

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

UNITED STATES,
Appellee

v.

Collyn L. LAWRENCE,
Airman First Class (E-3),
United States Air Force,
Appellant

**BRIEF ON BEHALF OF
APPELLANT**

Crim. App. Dkt. No. ACM 24064

USCA Dkt. No. 26-0237/AF

**TO THE JUDGES OF THE UNITED STATES
COURT OF APPEALS FOR THE ARMED FORCES:**

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ISSUES PRESENTED

- I. Whether the permissive inference is unconstitutional for marijuana cases, both facially and as applied to this case.**
- II. Whether Appellant's conviction for marijuana use is legally insufficient.**

INTRODUCTION

For decades, military courts have relied on a permissive inference to establish knowing use of controlled substances based solely on a positive urinalysis. This inference historically rested on the premise that accidental or unknowing ingestion is highly improbable. This was because marijuana was strictly prohibited nationwide, heavily regulated, and relegated to the black market.

Today, however, that premise is no longer true for marijuana. The present-day legal and societal landscape of marijuana has drastically changed. There has been widespread state-level legalization, the creation of a multi-billion-dollar commercial market, and the proliferation of unregulated marijuana products.

In light of this present-day experience, the permissive inference for marijuana use is unconstitutional both facially and as applied. Appellant was convicted of using marijuana based exclusively on this outdated inference, with no corroborating evidence of knowing use, and despite unrebutted evidence of his good military character. Because a positive urinalysis no longer rationally supports an inference of knowing use, Appellant's conviction must be set aside as legally insufficient.

STATEMENT OF STATUTORY JURISDICTION

Appellant filed a timely appeal of the court-martial judgment entered into the record on June 14, 2024, under Article 60c(a), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 860c, that includes a finding of guilty. Accordingly, the Air Force Court of Criminal Appeals (AFCCA) had jurisdiction pursuant to Article 66(b)(1)(A), UCMJ, 10 U.S.C. § 866(b)(1)(A). Appellant now invokes this Court’s Article 67, UCMJ, 10 U.S.C. § 867, jurisdiction.

RELEVANT AUTHORITIES

The 2024 edition of the Manual for Courts-Martial’s paragraph on “Article 112a (10 U.S.C. 912a)—Wrongful use, possession, etc., of controlled substances,” states, in relevant part:

b. *Elements.*

....

(2) Wrongful use of controlled substance.

(a) That the accused *used* a controlled substance; and

(b) That the *use* by the accused was wrongful.

....

c. *Explanation.*

....

(5) Wrongfulness. To be punishable under Article 112a, possession, use, distribution, introduction, or manufacture of a controlled substance must be wrongful. Possession, *use*, distribution, introduction, or manufacture *of a controlled substance is wrongful if it is without legal justification or authorization*. . . . Possession, *use*, distribution, introduction, or manufacture *of a controlled substance may be inferred to be wrongful in the absence of evidence to the contrary*. The burden of going forward with evidence with respect to any such exception in any court-martial or other proceeding under the UCMJ shall be upon the person claiming its benefit. If such an issue is raised by the evidence presented, then the burden of proof is upon the United States to establish that the use, possession, distribution, manufacture, or introduction was wrongful.

. . . .

(10) Use. “Use” means to inject, ingest, inhale, or otherwise introduce into the human body, any controlled substance. *Knowledge of the presence of the controlled substance is a required component of use. Knowledge of the presence of the controlled substance may be inferred from the presence of the controlled substance in the accused’s body or from other circumstantial evidence. This permissive inference may be legally sufficient to satisfy the Government’s burden of proof as to knowledge.*

Manual for Courts-Martial, United States (2024 ed.) (2024 MCM), pt. IV, ¶ 50.b.(2),

c.(5), c.(10) (emphasis added).

STATEMENT OF THE CASE

A military judge sitting as a special court-martial pursuant to Article 16(c)(2)(A), UCMJ, 10 U.S.C. § 816(c)(2)(A), convicted Appellant, contrary to his plea, of one charge and specification of wrongful use of Delta-9 Tetrahydrocannabinol,¹ a Schedule I controlled substance,² “within the Continental United States,” in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. JA 13. The military judge sentenced Appellant to a reduction in pay grade to E-2 and to be reprimanded. JA 13. The convening authority took no action on the findings or sentence. JA 16.

On May 7, 2026, the lower court affirmed the findings and sentence. JA 1-10. Appellant timely petitioned this Court for review on July 3, 2026.

STATEMENT OF FACTS

A. Marijuana is commercially available and can be lawfully purchased.

1. The Federal government has tolerated the production and sale of marijuana when done in accordance with state law.

The legal status of marijuana has dramatically changed since 1949 when the Manual for Courts-Martial first codified specific cannabis offenses. *Manual for*

¹ Delta-9 Tetrahydrocannabinol (THC-9) is “a natural product produced by the Cannabis Sativa plant,” commonly referred to as marijuana. JA 100:4-8. It is referred to as marijuana throughout this brief.

² Marijuana is no longer a Schedule I controlled substance. 91 Fed. Reg. 22714 (Apr. 28, 2026) (rescheduling marijuana to Schedule III under the Controlled Substances Act).

Courts-Martial, United States Army (1949 ed.), ¶ 117c. (identifying introduction and possession of “marihuana” as offenses); Maj Charles G. Hoff, Jr., *Drug Abuse*, 51 MIL. L. REV. 147, 171 (1971) (discussing the history of marijuana criminalization in the military).

Today, forty-one states, three territories, and the District of Columbia (D.C.) have legalized some marijuana use; of those, twenty-four states, three territories, and D.C. have legalized the recreational use of marijuana. *State Medical Cannabis Laws*, NAT. CONF. OF STATE LEGISLATURES (Sep. 2, 2026), <https://www.ncsl.org/health/state-medical-cannabis-laws> [permanent link unavailable];³ see David Carpenter et al., *The Evolution of Marijuana as a Controlled Substance and the Federal-State Policy Gap* (2022) (Congressional Research Service Report, R44782, April 7, 2022, showing that California was the first state to legalize marijuana for medicinal purposes in 1996) (available at <https://www.congress.gov/crs-product/R44782> [<https://perma.cc/NK6V-T4AM>]).

In 2013, the Department of Justice directed federal prosecutors to curtail their enforcement efforts against marijuana users even while marijuana products remained on Schedule I. Memorandum from the Attorney General of the United

³ Permanent links for some internet-only cited authorities are unavailable due to host website restrictions and include “[permanent link unavailable]” in lieu of the permanent link to annotate this issue. If this Court or the Government is unable to access those authorities via the parent link, undersigned counsel can provide a digital copy.

