IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES Appellee v. Captain (O-3) **TIMOTHY J. LUKACZ** United States Army Appellant	SUPPLEMENT TO PETITION FOR GRANT OF REVIEW Crim. App. Dkt. No. 20240143 USCA Dkt. No. 26-0171/AR

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Table of Contents

Table of Authorities

UNITED STATES SUPREME COURT

COURT OF APPEALS FOR THE ARMED FORCES/ COURT OF MILITARY APPEALS

SERVICE COURTS OF CRIMINAL APPEALS

UNIFORM CODE OF MILITARY JUSTICE

RULES

OTHER SOURCES

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

Issues Presented

I. WHETHER APPELLANT WAS DENIED A FAIR TRIAL WHEN GOVERNMENT COUNSEL REPEATEDLY ELICITED INADMISSIBLE TESTIMONY

II. WHETHER THE CONVICTION IS LEGALLY SUFFICIENT

Statement of Statutory Jurisdiction

The Army Court of Criminal Appeals (Army Court) had jurisdiction over this matter pursuant to Article 66, Uniform Code of Military Justice [hereinafter UCMJ], 10 U.S.C. § 866 (2018). This Honorable Court has jurisdiction over this matter under Article 67(a)(3), UCMJ, 10 U.S.C. § 867 (a)(3) (2018).[1]

[1] Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), appellant respectfully requests this court consider the information provided in Appendix B.

Statement of the Case

On March 22, 2024, an officer panel sitting as a general court-martial convicted appellant, CPT Timothy J. Lukacz, contrary to his pleas, of one specification of domestic violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b.[2] (R. at 957; Charge Sheet). The same day, the panel sentenced appellant to a reprimand and 30 days confinement. (R. at 1057). On April 8, 2024, the convening authority took no action on the findings or sentence. (Convening Authority Action). On April 19, 2024, the military judge entered Judgment. (Judgment of the Court).

On March 5, 2026, the Army Court affirmed the findings and sentence. *United States v. Lukacz*, ARMY 20240143 (Army Ct. Crim. App. March 5, 2026) (contained in App'x A). Appellant was notified of the Army Court's decision. On April 6, 2026, appellant filed a Petition for Grant of Review pursuant to Rule 20 of this Court's Rules of Practice and Procedure. This Court ordered appellate defense counsel to file a supplement to said petition under Rule 21 on or before April 27, 2026.

[2] Appellant was found Not Guilty of two specifications in violation of Article 120, two specifications in violation of Article 120b, five specifications in violation of Article 128, and two specifications in violation of Article 128b. (R. at 957; Statement of Trial Results). The military judge dismissed Specification 1 of Charge I based on the statute of limitations and granted a Government motion to dismiss Specification 5 of Charge III with prejudice. (R. at 140, 824).

Reasons to Grant Review

Appellant was denied a fair trial, not because of a single ruling, but because the proceedings were permeated by constant exposure to inadmissible and prejudicial material.

This case is not one in which trial counsel made a one, two, or three-time mistake healed by curative instruction. This is also not a case in which a trial counsel blatantly acted in bad faith. Here, the government could not control their witnesses and repeatedly introduced improper testimony. This type of injustice may be harder to detect and easier to excuse, but the result is the same: a violation of due process.

This presents an opportunity for this Court to address the less overt harms of prosecutorial misconduct that have even greater effects on the integrity of the process. When the indiscretions carry through trial, building on each other and creating a theme more powerful than that suggested by admissible evidence, the system fails. This is apparent through appellant's conviction for domestic violence.

At trial, appellant established that he imposed corporal punishment as a permissible parental disciplinary measure. The government failed to prove that the alleged force used was unreasonable or excessive and not for a legitimate purpose. Without photographs, medical documentation, contemporaneous reporting, or even

visible injury, the prosecution benefited from an evidentiary landscape that begged the members to view appellant as a bad person, or bad father. Given the limited record to support an atypical act – a finger in a mouth – this case offers a clear context in which to test the scope of the parental discipline defense.

