

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

UNITED STATES
Appellee

v.

First Lieutenant (O-2)
JUSTIN R. ROBINSON,
United States Army
Appellant

SUPPLEMENT TO PETITION FOR
GRANT OF REVIEW

Crim. App. Dkt. No. 20230640

USCA Dkt. No. 26-0130/AR

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Issues Presented

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[M.R.E.] 404(b) CLAIM**

**II. WHETHER THE MILITARY JUDGE ERRED BY ADMITTING
EVIDENCE OF APPELLANT’S ALLEGED COMMUNICATIONS
WITH MINORS IN VIOLATION OF M.R.E. 404(b)**

**III. WHETHER TRIAL DEFENSE COUNSEL RENDERED
INEFFECTIVE ASSISTANCE OF COUNSEL**

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

Statement of the Case

On December 12, 2023, a military judge sitting as a general court-martial convicted appellant, First Lieutenant Justin R. Robinson, contrary to his plea, of one specification of possession of child pornography in violation of Article 134 Uniform Code of Military Justice, 10 U.S.C. § 934 (2019) [UCMJ]. (R. at 226; Statement of Trial Results). The same day, the military judge sentenced appellant to sixteen months confinement and a dismissal. (R. at 263). On January 16, 2024, the convening authority took no action on the finding or sentence. (Convening Authority Action). On January 18, 2024, the military judge entered Judgment. (Judgment of the Court).

On November 12, 2025, the Army Court affirmed the findings and sentence. *United States v. First Lieutenant Justin R. Robinson*, No. ARMY 20230640, 2025 LX 538323 (A. Ct. Crim. App. Nov. 12, 2025) (contained in App'x A). On December 16, 2025 the Army Court denied a motion for reconsideration. (App'x B). Appellant was notified of the Army Court's decision. In accordance with Rule 19 of this Court's Rules of Practice and Procedure, on February 13, 2026 the

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 App'x C.

undersigned appellate defense counsel filed a Petition for Grant of Review, while seeking leave to file the Supplement to the Petition for Grant of Review separately. Additionally, appellant filed two motions for extension of time. This court granted both appellate defense counsel's motions, granting until March 17, 2026 to file the Supplement. The undersigned counsel hereby file the Supplement to the Petition for Grant of Review under Rule 21.

Statement of Facts

Appellant and his wife, Ms. Marrison Webb, arrived at Fort Novosel, Alabama, in July 2021. (R. at 133). Appellant and Ms. Webb were newlyweds. (R. at 133). Once at Fort Novosel, Ms. Webb found a job working as a financial advisor. (R. at 134).

On October 20, 2022, appellant and his co-pilot, WO1 William Maldonado, were conducting flight training, flying from Dothan, Alabama, to Albany, Georgia, and back. (R. at 209). The two completed their flight at around 1030 to 1200 hours. (R. at 209-10; Pros. Ex. 16). After the flight, they spent the next thirty to forty-five minutes eating lunch before they completed a necessary post-flight class and took a test. (R. at 210). The two were done with their test by around 1445 hours, just in time for them to catch the bus back to Fort Novosel, a ride that took approximately forty-five minutes without traffic. (R. at 210-11).

From 1916 to 2022 Coordinated Universal Time (UTC), or 1416 to 1522 hours Central Standard Time (CST), a device sent thirteen videos of suspected child sexual abuse material from appellant's email address. (R. at 52-54, 185; Pros. Ex. 2; App. Ex. VII-A). The Internet Protocol that sent the emails was associated with appellant's residence. (R. at 55, 104-05, 186).

On December 15, 2022, CID, pursuant to a search authorization, executed a search of appellant's home, seizing multiple electronic devices, including appellant's laptop computer and a tablet. (R. at 61, 174). Ms. Webb had access to some of appellant's devices, including his laptop computer. (R. at 146). Later analysis by CID digital forensic examiners revealed appellant's laptop contained suspected child sex abuse material. (R. at 162, 174).

The military judge, in an email to both counsel on September 11, 2023, provided an overview of potential grounds for challenge. (App. Ex. II). In the email she stated she previously worked for "...the National District Attorneys Association in the National Center for Prosecution of Child Abuse." In the two years she worked there she "taught courses throughout the nation on best practices in investigating and prosecuting child abuse (which included technology facilitated crimes against children)," and had "also authored an Amicus Brief to the U.S. Supreme Court on the topic on behalf of the NDAA." (Id.).