States to All United States Attorneys (Aug. 29, 2013) (available at <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>). And then, earlier this year, the Federal government moved some marijuana products to Schedule III, a category which includes drugs with a “currently accepted medical use.” 91 Fed. Reg. 22714 (Apr. 28, 2026).

“The [Federal] [g]overnment has largely tolerated the production and sale of marijuana when done in accord with state law, and it has allowed a multi-billion-dollar marijuana business to develop.” *United States v. Hemani*, 146 S. Ct. 1677, 1701 n.1 (2026) (Alito, J., concurring) (citing Congressional Research Service, L. Sacco & J. Lampe, *The Federal Status of Marijuana and the Policy Gap with States* 2 (2026)).

2. Marijuana use is more common than alcohol use and is easily accessible.

“[M]arijuana use today is like alcohol use at the founding. It is widespread and increasingly considered socially acceptable in many quarters. And from a practical standpoint, law enforcement widely tolerates the use of marijuana.” *Id.* at 1701 (Alito, J., concurring). Research suggests there are now more adults in the United States who regularly use marijuana than consume alcohol.⁴

⁴ See Jonathan P. Caulkins, *Changes in Self-Reported Cannabis Use in the United States from 1979 to 2022*, 119 ADDICTION 1648 (2024) (finding for the first time that more individuals self-report daily or near-daily marijuana use than alcohol use) (available at <https://pubmed.ncbi.nlm.nih.gov/38775461/>); Jeffrey M. Jones, *Nearly*

Marijuana is readily accessible too. In states where recreational marijuana is legal and commercially available,⁵ the requirement to purchase marijuana is the same as alcohol: a valid form of identification showing the purchaser is over twenty-one years old.⁶ State regulatory frameworks allow the sale of marijuana through

Half of U.S. Adults Have Tried Marijuana, GALLUP (Aug. 17, 2021), <https://news.gallup.com/poll/353645/nearly-half-adults-tried-marijuana.aspx> [<https://perma.cc/B7LE-7HRM>]; see *Most Americans Favor Legalizing Marijuana for Medical, Recreational Use*, PEW RESEARCH CENTER (Mar. 26, 2024), <https://www.pewresearch.org/politics/2024/03/26/most-americans-favor-legalizing-marijuana-for-medical-recreational-use/> [<https://perma.cc/VK3D-BMP5>] (showing 88% of adults support marijuana legalization for medical use, 57% support legalization for medical and recreational use, and 42% find legalization of recreational use “[m]akes the criminal justice system” “[m]ore fair”).

⁵ Out of the twenty-four states that have legalized recreational marijuana use, only Virginia does not have legal commercial sales—yet. See H.B. 30, 2026 Special Session I (Va. 2026) (allowing commercial sales to begin July 1, 2027).

⁶ See, e.g., *Adult-Use Cannabis FAQs*, MARYLAND CANNABIS ADMINISTRATION (last visited Sep. 10, 2026), <https://cannabis.maryland.gov/pages/cannabisfaq.aspx> [<https://perma.cc/B36K-2DXS>] (“Like tobacco and alcohol, the legal purchase age for cannabis in Maryland is 21 or older. Valid, government-ID (driver’s license, passport) is required at the point-of-sale.”).

dispensaries,⁷ delivery retailers,⁸ social consumption lounges,⁹ and at temporary events.¹⁰ There is no comprehensive federal regulatory framework—each state has its own. *See* JA 120, 125.

Marijuana can be consumed through a variety of methods. A common way to ingest marijuana is by inhaling vapor through vapes.¹¹ Vapes can be disposable or

⁷ *See, e.g.,* WISHING WELLNESS, <https://wishingwellnessdc.com/> [<https://perma.cc/R22W-YTW3>] (last visited Sep. 12, 2026) (a marijuana dispensary across the street from this Court).

⁸ *See, e.g.,* EAZE, <https://www.eaze.com/> [<https://perma.cc/UE2C-8ZDX>] (last visited Sep. 10, 2026) (California-based company providing same-day delivery of recreational marijuana products to individual residences); LEAFLY, <https://www.leafly.com/delivery/> [<https://perma.cc/NJA4-VNDL>] (last visited Sep. 10, 2026) (online service coordinating delivery of recreational marijuana products from dispensaries to individual residences in California, Maine, Massachusetts, Michigan, Arizona, Nevada, and Oregon); RISE CANNABIS, <https://risecannabis.com/> [<https://perma.cc/7RC4-KF8Q>] (last visited Sep. 10, 2026) (providing delivery of recreational marijuana products to individual residences in multiple states, including Maryland).

⁹ Social consumption lounges, also referred to as cannabis cafés, allow recreational marijuana to be consumed on a business’ property. *See, e.g.,* DON FUEGO, <https://donfuegocannabis.com/> [<https://perma.cc/5SME-P2JF>] (last visited Sep. 10, 2026) (D.C. cannabis café, one mile from this Court).

¹⁰ *See, e.g.,* MINN. STAT. § 342.39 (2025) (authorizing businesses to host events for up to four days that allow recreational cannabis consumption); N.Y. CANNABIS LAW § 130-A (Consol. 2026) (allowing the sale of recreational cannabis “at stand-alone cannabis sale ‘pop-up’ events, farmers’ markets and public markets”).

¹¹ Vapes “are battery-operated devices that heat a liquid and produce an aerosol. An aerosol is a mix of small particles released in the air. Some people refer to the aerosol from an e-cigarette as ‘vapor.’” *About E-Cigarettes (Vapes)*, U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION (Oct. 24, 2024), <https://www.cdc.gov/tobacco/e-cigarettes/about.html> [<https://perma.cc/UVT3-6S8Y>].

modular, capable of holding nicotine or marijuana cartridges, and often hide the contents and the smell of the substance through flavoring.¹² Vapes are also discreet, usually unlabeled and hiding any indication of whether they contain marijuana or nicotine:



¹² See Christian Giroud et al., *E-Cigarettes: A Review of New Trends in Cannabis Use*, 12 INT’L. J. ENV’T RSCH. PUB. HEALTH 9988, 9989-9992 (2015) (describing e-cigarette hardware that can be used for nicotine and cannabis) (available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC4555324/>); Ellen Meier & Dorothy K. Hatsukami, *A review of the additive health risk of cannabis and tobacco co-use*, 166 DRUG AND ALCOHOL DEPENDENCE 6 (2016) (describing how electronic nicotine delivery systems can be used for cannabis) (available at <https://www.sciencedirect.com/science/article/pii/S0376871616302101#sec0015>); *What is a 510 Battery and Vape Cartridge?*, G PEN, <https://gpen.com/pages/vape-cartridge-and-510-battery-guide> [<https://perma.cc/S5K2-GQ5Y>] (last visited Sep. 11, 2026) (“A vape cartridge is a small, pre-filled (or refillable) container that holds cannabis oil, CBD oil, nicotine e-liquid, or other concentrates, designed to be used with a compatible battery.”).