Statement of Facts

A. AA makes a sudden allegation against appellant.

Appellant is the biological father of VL, HL, and TL. (R. at 372). He and AA began a relationship in 2013 which lasted seven years. (R. at 511-13). AA is SA's mother. (R. at 510). VL, HL, TL, AA, and SA are all named victims in this case. (Charge Sheet).

In April of 2020, appellant's relationship with AA deteriorated significantly (R. at 293, 423, 588-89). Sensing they were on the verge of separating, appellant called AA's family members and ex-husband to complain about her as a mother, which upset AA. (R. at 589).

On April 15, appellant notified AA that he and VL would move out of the home. (R. at 588, 591-92). While appellant was packing, he was on speaker phone with a Military and Family Life Counseling (MFLC) counselor and AA blurted out, for the first time, an accusation that appellant was "inappropriately touching" VL. (R. at 295, 592-93).

The Honolulu Police Department (HPD) responded to appellant's house two days later based solely on AA's statement to the MFLC counselor. (R. at 599, 603). AA would eventually raise her own claims of physical and sexual abuse; though, at the time HPD responded, and for several months after, AA did not allege her own abuse. (R. at 603, 606).

HPD's investigation resulted in two intertwined cases: one involving AA and SA, and one involving VL, HL, and TL. (R. at 290-91, 599). Following the investigation, the Honolulu prosecuting attorney's office declined to file charges, which upset AA. (R. at 623). CID then assumed investigative responsibility about a year and a half after the initial outcry. (R. at 624).

HPD and CID did not collect any crime scene photos or any photographs of injuries to any of the alleged victims and did not receive any medical documentation. (R. at 753).

B. AA's allegation forces VL's involvement.

In February 2020, VL's school informed appellant and/or AA that VL was giving a "blowjob" to a boy from school. (R. at 410). According to VL, appellant and AA were bothered by this news and talked to her about the report. (R. at 410). VL described the appellant's tone during this conversation as "disappointed," "concerned," and "sad." (R. at 399, 401). The Government alleged that

immediately following this conversation, the appellant penetrated VL's mouth with his fingers. (R. at 402).

VL did not sustain any injuries as a result of the finger in her mouth and did not report the appellant prior to the HPD investigation. (R. at 419). Even during her interviews with HPD, Child Welfare Services (CWS), and the criminal justice center, VL repeatedly said no or "no, never" when asked whether the appellant had physically abused her in any way. (R. at 420-21).

At trial, AA testified VL had attention deficit hyper disorder (ADHD), heard voices in her head, and would sometimes "make things up." (R. at 575, 579). VL was prescribed "the highest dose" of Ritalin to manage these effects. (R. at 627). The Defense's expert, Ms. Anique Whitmore, reviewed VL's medical records and observed that she was diagnosed with ADHD and oppositional defiant disorder (ODD). (R. at 792). ODD may cause children to be vindictive and disruptive and lead them to lash out when disciplined. (R. at 792-93).

During trial, the evidence raised the issue of parental discipline in relation to VL and the panel was instructed on this affirmative defense. (R. at 846-47).

Appellant was found guilty of a single specification of domestic violence against VL (penetration of her mouth with his finger) and acquitted of all other charges and specifications. (R. at 957; Statement of Trial Results (STR)).

C. Improper testimony pervades the trial.

Before trial began, Defense counsel raised concerns about uncharged misconduct in a Rule for Courts-Martial (R.C.M.) 802 session. (R. at 151). Because the alleged victims were all related in some way, Defense suspected the witnesses would want to discuss the "abusive nature" of the accused. (R. at 151). Defense then put the military judge on notice they would object to testimony of that effect, understanding that the military judge would not make a ruling at that time. (R. at 151).