The military judge further disclosed that she joined the Department of Justice in 2015, where she served as a trial attorney until 2021, at which time she “became Chief of Staff to DOJ’s Office for Victims of Crime.” (Id.). In this role, she “serve[s] as strategic advisor to the Director” and is “responsible for all policy and legislative actions; and oversee[s] all communications that are made on behalf of OVC.” (Id.).

The military judge returned a guilty verdict in less than thirty-three minutes. (R. at 225-226).

Reasons to Grant Review

Pursuant to Rule 21 of this Court’s Rules of Practice and Procedure good cause exists to grant this petition because the proceedings were tainted by significant errors that were materially prejudicial to appellant’s substantial rights. In a court-martial for possession of child pornography, a military judge with self-disclosed affiliations to a national prosecutorial organization specializing in child abuse cases admitted highly inflammatory and irrelevant uncharged conduct evidence against the appellant, in clear violation of M.R.E. 404(b). (App. Ex. II).

The Army Court of Criminal Appeals compounded this error with a ruling that is irreconcilable with the record. The Army Court incorrectly concluded the 404(b) objection was waived, despite defense counsel’s multiple objections to “relevance” and “uncharged conduct.” (R. at 136-37). The Army Court then

created a fiction, unsupported by any evidence, that this prejudicial testimony was part of the defense's own strategy. This case presents a critical opportunity for the Court to reinforce the clear mandate of MRE 404(b) and to ensure that a conviction rests on competent evidence of the offense charged, not on improper character evidence admitted by a judge whose background created an appearance of partiality. All of these facts provide good cause to grant this petition as the errors assigned are materially prejudicial to the substantial rights of the appellant.

Issues Presented

I. WHETHER THE ARMY COURT ERRED WHEN IT FOUND APPELLANT HAD WAIVED HIS MILITARY RULE OF EVIDENCE [M.R.E.] 404(b) CLAIM

Facts Relevant to Assignment of Error

“A manipulator of children online” is how the government began its opening statement, offering a theme of juxtaposition between appellant's outward accomplishments and an allegedly dark hidden life. (R. at 35). Later in its opening, the government took the opportunity to highlight the expected testimony of Ms. Webb, appellant's ex-wife, who, at the time of trial, he had recently divorced: “she uprooted and moved thousands of miles from Utah and came to join him to live with him here on post, [and] [y]ou're going to hear about the issues she had with trusting him with digital devices, and how she identified he was posing as a minor online and attempting to talk to minors.” (R.

at 37).

During the government's case-in-chief, the special trial counsel (STC) directed Ms. Webb to September 2022, asking "[d]id you have an occasion to look at his computer during that period of time?" (R. at 134-35). The STC then asked: "[i]n that timeframe, September 2022, what types of messages did you see between him and other people that were online?" (R. at 135). The defense counsel immediately objected claiming marital privilege, hearsay, relevance, and stated "This is uncharged conduct . . . not an element of any of the offenses, what the perception is of the witness." (R. at 136-37). The military judge agreed "[i]t is uncharged conduct," and asked whether the government had given M.R.E. 404(b) notice to the defense. (R. at 137). The STC answered that the government "did provide M.R.E. 404(b) notice to show the messages that were exchanged demonstrate some type of knowledge or intent to engage in sexual conversations with minors." (R. at 137). The military judge then asked the defense counsel whether he had received the M.R.E. 404(b) notice, to which the defense counsel responded affirmatively "[w]e would object now, indicating that the individual didn't know it was a minor, has no personal knowledge." (R. at 137).

The military judge then directed Ms. Webb to answer the question, to which Ms. Webb stated "so on his computer I saw that, this is on the app

Discord, I saw that he had hidden messages on this app. And I found them, and he was messaging minors, girls, claiming to be 13, 14 years old.” (R. at 137). Ms. Webb added that appellant was “saying he was 17, almost 18 years old.” (R. at 137). The STC then asked, “[w]hat else was he specifically saying to these individuals who he believed – or – based on your perception, believed to be minors?” (R. at 138). Ms. Webb responded that appellant was “flirting with them . . . was being sexually suggestive with them . . . talked about masturbating . . . talked about other topics to get a response from them.” (R. at 138).