¹³ *Tombstone V2*, HAMILTON DEVICES, <https://hamiltondevices.com/product/tombstone-v2/> [<https://perma.cc/W3V8-RSEV>] (last visited Sep. 11, 2026) (pictured left, using 510-cartridges that can contain both nicotine, marijuana, and other substances); *Blue Dream Disposable Distillate Vape 2g*, LAZY RIVER PRODUCTS,

While some states require vape cartridges to be labeled with a marijuana warning, only California requires labeling the vaporizer itself; no other state or federal regulations require the vaporizer to be labeled. *See, e.g.*, CAL. CODE REGS. tit. 4, § 17410 (2022) (requiring a universal marijuana symbol on integrated cannabis vaporizers “a size no smaller than one-quarter (0.25) inch wide by one-quarter (0.25) inch high”); 560 R.I.C.R. 10-10-2.7.2.E.4.a. (LexisNexis 2026) (requiring cartridge labeling). Once the cartridge is in the device or the vaporizer is out of the box, there is no visible indicator whether the vaporizer contains nicotine or marijuana.

Another common way to consume marijuana is by eating edible products. These edible marijuana products include “copy-cat” foods.¹⁴ Companies intentionally manufacture products that mimic common snacks like Kellogg’s Rice Krispies Bars, Skittles, Starburst Gummies, and Doritos, with minimal warnings of marijuana content:

<https://lazyriverproducts.com/stores/lazy-river-products-tewksbury-llc/product/blue-dream-disposable-distillate-vape-2g> [https://perma.cc/2G2C-R6WM] (last visited Sep. 14, 2026) (pictured right, a single-use, disposable marijuana vaporizer).

¹⁴ *See* Danielle C. Ompad et al., *Copycat and lookalike edible cannabis product packaging in the United States*, DRUG AND ALCOHOL DEPENDENCE, June 2022 (available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC9106923/>); Geoffrey W. Brown et al., *The safety of lookalikes: a new THC beverage enhancer and a non-THC counterpart*, 5 J. CANNABIS RESEARCH 14 (2023) (available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC10191811/>).

at 4. Accidental ingestion has increased in recent years,¹⁵ and the potency of marijuana products has increased four-fold in the last thirty years.¹⁶ This is important

¹⁵ Robert G. Hendrickson et al., *Acute cannabis toxicity in older adults*, 4 TOXICOLOGY COMMUNICATIONS 67, 67-70 (2020) (finding 11% of marijuana ingestions reported to the Oregon and Alaska poison centers between 2015-2017 were accidental) (available at <https://www.tandfonline.com/doi/full/10.1080/24734306.2020.1852821#abstract>); Daniel G. Barrus et al., *Tasty THC: Promises and Challenges of Cannabis Edibles*, RESEARCH TRIANGLE INSTITUTE (Jan. 24, 2016), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5260817/> (identifying a trend in the National Poison Data System that “suggests that accidental exposures may become more common as more states legalize recreational or medical cannabis use”); Kelly Fong et al., *Unwitting adult marijuana poisoning: a case series*, 59 CLINICAL TOXICOLOGY 913, 913 (2021) (“Unintentional marijuana poisonings have increased, but legal and regulatory barriers have limited the study of marijuana outside highly controlled conditions.”) (available at <https://pubmed.ncbi.nlm.nih.gov/33688774/>); see, e.g., Caren Chesler, *As more states legalize marijuana, more children accidentally ingest THC-laced edibles*, WASHINGTON POST (Apr. 17, 2021), https://www.washingtonpost.com/health/marijuana-edibles-and-kids/2021/04/16/ef9daf6a-7136-11eb-85fa-e0ccb3660358_story.html [permanent link unavailable]; Maria Cramer, *Florida Wedding Guests are Sickened by Marijuana in Food, Police Say*, N.Y. TIMES (Apr. 21, 2022), <https://www.nytimes.com/2022/04/21/us/marijuana-food-florida-wedding.html> [permanent link unavailable]; Thomas Novelly, *Protein Shakes Pulled from Military Base GNC Stores Because They Contained Hemp Seeds*, MILITARY.COM (Sep. 23, 2024), <https://www.military.com/daily-news/2024/09/23/protein-shakes-pulled-military-base-gnc-stores-because-they-contained-hemp-seeds.html> [https://perma.cc/L7AA-GS8U].

¹⁶ Mahmoud A. ElSohly et al., *Changes in Cannabis Potency over the Last Two Decades (1995-2014) - Analysis of Current Data in the United States*, 79 BIOLOGICAL PSYCHIATRY JOURNAL 613 (2016) (“Overall, the potency of illicit cannabis plant material has consistently risen over time since 1995 from approximately 4% in 1995 to approximately 12% in 2014”) (available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC4987131/>); Stephanie Lake et al., *High-Potency Cannabis Use and Health: A Systematic Review of Observational and Experimental Studies*, 182 AM. J. PSYCHIATRY 616 (2025) (“Before 2000, the average potency of herbal cannabis seized in the United States was <5% THC,

for understanding whether the DoD cutoff level, which was established in 1988,¹⁷ still provides adequate protection against unknowing positive results.

3. The military has recognized the ubiquity of legal marijuana.

As a result of these changes, the highest levels of our military have deemed it prudent to warn military members of the ubiquity of legal marijuana. This year, the Under Secretary of War for Personnel and Readiness issued a memorandum, stating “Service members are reminded that the [UCMJ] prohibits . . . the wrongful use . . . of marijuana . . . even if a State or local jurisdiction legalizes the use of recreational marijuana or authorizes the sale of marijuana.” Memorandum from the Under Secretary of War for Personnel and Readiness to Senior Pentagon Leadership and Defense Agency and DOW Field Activity Directors (July 9, 2026) (available at https://www.armyresilience.army.mil/Portals/152/policies/Prohibition%20on%20the%20Use%20of%20Marijuana%20by%20Service%20Members%20and%20DoW%20Civilians.pdf?ver=i_NDYinU71o09E8qcsg_gA%3D%3D). The Department of the Air Force has given a similar warning: “While some jurisdictions have legalized the use of marijuana . . . for recreational or medical purposes, the wrongful use . . .

whereas the average potency of herbal cannabis is now ~20% in most state-regulated nonmedical retail markets.”) (available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC12549548/>).