As Defense anticipated, there were several instances of improper testimony:

	Witness	Testimony	Response	Result
1	HL	"We did tell our mother some of the stuff we were experiencing and that's why we initially pursued …" (R. at 336).	Defense objection Article 39(a) session	Defense reiterated, "Our concern is the government is not prepping these witnesses appropriately to not talk about other incidents … at some point the members get the impression and the idea there's a lot more out there." (R. at 340). The military judge reminded the parties they had an obligation to control their witnesses and could take up issues as they arose. (R. at 343).
2	TL	"And then after lunch, I was made to run up and down the driveway until I threw up." (R. at 351).	Defense objection, Military Rule of Evidence (M.R.E.) 404(b)	Objection sustained. Panel advised to disregard that portion of the answer. (R. at 352).
3	TL	"It wasn't like a singular incident	Defense objection	Objection sustained.

		that happened just once over summer visitations. There's been multiple –." (R. at 362).		Panel advised to disregard "anything the witness referenced about other incidents." (R. at 362).
Recess and R.C.M. 802 session to discuss "the concern about testifying in generalities about incidents that are not charged and specifics about incidents that are not charged." (R. at 369).				
4	VL	"He'd get very angry with me … I'd get whooped for it whenever I wasn't using my head. And I'd get took upstairs and I'd get whooped or I'd –." (R. at 377).	Defense objection, "exactly what we've been talking about"	Objection sustained. Panel advised to disregard the question and the answer "that related to generality." (R. at 377).
5	VL	"he would get very angry and he would take me upstairs –. " (R. at 378).	Military judge directed VL to stop answering the question and sent the panel to the deliberation room for an Article 39(a) session.	The military judge warned Government counsel, "the problem is your witness is not focusing her answer … her testimony, to most people, at least to me, sounds like a generality of, that is the pattern of what happened ..." (R. 380-81). Cautioned that if VL could not testify about the facts of a single incident, she would not be allowed to answer any questions; noting, "It is literally just her telling the panel this is a repeated incident." (R. at 381). The panel did not receive a curative instruction when they returned. (R. at 383).
6	VL	"He took his foot – still had his work uniform on – shoved me with	Defense objection, Relevance and	Objection overruled as *res gestae*.

		his foot." (R. at 387).	Mil. R. Evid. 404(b) Article 39(a) session	
7	VL	"I ran up to my room and I got whooped after that." (R. at 393).	Defense objection	Government moved to strike the statement. The military judge sustained the objection and instructed the panel to disregard any matter about the boot, VL falling to the floor, and getting spanked, as "the accused is not facing a charge for that." (R. at 393).
8	VL	Trial Counsel: "Did anything occur after he pushed and let go" VL: "Yes. I got whooped." (R. at 397).	Government counsel asked the Court to strike.	The military judge instructed the panel to disregard what the witness said about spanking. (R. at 397).
9	VL	"[F]rom years of CPS and being told where we were gonna be taken away, I didn't want that." (R. at 424).	Defense objection Article 39(a)	Objection sustained. (R. at 438). Defense reiterated their position that VL "need[ed] to be controlled by the trial counsel," (R. at 426) and that all witnesses were rambling. (R. at 430). Defense added, "at what point does the government bear some responsibility for making sure their witnesses prepped accordingly not to talk about certain issues. They've done it with every witness …" (R. at 430).
10	AA	"[VL] had been grounded for a whole month already. The	Defense objection, Relevance and MRE 404(b)	Military judge asked Trial Counsel, "[A]re you attempting to provide background that's not from that day?"

