricked, or cajoled" but instead "the evidence reveals that his rights were appropriately explained . . . and the accused made a knowing, intelligent, and voluntary choice to waive." (J.A. 221–22.)

And like in *Katso,* the Service Court here "f[ou]nd the military judge[] fail[ed] to address or analyze specific relevant facts of this case in determining if there was a . . . knowing and intelligent waiver," but in so doing, failed both to give deference to the Judge's findings, and also failed to view those facts in the light most favorable to the United States.

The Military Judge here not only cited the correct law, (J.A. 218), but then further made specific findings: he (1) found Appellee never was confused or demonstrated he did not understand his rights, (J.A. 214); (2) found Appellee's standardized scores were above and above-average, (J.A. 216); (3) found the Appellee was alert, attentive, and did not appear confused, (J.A. 216); (4) in detail examined Appellee's education, age, and ability to appreciate the investigator's questions and his rights, (J.A. 218-19); (5) found that the word "help" used by the

investigators, in context, meant "providing additional information," (J.A. 221); and, (6) concluded that Appellant's rights were appropriately explained and Appellee "made a knowing, intelligent . . . choice to waive them", (J.A. 221).

But the Service Court, like in *Katso,* erred by ignoring, failing to afford deference to, and failing to view in the light most favorable to the United States—as it must—those Findings. And the Service Court here erred in finding that the Judge's analysis needed to be more complete, given that nothing in the Judge's findings—as in *Hurtado*—indicated that the Judge misunderstood or misapplied the law, and the Service Court erred in failing to apply the standard presumption to the Judge's thorough Ruling addressing Appellee's trial Motion.

2. Not only did the lower court fail to apply the standard deference and presumptions, but on its face, the Military Judge's Ruling substantively found that Appellee's confession was made voluntarily, knowingly, and intelligently. The Judge considered the totality of the circumstances.

In *Lewis*, the military judge found a confession involuntary because the appellant's General Technical score was below average and because he was diagnosed with adjustment disorder six months after the interrogation; the military judge inferred the appellant suffered from the disorder during the interrogation. 78 M.J. at 451. This was clear error, despite the deferential standard of review, because there was no temporal tie between his diagnosis and the confession and no testimony indicated he had the disorder during the interview. *Id*. at 454.

Here, the Military Judge considered an exhaustive list of factors in ruling that Appellee's statement was voluntary. (J.A. 211–22.) The Military Judge considered Appellee's mental health appointment which proceeded the interview, the statements of the sailor who brought Appellee to the interview, and Appellee's age, years of service, rank and military occupational specialty. (J.A. 213–14.) He also considered the Detective's offer to act as a confidential informant and the numerous references to the "help" offered to Appellee. (J.A. 213–16.) The Military Judge also considered that Appellee appeared "alert and attentive" and did not appear confused by the investigators, who themselves were "professional and cordial in their tone and behavior and did not appear to be aggressive in their questioning." (J.A. 216.) Contrary to the lower court's Opinion, the Military Judge in fact considered the pre-waiver question, "you understand what you're here for?" (J.A. 214.)

After considering the "totality of the circumstances," the Military Judge ultimately concluded that "the evidence reveals that [Appellee's] rights were appropriately explained to him both orally and in writing and made a *knowing, intelligent* and voluntary choice to waive them." (J.A. 221–22 (emphasis added).)

Unlike *Mott*, where uncontested expert testimony was not discussed or explicitly analyzed, here the Military Judge explicitly analyzed all the factors that pertain to voluntary *and* knowing, intelligent waiver. Though the Military Judge

did not explicitly detail it, he was no doubt aware that Appellee's R.C.M. 706 inquiry, which he admitted was limited to his mental state at the time of the offense, had found he was mentally responsible. (J.A 261–62.)

3. Even if this Court holds the Military Judge did not adequately consider the totality of the circumstances under *Mott*, the confession was voluntary, knowing and intelligent.

a. Appellee's characteristics weigh in favor of voluntariness.

An appellant's relevant characteristics during an interrogation include age, level of education, and level of intelligence, including the ability to read and write. *See Lewis*, 78 M.J. at 453; *United States v, Freeman*, 65 M.J. 451, 454 (C.A.A.F. 2008). "[M]any soldiers share [the] characteristics" of both being an E-4 and having "low average or below average intelligence," the *Lewis* court noted, so those facts do not "necessarily weigh[] against a finding of voluntariness." *Lewis*, 78 M.J. at 453–54 (internal citations and quotations omitted).