¹⁷ Mandatory Guidelines for Federal Workplace Drug Testing Programs; Final Guidelines; Notice, 53 Fed. Reg. 11970, 11983 (Apr. 11, 1988) (setting the confirmatory testing cutoff for “[m]arijuana metabolite[s]” at 15ng/ml).

remains prohibited and punishable under Article 112a, UCMJ.” Department of the Air Force Manual 44-197, *Military Drug Demand Reduction Program*, ¶ 1.2.2. (Sep. 5, 2023).

Marijuana is no longer a “black-market” drug, as the trial counsel described it during closing argument. JA 138. It is a supermarket or farmer’s market recreational drug, which can be delivered to someone’s home with no more effort than ordering takeout. It is accessible by anyone over the age of twenty-one in nearly half our country’s states and in our capital. It does not have the status it did in 1949.

B. Appellant’s random urinalysis test came back positive for a small amount of marijuana.

On January 9, 2024, Appellant was selected for a random urinalysis. JA 29. Appellant’s sample returned a positive test result for THC-9 at 22 ng/ml—just 7 ng/ml above the Department of Defense cutoff level. JA 28. Appellant’s commander subsequently offered Appellant nonjudicial punishment under Article 15, UCMJ, 10 U.S.C. § 815, for wrongful use of marijuana, a Schedule I controlled substance, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. JA 17-19. Appellant declined the Article 15 and demanded a trial by court-martial. JA 17.

At the time of his court-martial, Appellant had been in the Air Force for nearly two years. JA 76. Aside from this positive urinalysis result, Appellant was not involved in any other serious misconduct. *Cf.* JA 78-81 (Appellant received a record of individual counseling for using a vape while at work and for failing to attend a

scheduled appointment). In fact, Appellant had terrific military character, as demonstrated by various letters from colleagues and supervisors admitted during findings. *See* JA 82-90.

C. The Government put on no evidence that Appellant knowingly used marijuana and relied on the permissive inference to prove knowledge.

The Government put on no evidence that Appellant knowingly used marijuana. *See* JA 138-41 (trial counsel arguing “the twin issues of knowing”). The Government did put on evidence of Appellant’s leave status in the weeks preceding the urinalysis, his nicotine vape use in the months prior to trial, and his preservice marijuana use, but did not use them to prove knowledge. *Compare* JA 25-27 (Pros. Ex. 1, showing Appellant taking leave within two weeks of his urinalysis), *and* JA 128-29 (testimony about Appellant’s vape use), *and* JA 94-96 (military judge discussing the low probative value of undated prior service use), *with* JA 147-49 (rebuttal argument on findings discussing Appellant’s leave to argue opportunity and vape use to rebut an implied defense of innocent ingestion), *and* JA 135-42, 147-49 (trial counsel’s argument on findings omitting any reference to preservice use).

Instead, the Government asked the factfinder to use the permissive inference to “infer knowledge.” JA 141. The Government’s expert witness, Dr. Eric Holwitt, a laboratory certifying official at the Air Force Drug Testing Laboratory, conceded that marijuana is sold recreationally in some states, marijuana can be consumed

through vaping, marijuana can be purchased at vape shops, marijuana is not federally regulated, and urinalysis results cannot show knowing use. JA 119-22.

Like the Government at trial, the AFCCA relied on the permissive inference—which it found constitutional both facially and as applied to Appellant—to affirm Appellant’s conviction. JA 7-8. Ultimately, the AFCCA considered “the permissive inference, Appellant’s known vape use, and scheduled leave plans” to find his conviction legally sufficient. JA 8.

ARGUMENT

Despite the ubiquity of legal marijuana, military courts continue to use the permissive inference¹⁸ to prove knowing marijuana use. JA 7-8; *but see United States v. Bass*, __ M.J. __, No. 25-0149/MC, 2026 CAAF LEXIS 544, at *15–16 (C.A.A.F. June 24, 2026) (declining to apply the permissive inference for wrongfulness and knowledge to hemp-derived products (i.e., tetrahydrocannabinol (THC)-8)).

¹⁸ “Knowledge of the presence of the controlled substance is a required component of use.” 2024 *MCM*, pt. IV, ¶ 50.c.(10). “Knowledge of the presence of the controlled substance may be inferred from the presence of the controlled substance in the accused’s body or from other circumstantial evidence. This permissive inference may be legally sufficient to satisfy the Government’s burden of proof as to knowledge.” *Id.* The 2024 *MCM* contains another permissive inference for wrongful use, but it is without reference to the knowledge of the presence of a controlled substance. *Id.*, pt. IV, ¶ 50.c.(5) (omitting “use” from list of acts that are not wrongful if done without knowledge of the contraband nature of the substance).

But a permissive inference is unconstitutional if it lacks “a rational connection between the fact proved and the fact inferred.” *Bass*, 2026 CAAF LEXIS 544, at *14 (citing *Barnes v. United States*, 412 U.S. 837, 842 (1973)). That is true here. Marijuana products and their use are pervasive in today’s society, and products containing marijuana are largely unregulated and often marketed in ways that hide the fact that they contain marijuana. Because of this, there is no longer a rational connection between the fact proved (a metabolite of marijuana in one’s body) and the fact inferred (knowing use of marijuana). The use of the permissive inference in marijuana cases, and especially in Appellant’s case, is unconstitutional. Without the permissive inference, the Government failed to meet its burden of proof, rendering Appellant’s conviction legally insufficient. Therefore, the findings and sentence should be set aside.

I. The factfinder’s use of the permissive inference to infer knowledge was unconstitutional, both facially and as applied to Appellant.

The premises supporting the permissive inference for marijuana are no longer present in today’s society. Therefore, “a positive THC-[9] urinalysis result, standing alone, cannot rationally support a permissive inference of knowing use” of marijuana and it is unconstitutional to “rely[] on such an inference to find knowledge and wrongfulness.” *Id.* at *16.

A. Standard of review.

“This Court reviews questions of law de novo.” *Id.* at *14.

B. The permissive inference for knowing marijuana use is facially unconstitutional because its foundational premises no longer reflect present-day experience.