		whole month of February. And he didn't just make her sit in the room. He made her sit on a – " (R. at 535).		Trial Counsel responded, "the witness was giving information that's not particularly from that day … I will tailor my questions to be more specific." (R. at 536). Objection sustained. "The panel will disregard that answer and government will – begin again." (R. at 536).
11	AA	"He became very drunk and he said, 'I took it too far.' And I asked him, what did he mean by that? And he said he had went into the girls' room and took it too far with [VL]. And then he said, I might have choked her." (R. at 537).	Defense objection, Section III disclosures. (R. at 537).	The government acknowledged they were made aware of the statements during witness preparation the weekend prior but did not provide any disclosures to Defense. (R. at 540). The military judge chastised the Government, noting they could have picked up the phone, sent an email, or texted that something came up. (R. at 545). When the members returned, the military judge advised the panel to disregard the question and answer from the witness because it was in "no way admissible in this trial and cannot be used for anything." (R. at 555). This was after a lengthy 39(a) session handling numerous issues.

In support of its Section III objection, Defense lamented, "Exactly what we thought was gonna happen at the beginning of this trial has happened with every single witness. I don't think there's one witness, other than maybe [SA] that got into – that didn't get into information that was not charged, or was irrelevant, or

some other statement." (R. at 540). The Defense noted the cumulative impact of the improper testimony, even with the military judge's instructions to disregard certain statements and asked for a specific remedy; namely, precluding the Government from asking more questions of the witness. (R. at 541). The military judge agreed with the Government's suggestion of striking the question and answer from the record.

Defense alerted the military judge that any previous mention of a TRO in front of the members was improper. (R. at 542). The military judge admonished, "Both sides, frankly, have taken to either pretending that there are no Rules of Evidence and so we don't mention them, or making a full argument, talking about something like a TRO, which I would guess every panel member knows that means 'temporary restraining order.'" (R. at 543). The military judge noted the Government had the ability to file an extensive M.R.E. 404(b) motion in this case, but chose to only file one, which was "very short and did not contain any of this information." (R. 545).

Following these repeated indiscretions, the military judge acknowledged she was "concerned as well, that we will reach the point where the panel has heard too many things that were not supposed to be before this court. And to ask them to divide their mind and pretend that multiple witnesses didn't talk about other assault[s], other conduct …" (R. at 546).

Issues Presented

I. WHETHER APPELLANT WAS DENIED A FAIR TRIAL WHEN GOVERNMENT COUNSEL REPEATEDLY ELICITED INADMISSIBLE TESTIMONY

Standard of Review

Allegations of prosecutorial misconduct are reviewed de novo. *United States v. Andrews,* 77 M.J. 393, 402 (C.A.A.F. 2018). When proper objection is made, this court reviews for prejudicial error under Article 59, UCMJ. *United States v. Fletcher*, 62 M.J. 175, 179 (C.A.A.F. 2005).

Law

The prosecutor's obligation is to govern impartially and serve justice, not win a case. *Id.* at 179 (citing *Berger v. United States*, 295 U.S. 78, 88 (1935)) ("It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use very legitimate means to bring about a just one."). To this end, "action or inaction by a prosecutor in violation of a legal norm or standard, e.g., a constitutional provision, a statute, a Manual rule, or an applicable professional ethics canon" constitutes prosecutorial misconduct. *United States v. Meek,* 44 M.J. 1, 5 (C.A.A.F. 1996) (citing *Berger*, 295 U.S. at 88).

Prosecutorial misconduct is judged by its effect on the fairness of the trial. *United States v. Pabelona*, 76 M.J. 9, 11–12 (C.A.A.F. 2017) (referencing *United States v. Fletcher*, 62 M.J. 175, 184–85 (C.A.A.F. 2005)). Rather than parse out

individual violations, courts will consider their cumulative impact. *Fletcher*, 62 M.J. at 184; *Meek*, 44 M.J. at 6. In conducting this prejudice inquiry, courts may consider (1) the severity of the misconduct, (2) the measures adopted to cure the misconduct, and (3) the weight of the evidence supporting the conviction. *Fletcher*, 62 M.J. at 184.