Courts examine whether an appellant suffered any particular "mental impairment," such as a heightened or fragile emotional state going into the interview or a mental illness. *Lewis*, 78 M.J. at 454–55; *United States v. Martinez*, 38 M.J. 82, 85 (C.A.A.F. 1993). Voluntariness of a waiver depends on the absence of police overreaching, not on free choice in any broader sense of the word. *Connelly*, 479 U.S. at 170.

In *Freeman*, 65 M.J. 451, the appellant—a twenty-three year old E-3 who

could read and write and completed high school—waived his rights and spoke to law enforcement. *Id.* at 454. During a nearly ten-hour interrogation, law enforcement lied about having eyewitnesses and finding fingerprints, and they threatened to refer the case to civilian authorities to increase the appellant's punitive exposure if he did not confess. *Id.* at 456. On appeal, the court found the confession was voluntary under the totality of the circumstances. *Id.* at 457.

In *Lewis*, the appellant was a junior enlisted servicemember in his early twenties with a high school education and six years of military service. 78 M.J. at 453. He had a high school education, a General Technical score of ninety-two, and was diagnosed with adjustment disorder. *Id*. at 453–54. The court found this combination of attributes "[did] not raise any serious red flags" about his ability to voluntarily confess. *Id*.

The *Lewis* court found the confession voluntary, even though there was an Article 31(b) violation in the first interview and the appellant was never given a cleansing statement. *Id.* at 455. The court noted the appellant chose to speak with investigators after they informed him of his rights, and the appellant chose not to seek legal counsel between interrogations. *Id*.

Here, Appellee was in his early twenties and of relatively junior rank, like the appellants in *Freeman* and *Lewis*. (J.A. 214); *see Freeman*, 65 M.J. at 454; *Lewis*, 78 M.J. at 453. The Military Judge found Appellee to be "relatively

intelligent" and found his two years as a Master-At-Arms weighed in favor of voluntariness. (J.A. 219.)

Further, the Military Judge found that Appellee "appeared alert and attentive, and did not appear to be confused by the investigator's questions." (J.A. 217.) Nothing supports that he "cracked and gave up," causing him to tell "[law enforcement] what it wanted to hear." *See Martinez*, 38 M.J. at 85.

"Mental illness does not make a statement involuntary per se." *Lewis*, 78 M.J. at 454–55. Even if this Court considered the "depress[ed] state" for which Appellee sought treatment arose from a mental impairment or illness, it is no worse than the adjustment disorder or schizophrenia suffered by other appellants whose statements were deemed voluntary. (J.A. 214–16); *see Lewis*, 78 M.J. at 454–55; *Mott*, 72 M.J. at 322; *Colorado v. Connelly*, 479 U.S. 157, 161–62 (1986).

Nothing supports that Appellee's mental state "negatively affected his capacity for free choice or that government overreaching occurred at the time of his…interview." *Lewis*, 78 M.J. at 454–55. Thus, "no consideration of [any] mental impairment he suffered at the time of his . . . interview, if any, is warranted." *Id*.

b. Appellee was properly informed of his rights but chose to waive them.

In *Lewis*, the court found it "highly probative" of voluntariness that the appellant "chose to speak after being informed of his rights." 78 M.J. at 455.

Here, Appellee was properly advised of his rights, waived them, and agreed to answer questions; thus, this waiver is "highly probative." *See Lewis,* 78 M.J. at 455; *Nelson*, 82 M.J. at 256 ("not only did Appellee 'technically' waive his *Miranda*/Article 31, UCMJ, rights, he did so forthrightly and unambiguously and demonstrated his willingness to answer questions.").

c. The interrogation was short and non-threatening.

Courts examine how long an appellant was detained, how repeated or prolonged questioning was, or whether there were multiple rounds of interrogations. *See Nelson*, 82 M.J. at 256–57; *Lewis*, 78 M.J. at 450–52; *Freeman*, 65 M.J. at 454–55; *United States v. Bresnahan*, 62 M.J. 137, 141–42 (C.A.A.F. 2005); *United States v. Ford*, 51 M.J. 445, 452 (C.A.A.F. 1999). Also considered is whether an appellant was deprived of food, drink, sleep, breaks, or other material comforts. *See Lewis*, 78 M.J. at 455; *Freeman*, 65 M.J. at 455; *Ford*, 51 M.J. at 452; *Martinez*, 38 M.J. at 84–85.