The Supreme Court has held that, in a criminal case, a statutory inference is “‘irrational’ or ‘arbitrary,’ and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend.” *Leary v. United States*, 395 U.S. 6, 36 (1969). This means that for the permissive inference to be constitutional for marijuana use, the inferred fact (knowledge of use) “must more likely than not” flow from the proved fact (the metabolite of marijuana in an accused’s body). *Id.* The inference must also be supported by “present-day experience.” *Barnes*, 412 U.S. at 844-45; *see also County Ct. of Ulster Cnty., N.Y. v. Allen*, 442 U.S. 140, 157-63 (1979). The Ninth Circuit has helpfully summarized the governing law: “Ultimately, the seminal Supreme Court cases on this issue all say the same thing: a permissive inference violates due process when the presumed fact does not follow from the facts established.” *Hall v. Haws*, 861 F.3d 977, 991 (9th Cir. 2017).

But present-day experience does not show it is “more likely than not” that a person knowingly used marijuana just because a metabolite is found in their body above the DoD cutoff level. *Leary*, 395 U.S. at 36. The widespread use of marijuana

compounded by the prevalence of unregulated marijuana products masquerading as mainstream commercial food products makes the risk of unknowing ingestion high and undermines the constitutionality of the permissive inference. *Cf. Hemani*, 146 S. Ct. at 1701 (Alito, J., concurring) (“[M]arijuana use today . . . is widespread and increasingly considered socially acceptable [F]rom a practical standpoint, law enforcement widely tolerates [its] use.”).

The permissive inference rests on several premises: “controlled substances are illegal to possess, are tightly regulated even in lawful channels, and are commonly associated with noticeable psychoactive effects, making unknowing ingestion unlikely and a positive test a rational indicator of knowing, wrongful use.” *Bass*, 2026 CAAF LEXIS 544, at *15. That inference no longer holds for marijuana.

1. Marijuana is legal to possess and use.

Forty-one states, three territories, and D.C. have legalized some marijuana use; of those, twenty-four states, three territories, and D.C. have legalized the recreational use of marijuana. *State Medical Cannabis Laws*, NAT. CONF. OF STATE LEGISLATURES (Sep. 2, 2026), <https://www.ncsl.org/health/state-medical-cannabis-laws> [permanent link unavailable]. As a result, marijuana is now “sold in mainstream retail venues.” *Bass*, 2026 CAAF LEXIS 544, at *15. Marijuana can be purchased at a dispensary, a farmer’s market, or a cafe—including the “cannabis apothecary”

across the street from this Court.¹⁹ Marijuana does not even need to be purchased at a store—it can be delivered directly to a person’s door like pizza.²⁰

While marijuana remains a controlled substance, it is now listed as a Schedule III substance with accepted medical uses, and the Federal government “largely tolerate[s] the production and sale of marijuana when done in accord with state law.” *Hemani*, 146 S. Ct. at 1701 (Alito, J., concurring); 91 Fed. Reg. 22714 (Apr. 28, 2026). The Federal government’s own treatment of legal, recreational marijuana “has allowed a multi-billion-dollar marijuana business to develop.” *Hemani*, 146 S. Ct. at 1701 (Alito, J., concurring). Marijuana possession and use are prevalent, with adults using it more regularly than alcohol.²¹ Ultimately, marijuana

¹⁹ See, e.g., WISHING WELLNESS, <https://wishingwellnessdc.com/> [<https://perma.cc/R22W-YTW3>] (last visited Sep. 12, 2026) (marijuana dispensary across the street from this Court).

²⁰ See, e.g., EAZE, <https://www.eaze.com/> [<https://perma.cc/UE2C-8ZDX>] (last visited Sep. 10, 2026) (California-based company providing same-day delivery of recreational marijuana products to individual residences); LEAFLY, <https://www.leafly.com/delivery/> [<https://perma.cc/NJA4-VNDL>] (last visited Sep. 10, 2026) (online service coordinating delivery of recreational marijuana products from dispensaries to individual residences in California, Maine, Massachusetts, Michigan, Arizona, Nevada, and Oregon); RISE CANNABIS, <https://risecannabis.com/> [<https://perma.cc/7RC4-KF8Q>] (last visited Sep. 10, 2026) (providing delivery of recreational marijuana products to individual residences in multiple states, to include Maryland).

²¹ See Jonathan P. Caulkins, *Changes in Self-Reported Cannabis Use in the United States from 1979 to 2022*, 119 ADDICTION 1648 (2024) (In 2022, finding for the first time, more individuals self-report daily or near-daily marijuana use than alcohol use) (available at <https://pubmed.ncbi.nlm.nih.gov/38775461/>); Jeffrey M. Jones, *Nearly Half of U.S. Adults Have Tried Marijuana*, GALLUP (Aug. 17, 2021),

is legal to possess and is ubiquitous—the premise that it is not legal to possess for the vast majority of the public no longer holds.

2. Marijuana is not tightly regulated, even in lawful channels.

Marijuana’s multi-billion-dollar business is subject to a patchwork of regulations, causing inconsistencies in packaging that lead to inadvertent ingestion. The legal framework is patchy because it is state-by-state, and not every state has legalized recreational use or possession.²² The Federal government’s own policies “to curtail their enforcement efforts against marijuana users” helped facilitate this patchy framework. *Hemani*, 146 S. Ct. at 1692-93. The Federal government’s treatment of marijuana has allowed states to legalize its recreational use, increasing its prevalence and exposure to servicemembers who interact with the civilian population.

The Government’s expert testified that marijuana product labeling is inconsistent and often incorrect and misleading. JA 121. Vapes—which often accommodate both nicotine cartridges and marijuana cartridges—do not clearly show whether they contain marijuana or nicotine, causing potential accidental

<https://news.gallup.com/poll/353645/nearly-half-adults-tried-marijuana.aspx>
[<https://perma.cc/B7LE-7HRM>].

²² *State Medical Cannabis Laws*, NAT. CONF. OF STATE LEGISLATURES (Sep. 2, 2026), <https://www.ncsl.org/health/state-medical-cannabis-laws> [permanent link unavailable]; see David Carpenter et al., *The Evolution of Marijuana as a Controlled Substance and the Federal-State Policy Gap* (2022) (available at <https://www.congress.gov/crs-product/R44782> [<https://perma.cc/NK6V-T4AM>]).

ingestion. Researchers have also noted an increase in copy-cat products—marijuana-infused products that copy common snacks like Kellogg’s Rice Krispies Bars, Skittles, Starburst Gummies, and even Doritos. *See* Danielle C. Ompad et al., *Copycat and lookalike edible cannabis product packaging in the United States*, DRUG AND ALCOHOL DEPENDENCE, June 2022 (available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC9106923/>). In an analysis of those products, researchers found that some of them did not “clearly indicat[e] it was THC” and were not using standardized cannabis warning symbols, causing “the potential for accidental ingestion by children or adults.” *Id.* at 2, 4.