Severity is considered based on the "raw numbers" or number of instances, whether it spread throughout the case as a whole, the length of trial and deliberations, and whether the trial counsel abided by rulings from the military judge. *Id*. Curative measures may not be sufficient if they are too general or if the military judge did not make sufficient effort to remedy the issue. *Id*. at 185. Finally, courts should consider the strength of the case absent the misconduct. *Id*.

Prosecutorial misconduct will require reversal when this Court "cannot be confident that the members convicted appellant on the basis of the evidence alone." *Meek*, 44 M.J. at 5.

Argument

The government failed to take meaningful steps to prevent improper testimony. In doing so, they compromised their responsibility to protect against a wrongful conviction.

This Court has held it is not the prosecutor's intent that drives the analysis of prosecutorial misconduct, it is the effect on the fairness of the trial. *See generally*

Fletcher, 62 M.J. at. 184. Virtually every government witness in this trial testified to something objectionable. It was apparent to the parties that the witnesses were inclined to speak about uncharged events, evidenced by the defense placing their concerns on the record prior to trial. Despite this, the witnesses were untethered to any restrictions on what they could discuss; instead taking their time on the stand as an opportunity to lambast appellant. This narrative started with the first witness and continued throughout the trial, ultimately creating the theme of appellant as a "bad father." Many of the objections arose during VL's testimony, prompting the military judge to warn trial counsel that VL was not "focusing her answer" and was speaking in "generalities." (R. at 380-81). We need not look further than the record to surmise why the military judge was concerned with VL's testimony: "It is literally just her telling the panel this is a repeated incident." (R. at 381). It may be impossible to determine how much of appellant's conviction rested on this impermissible testimony, but it was certainly a factor.

While the military judge offered curative instructions for most, but not all, violations, the cumulative effect of the improper testimony overpowered the measures adopted to cure the misconduct. The objections led to numerous and often lengthy Article 39(a) sessions and, when the panel returned, it became an impossible task to parse through what they could consider and what they could not. The judge again expressed her concern that they would reach a point "where the

panel has heard too many things that were not supposed to be before this court. And to ask them to divide their mind and pretend that multiple witnesses didn't talk about other assault[s], other conduct." (R. at 546). At a certain point, the bell cannot be unrung.

This type of misconduct is even more impactful in a "witness credibility" case. Here, every witness for the prosecution was related with a potential motive to fabricate against the accused. Ultimately, the prosecution secured a conviction, at least in part, from this collective airing of grievances. Where there was essentially no independent evidence to support the allegations, a mutually reinforcing narrative drove the panel's determination.

While this Court has addressed the "persistent problem of trial counsel using improper arguments during courts-martial," this case involves a less overt, but equally damaging, form of misconduct. *Cf. United States v. Matti*, No. 25-0148/AF, 2026 CAAF LEXIS 189, at **18 (C.A.A.F. Feb. 17, 2026) (appendix). Eliciting improper testimony is akin to improper argument insofar as both convey inadmissible information to the factfinder, but nuanced enough to warrant further discussion. Absent admonishment, trial counsel may not appreciate the importance of preparing witnesses and tailoring their questions to the rules of evidence. Contemporaneous attempts to withdraw questions or focus a witness may cut against bad faith, but the damage has already been done.

II. WHETHER THE CONVICTION IS LEGALLY SUFFICIENT

Standard of Review

This Court reviews issues of legal sufficiency de novo. *United States v. Smith,* 83 M.J. 350, 359 (C.A.A.F. 2023) (citing *United States v. Robinson*, 77 M.J. 294, 297 (C.A.A.F. 2018)). "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 offense beyond a reasonable doubt." *Id.* (citing *Robinson*, 77 M.J. 294 at 297-98).

Law

A. The law recognizes a parent's authority to discipline their child, within limits.

To convict appellant of domestic violence in violation of Article 128b, Uniform Code of Military Justice, as charged, the government was required to prove beyond a reasonable doubt the following elements:

> (1) That between on or about 1 February 2020 and on or about 28 February 2020, on the Island of Oahu, the Accused committed a violent offense, to wit: an assault consummated by a battery, in violation of Article 128, UCMJ, by unlawfully touching [VL] by penetrating her mouth with his finger;
>
> (2) That the violent offense was committed against [VL] who was, at the time of the violent offense, an immediate family member of the Accused; and

> (3) That, at the time, [VL] was a child under the age of 16 years.