Here, the interrogation was around thirty-two minutes long. (J.A. 238.) Much longer interrogations have been found voluntary. *See Freeman*, 65 M.J. at 455 (voluntary ten-hour interrogation); *United States v. Henderson*, 52 M.J. 14, 16 (C.A.A.F. 1999); (voluntary interrogation after midnight); *United States v. Washington*, 46 M.J. 477, 481 (C.A.A.F. 1997); *Nelson*, 82 M.J. at 253 (multiple voluntary interrogations over several days).

There were no prolonged, repeated attempts to goad Appellee into confessing. Rather, Appellee answered CID's questions willingly and forthrightly. After his rights reading, and after agreeing to speak, Appellee answered Detective Watson's first question—"So what happened?"—immediately and without vacillating. (J.A. 159.) Appellee began describing the location and circumstances of his drug use within eleven minutes of the interview's open and less than forty-five seconds after Detective Watson's first substantive question. (J.A. 238 at 10:23–11:07.)

d. The interview was not coercive.

Merely being escorted to a police station by a member of an appellant's command to facilitate an interrogation is not per se coercion. *United States v. Chatfield*, 67 M.J. 432, 440 (C.A.A.F. 2009). "While being interrogated in the 'station house' is somewhat coercive in itself," it is not determinative of involuntariness. *Ford*, 51 M.J. at 452.

That Appellee was taken to a mental health appointment before being escorted to his interrogation is not indicative of coercion; the law enforcement agents did not purport to be an extension of mental health treatment, and any discussion of Appellee's mental state was self-initiated. (J.A. 158.)

e. The Agents did not use trickery or cajoling, and even if they did, they were not coercive.

The use of lies, threats, or promises can lead to a coerced confession, but are not determinative of involuntariness. *See Nelson*, 82 M.J. at 257; *Freeman*, 65 M.J. at 455–56; *Bresnahan*, 62 M.J. at 141. "[E]ven where there is a causal connection . . . Ploys to mislead a suspect or lull him into a false sense of security do not render a statement involuntary . . . so long as that decision is a product of the suspect's own balancing of competing considerations." *United States v. Bubonics*, 40 M.J. 734, 739 (N-M. C.M.R. 1994) (internal citations omitted).

In *United States v. Steward*, 31 M.J. 259 (C.A.A.F. 1990), law enforcement —without providing Article 31(b) warnings—told the appellant "from this point on you are grounded. You can either cooperate with us and try to get your wings back or lose your wings forever." 31 M.J. at 260. When the appellant asked why, the agent said "he was suspected of using marijuana" and then "read [him] his Article 31 rights." *Id.*

The military judge held "the rights advisement was sufficient to erase the taint of [law enforcement's] introductory remark." *Id.* at 262. The *Steward* court disagreed: the agent's remark "was reinforced throughout the course of the interview by [his] sympathetic reference to his own prior experience as a pilot and, more importantly, references to the report to be made to the wing commander of [the appellant's] 'conduct' during the interview." *Id.* Thus, the "pre-advisement

appeal to the appellant's compulsion to continue flying constituted an improper inducement." *Id.*

Unlike *Steward*, the Agent's offer to help here was not accompanied by threats or inducements. Appellee argued at the lower court that law enforcement made use of trickery and cajoling during the interrogation by repeatedly emphasizing that their purpose was to help Appellee. (Appellee Br. at 18.) Yet to the extent that Detective Watson's statements about helping Appellee were untrue, they were ultimately accompanied with a caveat: "No guarantees." (J.A. 157.)

Contrary to Appellee's assertion that Appellee was "cajoled," Detective Watson's statements—and their caveat—were not insincere because they were correct. Detective Watson merely contextualized the range of options Appellee had: be forthcoming and potentially receive pay and a less punitive exit from the Navy; or obfuscate and receive no such benefits. (J.A. 171–73.)

Further, Appellee did not act as though he were coerced; like the appellants in *Lewis* and *Freeman*, Appellee "never complained about the process, never asked for an attorney, never asked to stop the interview or leave, or in any other way indicated that he felt coerced or pressured into making a statement." *Lewis*, 78 M.J. at 454 (quoting *Freeman*, 65 M.J. at 454). Instead, after Detective Watson read his rights, Appellee waived all of them less than eight minutes into the interview and admitted to using cocaine less than three minutes later. (J.A. 157.)