The marijuana plant, edible snacks containing marijuana, and vaporized marijuana are subject to patchwork regulation; they are not tightly regulated. The patchwork regulation and the ubiquity of legal marijuana have led to an increase in accidental or unknowing ingestion among adults.²³ Therefore, the premise that

²³ Robert G. Hendrickson et al., *Acute cannabis toxicity in older adults*, 4 TOXICOLOGY COMMUNICATIONS 67, 67-70 (2020) (finding 11% of marijuana ingestions reported to the Oregon and Alaska poison centers between 2015-2017 were accidental) (available at <https://www.tandfonline.com/doi/full/10.1080/24734306.2020.1852821#abstract>); Daniel G. Barrus et al., *Tasty THC: Promises and Challenges of Cannabis Edibles*, RESEARCH TRIANGLE INSTITUTE (Jan. 24, 2016), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5260817/> (identifying a trend in the National Poison Data System that “suggests that accidental exposures may become more common as more states legalize recreational or medical cannabis use”); Kelly Fong et al., *Unwitting adult marijuana poisoning: a case series*, 59 CLINICAL TOXICOLOGY 913, 913 (2021) (“Unintentional marijuana poisonings have increased, but legal and regulatory barriers have limited the study of marijuana outside highly

marijuana is tightly regulated no longer holds for marijuana because it is not, even in lawful channels.

3. A urinalysis alone cannot determine if a marijuana user experiences any psychoactive effect.

Like in *Bass*, “the Government’s own expert testified that the urinalysis results cannot determine if the user experiences any such psychoactive effect.” *Bass*, 2026 CAAF LEXIS 544, at *16; JA 122:5-6 (“Q. You can’t tell us if a member would feel the effects of a positive test? A. No.”); see *United States v. Downum*, 86 M.J. 200, 209 (C.A.A.F. 2025) (“[I]t is not possible to definitively state that the user ‘experienced the physical and psychological effects of the drug.’”). More information is required, such as the dosage of marijuana, the “member¹’s physiology numbers, how fast they metabolized THC, and on the day they gave the urine test, how dehydrated or hydrated they are.” JA 117:19-20.

controlled conditions.”) (available at <https://pubmed.ncbi.nlm.nih.gov/33688774/>); see, e.g., Caren Chesler, *As more states legalize marijuana, more children accidentally ingest THC-laced edibles*, WASHINGTON POST (Apr. 17, 2021), https://www.washingtonpost.com/health/marijuana-edibles-and-kids/2021/04/16/ef9daf6a-7136-11eb-85fa-e0ccb3660358_story.html [permanent link unavailable]; Maria Cramer, *Florida Wedding Guests are Sickened by Marijuana in Food, Police Say*, N.Y. TIMES (Apr. 21, 2022), <https://www.nytimes.com/2022/04/21/us/marijuana-food-florida-wedding.html> [permanent link unavailable]; Thomas Novelly, *Protein Shakes Pulled from Military Base GNC Stores Because They Contained Hemp Seeds*, MILITARY.COM (Sep. 23, 2024), <https://www.military.com/daily-news/2024/09/23/protein-shakes-pulled-military-base-gnc-stores-because-they-contained-hemp-seeds.html> [<https://perma.cc/L7AA-GS8U>].

All three premises purportedly supporting the permissive inference for knowing use no longer stand. Marijuana is legal to possess in nearly every state for medical use, and in half the states recreationally. In those states, regulations vary widely. Manufacturers and sellers mislabel or conceal the presence of marijuana and create copy-cat products. Furthermore, the Government’s own evidence shows that a positive test cannot, on its own, prove the member experienced psychoactive effects. The premises necessary for the permissive inference to be constitutional no longer hold for marijuana. Our “present-day experience” shows the permissive inference is facially unconstitutional. *Barnes*, 412 U.S. at 844-45.

4. The *Quick*²⁴ factors support overruling *Ford*’s²⁵ holding that the permissive inference for marijuana use is constitutional.

In *Ford*, this Court found “no constitutional violation in findings of guilty to wrongful marihuana use” when the Government used the permissive inference to prosecute the appellant. *Ford*, 23 M.J. at 337. Finding the permissive inference facially unconstitutional here requires *Ford* to be overruled in part. *See id.* at 336-37 (section on “Constitutional Sufficiency”). This Court should overrule *Ford* in part because of intervening events, the risk of undermining public confidence in the law, the reasonable expectations of servicemembers, and its poor reasoning. *See Quick*, 74 M.J. at 336.

²⁴ *United States v. Quick*, 74 M.J. 332, 336 (C.A.A.F. 2015).

²⁵ *United States v. Ford*, 23 M.J. 331, 337 (C.A.A.F. 1987).

“[W]hen this [C]ourt considers a request to overrule a prior decision of the [C]ourt, [it] analyze[s] the matter under the doctrine of stare decisis.” *Id.* at 335. Under that doctrine, this Court examines “whether the prior decision is unworkable or poorly reasoned; any intervening events; the reasonable expectations of servicemembers; and the risk of undermining public confidence in the law.” *Id.* at 336. The doctrine “is at its weakest when [the Court] interpret[s] the Constitution.” *Agostini v. Felton*, 521 U.S. 203, 235 (1997).

Over the last forty years, there have been drastic changes in the legal and societal landscape surrounding marijuana. Such intervening events strongly guide in favor of overturning *Ford*. “*Stare decisis* need not lead to an ‘imprisonment of reason’ when facts or perceptions, or even underlying assumptions, have changed.” *United States v. Tualla*, 52 M.J. 228, 232-33 (C.A.A.F. 2000) (Crawford, J., concurring). The underlying facts, perceptions, and assumptions of *Ford*’s analysis have changed. *Contrast Ford*, 23 M.J. at 337 (discussing the limited availability of marijuana, noticeable psychoactive effects, and that people know what they consume), *with supra* Statement of Facts, § A; Argument, § I.B.1.-3., *and Bass*, 2026 CAAF LEXIS 544, at *15-16. So too should the constitutionality of the permissive inference.