Article 128b, UCMJ (2019).

The law recognizes a parent's authority to discipline their child, provided the corporal punishment is for the purpose of safeguarding or promoting the welfare of the child and the force is not unreasonable or excessive. Dep't of Army, Pam. 27-9, *Military Judges' Benchbook*, para. 5-16 (29 February 2020). Once the defense is raised, the government has the additional burden of refuting the defense beyond a reasonable doubt. *United States v. Rivera*, 54 M.J. 489, 490 (C.A.A.F. 2001); *see generally* R.C.M. 916(b). The prosecution's burden of proof to establish the guilt of the accused, therefore, applies not only to the elements of the offense, but also to the issue of parental discipline. *See generally Rivera,* 54 M.J. at 490.

B. First Prong of Parental Discipline Defense – Courts will consider the motive for punishment when determining whether the parent is "safeguarding or promoting the welfare of the child."

"Safeguarding or promoting the welfare of the child" includes the prevention or punishment of the child's misconduct. *Military Judges' Benchbook* para. 5-16. The law recognizes that there is "an inherent tension between the privacy and sanctity of the family, including the freedom to raise children as parents see fit, and the interest of the state in the safety and well-being of children." *Rivera*, 54 M.J. at 491. While this tension makes it difficult to discern what constitutes "proper"

force, a strong indicator is whether the motive was in fact punishment. *United States v. Robertson*, 36 MJ 190, 192 (C.A.A.F. 1992).

Regardless of its ultimate holding, this Court has determined that receiving a negative report from school or discovering a child has disobeyed the rules are appropriate predicates for discipline. *Robertson*, 36 M.J. at 192; *Rivera*, 54 M.J. at 492. The second prong of the test then considers the force used. *Robertson*, 36 M.J. at 192.

C. Second Prong of Parental Discipline Defense – to constitute an offense, the force must rise to a level that is unreasonable or excessive under the circumstances.

Unreasonable or excessive force is that designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme pain, extreme mental distress, or gross degradation. *Military Judges' Benchbook* para. 5-16. There is no *per se* rule for what constitutes excessive force; rather, courts will consider contextual reasonableness. *Rivera*, 54 M.J. at 491. Factors to consider include physical injury or the need for medical care, the intensity of the blow, or the targeted area. *See id.; see also Robertson*, 36 M.J. at 192.

This Court has relied on the Model Penal Code when considering unreasonable or excessive force and has declined to apply the defense of parental discipline when a thirteen year old was punched hard in the stomach, causing him to fall; when a seven year old was struck hard multiple times on the buttocks with a

belt, leading to bruising; or when a seven year old was administered numerous blows and each produced welts and bruising. *Rivera*, 54 M.J. at 492; *Robertson*, 36 M.J. at 192; *United States v. Brown*, 26 M.J. 148, 151 (C.M.A. 1988). Whether an action carries "substantial risk of bodily injury" may rely in part on common knowledge of human nature and the ways of the world, but "competent evidence," such as treating pediatricians, photographs, and x-rays, more clearly support a finding of unreasonable conduct. *See Rivera*, 54 M.J. at 491; *but see Robertson*, 36 M.J. at 192.

Argument

Even when viewing the evidence in the light most favorable to the prosecution, the purpose and degree of appellant's force constituted reasonable parental discipline.

A. The prosecution failed to prove beyond a reasonable doubt that appellant's motive was improper.

Context is important. Assuming *arguendo* the act occurred, appellant took corrective action in a parental capacity. Appellant's methods may not be palatable to some, but "it is the duty of appellate courts to say what the law is; not to make moral judgments about what the law should be." *Rivera*, 54 M.J. at 491. And the law is clear that receiving a negative report from school, or the "desire to improve scholastic performance," is a proper motive for discipline. *See id.* at 492.