Thus, none of the Agent's statements can be said to qualify as deceptions so significant as to render Appellee's confession involuntary.

f. This case is not like *Patterson* and *Giddins.*

Appellee's reliance at the lower court on *United States v. Giddins*, 858 F.3d 870 (4th Cir. 2017), is misplaced. (*See* Appellee's Br. at 18.) In *Giddins*, the police made it seem like the appellant had to answer questions in order to get his car back. *Giddins*, 858 F.3d at 881. The police statements about the car, which the appellant used to get to his job, were coercive because it threatened economic consequences for failing to talk. *Id*. at 881–883 (citing *Garrity v. New Jersey*, 385 U.S. 493 (1967); *Lefkowitz v. Cunningham*, 431 U.S. 801 (1977)). Further, despite the appellant's inquiries as to the nature of the interview, law enforcement—who had in hand an arrest warrant—lied, claiming that he was not in trouble and not being accused of anything. *Id*. at 884. The deceit in the nature of the investigation was coercive. *Id*.

In *United States v. Patterson*, No. 202200262, 2024 CCA LEXIS 130 (N-M. Ct. Crim. App., Apr. 4, 2024), the appellant's statements were found to be involuntary when NCIS agents mischaracterized a rights warning as "just a piece of paper." *Id* at 5. This Court suppressed those statements, explaining that law enforcement may not mislead a suspect by informing him he is not accused of criminal conduct when the opposite is true; instead, they must inform the suspect

of the accusation regardless of whether he is "accused" or merely "suspected." *Id*. at 13–14.

Unlike *Patterson*, and *Giddins*, here Detective Watson was unambiguous about the nature of the interview. At the outset, the Detective asked Appellee whether he understood why he was being interviewed and plainly explained "[u]rinalysis." (J.A. 215.) Detective Watson's reference to any help did not obfuscate that he suspected Appellee of illegal drug use.

Mere seconds after the reference to help, Detective Watson recited to Appellee that he was "a suspect of violation of the UCMJ, Article 112a, wrongful use of a controlled substance." (J.A. 154.) Appellee was then presented with the urinalysis paperwork indicating that he had tested positive for the cocaine metabolite at "three times the acceptable level." (J.A. 157.) Nor did the Detective trivialize the rights advisement form at any point. And unlike *Giddins*, there were no threatened economic consequences—in fact, there were no threatened consequences of any kind.

E. Assuming the Military Judge erred in admitting Appellee's statements, the error was harmless beyond a reasonable doubt.

Admission of a statement . . . is not harmless beyond a reasonable doubt if "there is a reasonable possibility that the evidence complained of might have contributed to the conviction;" this determination is made on the basis of the entire record. *Mott*, 72 M.J. at 332 (internal citations omitted).

In *Arizona v. Fulminante*, 499 U.S. 279 (1991), the Supreme Court held admission of the involuntary confession was not harmless beyond a reasonable doubt because, without it, "it [was] unlikely that [the appellant] would have been prosecuted at all, because the physical evidence from the scene and other circumstantial evidence would have been insufficient to convict." *Id*. at 297.

No such concern exists here. The United States presented an Expert Witness who testified credibly that cocaine was found in Appellee's system. (J.A. 322–444.) The United States also presented the Urinalysis Program Coordinator who took Appellee's sample, who testified that he followed standard procedures on the day Appellee gave a sample. (J.A. 315.)

Finally, the United States presented testimony from the observer who verified Appellee's sample, who testified that he always watched urinalysis sample being provided and verified. (J.A. 320.) Thus, unlike in *Fulminante*, even assuming the Military Judged erred in admitting Appellee's statements, the error would have been harmless beyond a reasonable doubt because there was enough evidence to convict Appellant regardless. *Fulminante*, 499 U.S. at 297–300.

Conclusion

The United States respectfully requests that this Court affirm the findings and sentence as adjudged and approved below.

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I certify that this document was emailed to the Court's filing address and that a copy of the foregoing was emailed to Appellate Defense Counsel, Lieutenant Commander Raymond BILTER, JAGC, U.S. Navy, on April 10, 2026.

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