Additionally, if servicemembers continue to be convicted with a permissive inference unsupported by present-day experience, there is a risk of undermining

public confidence in the law. Public confidence in the military justice system is severely undermined when federal convictions for drug use appear to be automated by a lab machine rather than proven by prosecutorial investigation. When convictions rest on automated, outdated premises rather than actual evidence of mens rea, it creates a perception that the military justice system values administrative efficiency over fundamental fairness and guarantees of due process. *See Allen*, 442 U.S. at 156 (citing *In re Winship*, 397 U.S. 358, 364 (1970) (“[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.”)).

Moreover, overturning *Ford* will not frustrate servicemember expectations. While this Court has recognized that “it is difficult to quantify the expectations of servicemembers,” *Quick*, 74 M.J. at 337, overturning *Ford* does little to impact servicemembers’ expectations. After all, marijuana use remains illegal for servicemembers under the UCMJ despite state-level legalization and overturning *Ford* does not render Article 112a, UCMJ, 10 U.S.C. § 912a, unconstitutional. Instead, it only impacts how a prosecution for marijuana use would proceed at trial.

Not only is *Ford*’s reasoning poor in light of the societal and legal changes that have occurred in the last forty years, discussed *supra*, its reasoning was poor the day it was decided. The *Ford* Court justified the constitutionality of the inference

because it “ha[d] existed in military law for over 35 years, and this Court[’s predecessor], during this time period, has repeatedly recognized its persuasive force.” *Ford*, 23 M.J. at 337. This Court’s predecessor went on to say that the inference’s “longstanding and consistent judicial approval reflecting accumulated common military experience strongly indicates that its application comports with due process.” *Id.* For these propositions, this Court’s predecessor cited *Barnes*. *Id.* But in *Barnes*, the Supreme Court reasoned the exact opposite: even an “impressive historical basis” for an inference “is not in itself sufficient to establish . . . constitutionality.” *Barnes*, 412 U.S. at 844.

Overruling *Ford* in part does not stop marijuana use prosecutions in the military—it merely requires the Government to prove its case beyond a reasonable doubt with more than a urinalysis result. A marijuana use case stemming from a urinalysis is unique in that there is a specific timeframe the Government knows the alleged crime was committed—three weeks prior to the urinalysis. JA 117. Because of this, the Government’s investigation would be simple. The Government could interview a suspect’s friends, family members, neighbors, or investigate locations where a servicemember spent time within the window of the purported use. Requiring the Government to take investigative steps and gather “admissible evidence [that] will probably be sufficient to obtain and sustain a finding of guilty in a trial by court-martial” enhances the public’s confidence in the law. 2024 *MCM*,

App. 2.1, § 2.1.a. Allowing the Government to convict servicemembers without that evidence undermines their confidence.

Under the *Quick* factors, this Court should overrule *Ford* in part, holding that a positive THC-9 urinalysis result, standing alone, cannot rationally support a permissive inference of knowing use of marijuana; therefore, the permissive inference for marijuana use is facially unconstitutional.

C. Even if not facially unconstitutional, the permissive inference is unconstitutional as applied to Appellant.

The permissive inference is unconstitutional as applied to Appellant because (1) the presumed fact (that Appellant knowingly used marijuana) does not, more likely than not, flow from the proved fact (his urinalysis results); and, (2) the urinalysis was the sole basis for a finding of guilt and using it in this case violates the requirements of Fifth Amendment Due Process. U.S. CONST. amend. V.

The first basis is simple: “there is no rational way the trier [of fact] could make the connection permitted by the inference” in Appellant’s case; therefore, the permissive inference is unconstitutional as applied to him. *Allen*, 442 U.S. at 157. The connection is irrational for the reasons described *supra*: the premises supporting the permissive inference for marijuana are no longer present in our society. *See supra* § I.B.

The second basis is grounded in the Government's evidence in Appellant's case. For a permissive inference to apply, the Government must prove "that the presumed fact is *more likely than not* to flow from the proved fact on which it is made to depend." *Leary*, 395 U.S. at 36 (emphasis added). If the permissive inference is "the sole and sufficient basis for a finding of guilt," then the presumed fact must, beyond a reasonable doubt, flow from the proved fact. *Allen*, 442 U.S. at 167. Otherwise, a servicemember could be found guilty by a single fact proven only by a preponderance, violating the Fifth Amendment's Due Process Clause. *See id.* at 156; *see also In re Winship*, 397 U.S. at 364.

In this case, the permissive inference was the "sole and sufficient basis for a finding of guilt" because it was the Government's only proof of knowing use, an element necessary to constitute the crime of which Appellant was convicted. *Allen*, 442 U.S. at 167. Because the urinalysis test was the "sole and sufficient basis for a finding of guilt," the Government was required to prove the presumption that knowing use of marijuana flows, beyond a reasonable doubt, from a positive urinalysis test for marijuana. *Id.* The Government failed to meet its burden. As described *supra*, that flow no longer exists, even by a preponderance, let alone beyond a reasonable doubt. *See supra* § I.B. Even the Government's expert acknowledged the reasonable doubts inherent in urinalysis testing:

Q. Dr. Holwitt, you can't tell us if this positive test resulted from knowing use, can you?

A. No.

Q. You can't tell us if a crime was committed?

A. No.

Q. You can't tell us if a member would feel the effects of a positive test?

A. No.

Q. And you can't tell us the likelihood of whether it was knowing or unknowing?

A. No.

Q. Dr. Holwitt, this sample is consistent with unknowing use, isn't it?

A. Yes.

JA 122:1-10.

The Constitution requires more than mere conjecture to convict, yet that is exactly what happened in this case. The permissive inference was not only unsupported by present-day experience and evidence admitted at trial, but it was also contradicted by the Government's own expert. When, as here, the permissive inference cannot be proven by any standard of proof, it is unconstitutional as applied to Appellant.

II. Appellant’s conviction for marijuana use is legally insufficient.

Appellant’s conviction for marijuana use is legally insufficient because (1) it was error to use the permissive inference because it no longer holds for marijuana use, *see supra* § I; (2) it was error to use the permissive inference because the Government failed to satisfy the *Campbell*²⁶ facts; and, (3) the Government did not overcome Appellant’s good military character. Therefore, the findings and sentence must be set aside as legally insufficient.

A. Standard of review.

This Court reviews the legal sufficiency of the evidence de novo. *United States v. King*, 78 M.J. 218, 221 (C.A.A.F. 2019). “The test for legal sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Gutierrez*, 73 M.J. 172, 175 (C.A.A.F. 2014) (internal quotation marks omitted) (quoting *United States v. Bennitt*, 72 M.J. 266, 268 (C.A.A.F. 2013)).