Such was the motive here. VL received a negative report from school and appellant had a conversation with her about the report. (R. at 410). Appellant's tone was "disappointed," "concerned," and "sad" because, as VL testified, "he thought I was going out doing bad stuff, you know." (R. at 399, 40). VL acknowledged appellant's intent: "he was telling me that he's doing this because he loves me, because he wants me to be safe." (R. at 403). Following the alleged act, appellant "chuckled," and VL "laughed along with him," belying the notion he was motivated by anger. (R. at 403).

Because appellant sought to prevent or punish future misconduct, the first prong was satisfied. The prosecution failed to carry their burden to refute the defense.

B. The prosecution failed to prove beyond a reasonable doubt that the force used was unreasonable or excessive under the circumstances.

Although unconventional, the alleged act (a finger in the mouth) bore a direct relationship to the conduct the discipline was intended to address (VL giving "blowjobs" to boys at school). (R. at 410). In this sense, the force used was not arbitrary or random.

When considering whether the force was excessive, this case is an outlier. It involves a finger in the mouth, not a fist to the stomach or a belt to the buttocks. There was no bruising or welting. The record is devoid of medical records, doctor

testimony, x-rays, or photographs. In fact, VL never reported this instance to authorities until implicated through an unrelated investigation.

The prosecution relied on VL's testimony to establish injury. However, when directly asked whether the finger caused any physical injuries, VL responded "No." (R. at 419). When asked if it caused permanent disfigurement, she replied, "No, it just made me a little sore." (R. at 419). To the extent VL testified she had trouble breathing, this was tempered by testimony that "*whenever*" she was upset, sad, angry, or confused, her breathing would get hard and heavy. [3] (R. at 411). Similarly, although VL testified she was gagging, she also acknowledged she had a "very bad" gag reflex. (R. at 404). While the factfinder is permitted to use common knowledge when assessing injury, it is not obvious that a finger in a mouth is "designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme pain, extreme mental distress, or gross degradation."

Appellant's act was reasonably related to the misconduct within the report he received, and the force used was not excessive. The second prong was satisfied and the prosecution failed to carry their burden to refute the defense.

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[3] In the context of another allegation, when asked if her breath was affected by the appellant's hand or her response, VL stated, "I don't know which one it was because it happens all the time – like, right now." (R. at 412). Considering she was confronted with her alleged sexual acts by her father, of course that would cause her to feel upset or confused, thus impacting her breath.

Conclusion

WHEREFORE, appellant respectfully requests this Court grant his petition for review.

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Appendix A: Army Court Decision

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
WILLIAMS, COOPER, and SCHLACK
Appellate Military Judges

UNITED STATES, Appellee
v.
Captain TIMOTHY J. LUKACZ
United States Army, Appellant

ARMY 20240143

Headquarters, 8th Theater Sustainment Command
Michael E. Korte and Rebecca L. Farrell, Military Judges
Lieutenant Colonel Christofer T. Franca, Staff Judge Advocate

For Appellant: Colonel Frank E. Kostik, Jr., JA; Lieutenant Colonel Kyle C. Sprague, JA; Major Kelsey Mowatt-Larssen, JA (on brief and reply brief).

For Appellee: Colonel Richard E. Gorini, JA; Major Stephen Harmel, JA; Captain Clare Murphy, JA (on brief).

5 March 2026

DECISION

Per Curiam:

On consideration of the entire record, including consideration of the issues personally specified by the appellant, we hold the findings of guilty and the sentence, as entered in the Judgment, correct in law and fact. Accordingly, those findings of guilty and the sentence are AFFIRMED*.

FOR THE COURT:

James W. Herring, Jr.
JAMES W. HERRING, JR.
Clerk of Court

* Blocks 29, 30, and 32 of the Statement of Trial Results were incorrectly marked. First, block 29 should reflect "yes," as DoDI 1325.07 required DNA processing in

(continued . . .)

(. . . continued)
appellant's case. Second, block 30 should reflect "no," as appellant is not required to register as a sex offender. Third, block 32 should reflect "no," as appellant was not convicted of a misdemeanor crime of domestic violence. We lack the authority to correct these errors, though we note them for the record. *United States v. Williams*, 85 M.J. 121, 126 (C.A.A.F. 2024).

Appendix B: Matters Submitted Pursuant to *United States v. Grostefon*

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), the appellant, through appellate defense counsel, personally requests that this court consider the following matters:

I. WHETHER A COURT JUDGMENT IN FAVOR OF APPELLANT AND AGAINST AA FOR A TOTAL OF FIVE THOUSAND DOLLARS CONSTITUTES EVIDENCE THAT AA LIED ABOUT THE ALLEGATIONS

II. WHETHER A SETTLEMENT BETWEEN APPELLANT AND HIS EX-WIFE, JL, WHEREBY JL AGREED TO PAY APPELLANT ONE THOUSAND TWO HUNDRED DOLLARS CONSTITUTES EVIDENCE THAT JL CONSPIRED WITH AA TO LIE ABOUT THE ALLEGATIONS IN THIS CASE

III. WHETHER THE WITNESSES AND ALLEGED VICTIMS IN THIS CASE COLLUDED TO ALIGN THEIR TESTIMONY AND WERE COACHED BY AA, JL, AND THEIR SIGNIFICANT OTHERS

IV. WHETHER THE WITNESSES' BEHAVIOR, PARTICULARLY POSTING PHOTOS ON SOCIAL MEDIA OF THEIR TIME IN HAWAII DURING TRIAL, IS EVIDENCE THAT THEY FAILED TO RESPECT THE SOLEMNITY OF THE PROCEEDINGS AND WERE THEREFORE FABRICATING THE ALLEGATIONS

V. WHETHER RELIEF IS WARRANTED WHEN THE APPELLANT'S CHAIN OF COMMAND ALLUDED TO THE APPELLANT GOING TO JAIL, ADMINISTERED A RELIEF FOR CAUSE OER AS THE INVESTIGATION WAS ONGOING, AND FAILED TO SUPPORT THE APPELLANT THROUGHOUT THE INVESTIGATION AND WHILE IN CONFINEMENT

VI. WHETHER THE APPELLANT WAS DISADVANTAGED IN THAT HE WAS ONLY REPRESENTED BY ONE MILTIARY

DEFENSE COUNSEL IN ADDITION TO HIS CIVILIAN COUNSEL, WHEN THE GOVERNMENT DETAILED THREE ATTORNEYS TO THE CASE AND HAD NUMEROUS ATTORNEYS AND VICTIM ADVOCATES IN THE GALLERY

VII. WHETHER THIS CASE FAILED TO MEET THE GOALS OF THE MILITARY JUSTICE SYSTEM IN THAT THE PROSECUTION PROCEEDED WITH WEAK CHARGES AND APPELLANT SUFFERED SIGNIFICANT EMOTIONAL DISTRESS AS A RESULT OF SERIOUS ALLEGATIONS FOR WHICH HE WAS FOUND NOT GUILTY

CERTIFICATE OF COMPLIANCE WITH RULE 24 AND RULE 37

1. This brief complies with the type-volume limitation of Rule 24(b): this brief contains 4,864 words.

2. This brief complies with the typeface and type style requirements of Rule 37 because it has been prepared in Times New Roman font, using 14-point type with one-inch margins.

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of United States v. Lukacz, Crim. App. Dkt. No. 20240143, USCA Dkt. No. 26-0171/AR was electronically filed with the Court and Government Appellate Division on April 24, 2026.

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