²⁶ *United States v. Campbell*, 52 M.J. 386, 388 (C.A.A.F. 2000) (per curiam) (on reconsideration).

B. The Government failed to prove the premises required under *Bass* for the permissive inference to apply.

For the reasons stated in Section I, *supra*, the Government failed to prove the premises underlying the permissive inference. Without that inference, no “rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt,” because no other evidence existed to prove those elements. *Id.* Therefore, Appellant’s conviction is legally insufficient.

C. The Government failed to prove the second *Campbell* fact required for the permissive inference to apply.

“When the [G]overnment seeks to prove that a defendant’s use of a controlled substance was wrongful based solely on scientific evidence,” the Government may offer expert testimony to establish the permissive inference. *Downum*, 86 M.J. at 204. When the Government uses expert testimony to establish the permissive inference, the Government must establish three facts about the urinalysis results:

[(1)] [T]hat the metabolite is not naturally produced by the body or any substance other than the drug in question[;]

[(2)] [T]hat the cutoff level and reported concentration are high enough to reasonably discount the possibility of unknowing ingestion[;] and[,]

[(3)] [T]hat the testing methodology reliably detected the presence and concentration of the drug or metabolite in the sample.

Id. (citing *Campbell*, 52 M.J. at 388); *see id.* at 204 n.3 (holding that *Campbell* remains “controlling precedent” with the caveat that the Government need not

establish that the accused would have experienced the physiological effects of the controlled substance). Here, the Government failed to establish the second fact.

At trial, the Government's expert, Dr. Holwitt, testified about the cutoff level:

Q. . . . What is the DOD cutoff for reporting a specimen as positive for THC-9?

A. 15 nanograms per milliliter.

Q. And why does the drug lab have this particular cutoff at this level?

A. So, the cutoff was based on research in the nineties, about what instrumentation could do. So, we got the cutoff be high enough, so it's not, it's not noise. We know it's actually a signal there. And then the cutoff is also set high enough for, at that time, the non-using population is completely separated from a population of known users.

Q. So to prevent somebody who hasn't used THC-9 to, to prevent them from testing positive for THC-9?

A. That's correct.

JA 103:3-12.

Dr. Holwitt's testimony stated that the cutoff level and reported concentration were high enough to reasonably discount the possibility of a false positive due to "noise," *not* that it reasonably discounted the possibility of unknowing ingestion. *Id.* In fact, Dr. Holwitt testified that, based on the test, he could not tell the likelihood of whether the use was knowing or unknowing, and testified that the sample was "*consistent with unknowing use.*" JA 122:1-10 (emphasis added); *but see* JA 7 (AFCCA finding, without citation or explanation, the Government introduced expert

testimony that “the cut-off level and concentration was high enough to discount the possibility of unknowing ingestion”). The Government’s own expert provided testimony directly contradicting the second *Campbell* fact.

This Court has observed that “when courts consider an Article 112a specification based on a failed urinalysis test,” it “should zealously guard the uses of these results and hold the Government to the highest standards of proof required by law.” *Downum*, 86 M.J. at 207 (second quotation quoting *United States v. Graham*, 50 M.J. 56, 60 (C.A.A.F. 1999)). The Government’s evidence supporting knowing use was solely based on the urinalysis results. JA 138-41 (In closing, the Government argued the alleged premises supporting the permissive inference—that marijuana is “a black-market contraband substance” and difficult to obtain, and that marijuana is properly labeled—meant the military judge should “infer knowledge”).

The Government failed to meet the requirements for the permissive inference to apply. Without the permissive inference, no “rational trier of fact could have found the essential element[] of [use] beyond a reasonable doubt” because the Government offered no other evidence on that element. *Gutierrez*, 73 M.J. at 175. Therefore, Appellant’s conviction is legally insufficient under *Campbell*, even if this Court finds the permissive inference otherwise constitutional.

D. The Government failed to overcome evidence of Appellant's good military character.

Appellant's good military character went un rebutted, even though that character evidence suggested Appellant would not knowingly use marijuana. JA 82-90. "A person of good military character is less likely to commit" drug offenses. *United States v. Vandelinder*, 20 M.J. 41, 45 (C.M.A. 1985). Therefore, "good military character is clearly a pertinent character trait in military drug cases." *Id.*; Dep't of the Army, Pam. 27-9, *Military Judges' Benchbook*, § 7-8-1 (Jan. 26, 2026).

The Benchbook instruction says it best: "Evidence of the accused's [good military character] may be sufficient to cause a reasonable doubt as to his guilt." *Id.* Where there is ample, un rebutted evidence of good military character, it is improper to rely on the permissive inference when there is no evidence of knowing use. Therefore, even if the Government could rely on the permissive inference, that inference alone could not overcome the good military character in this case and no "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Gutierrez*, 73 M.J. at 175.

CONCLUSION

The military justice system should not rely on assumptions that do not reflect reality. The foundational premises that once supported the permissive inference for marijuana—that it is entirely illegal, difficult to access, and heavily regulated—have been dismantled by nationwide commercialization and the proliferation of deceptive, unregulated products. Consequently, a positive urinalysis is insufficient to prove knowing use beyond a reasonable doubt. This is especially true in Appellant’s case, where he tested positive at a level barely above the Department of Defense cutoff.

Here, the Government offered no independent evidence of knowledge, relying entirely on a permissive inference despite its own expert conceding that the urinalysis results were consistent with unknowing use. Furthermore, the Government wholly failed to overcome Appellant’s un rebutted good military character evidence. Appellant respectfully requests that this Court reverse the decision of the AFCCA, set aside the findings and sentence, and dismiss the charge and its specification with prejudice. *See, e.g., United States v. Scheurer*, 62 M.J. 100, 110 (C.A.A.F. 2005).

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of C.A.A.F. R. 24(b) because it contains 9,458 words.

This supplement complies with the typeface and type-style requirements of C.A.A.F. R. 37 because it has been prepared in a proportional typeface using Microsoft Word with Times New Roman 14-point typeface.



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CERTIFICATE OF FILING AND SERVICE

I certify that I electronically filed a copy of the foregoing with the Clerk of Court on September 15, 2026, and that a copy was also electronically served on the Air Force Government Trial and Appellate Operations Division at af.jajg.afloa.filng.workflow@us.af.mil on the same date.



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