The defense counsel then stated “[w]e’d argue, Your Honor, that is the perception of the mind, that whether or not these individuals were minors. There’s no way to verify that.” (R. at 138). The military judge then stated “so let’s deal with your hearsay statement. The things he typed to them, we agree, is statement by a party opponent?” (R. at 138). To which the defense counsel agreed, before the military judge then asked “so whatever they reply back, something having to do with their age, what do you want me to know about that? That it could have been some old 52-year-old dude?” (R. at 138). The defense counsel responded, “That’s what we would suggest,” before stating they had no other hearsay objection. (R. at 138-9). The military judge stated the government was not “offering it for the truth of the matter, which is that it was

in fact some 13-year-old girl responding back,” before admitting the statement. (R. at 139).

During the government’s closing argument, the trial counsel returned to the theme of a wicked hidden life, again contrasting appellant’s accomplishments with the testimony of Ms. Webb, intoning darkly that “[w]e know again through Ms. Webb, that he manipulated children online.” (R. at 218). Later, at the end of his recitation of the government’s evidence, the trial counsel reminded the court that Ms. Webb had “shared her own personal knowledge of the accused’s communicating with minors, or children identified as 13- to 14-year-olds, discussing topics like flirtation and masturbation.” (R. at 221).

The Army Court of Criminal Appeals (ACCA), on November 12, 2025, found appellant had waived his 404(b) objection, and the 404(b) evidence was part of the defense’s theory of the case. (App’x A). The court’s reasoning was based on: the lack of a pretrial motion to exclude the Government’s 404(b) evidence, the lack of objection when the military judge asked for more objections after overruling the defense’s hearsay objection, and the defense counsel’s failure to object when the government discussed the 404(b) evidence in closing. *Id.* at 6. Furthermore, the court found that, even assuming any error, there was no prejudice to appellant. *Id.*

Standard of Review

This court reviews a military judge’s evidentiary ruling for an abuse of discretion. *United States v. Hyppolite*, 79 M.J. 161, 164 (C.A.A.F. 2019). “Military judges abuse their discretion (1) if the findings of fact upon which they predicate their ruling are not supported by the evidence of record; (2) if they use incorrect legal principles; or (3) if their application of the correct legal principles to the facts is clearly unreasonable.” *United States v. Wilson*, 84 M.J. 383, 390 (C.A.A.F. 2024) (citing *United States v. Ellis*, 68 M.J. 341, 344 (C.A.A.F. 2010)). A military judge’s ruling receives “less deference if they fail to articulate their analysis on the record.” *United States v. St. Jean*, 83 M.J. 109, 113 (C.A.A.F. 2023).

Law

Any objection pursuant to M.R.E. 404(b) for uncharged conduct during trial “must be raised before the court-martial is adjourned for that case.” R.C.M. 905(e)(2). “Failure to raise such ... objection shall constitute forfeiture, absent an affirmative waiver.” R.C.M. 905(e)(2). Review of “[w]hether an accused waived an issue” is done “de novo.” *United States v. Ahern*, 76 M.J. 194, 197 (C.A.A.F. 2017) (citation omitted).

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) (citations omitted). A court may not review waived issues “because a valid

waiver leaves no error” ... “to correct on appeal.” *United States v. Davis*, 79 M.J. 329, 331 (C.A.A.F. 2020) (quoting *Id.*). In determining whether defense counsel waived this issue, the court “consider[s] whether the failure to raise the objection at the trial level constituted an intentional relinquishment of a known right.” *Campos*, 67 M.J. at 332 (citations omitted).

Argument

Judges abuse their discretion if the findings of fact upon which they predicate their ruling are not supported by the evidence. The Army Court’s statement “the record indicates defense affirmatively waived any M.R.E. 404(b) objection and did so to advance their defense theory,” is an abuse of discretion. (App’x A at 6).

The court supports its erroneous conclusion with three observations. First, government counsel provided pretrial notice of their intent to introduce evidence of appellant’s online chats with respondents purporting to be minors; defense did not file a pre-trial motion to exclude it. *Id.* Second, during the testimony of appellant’s wife, the military judge agreed the chats were uncharged misconduct and asked defense whether there was a ground besides hearsay upon which they wished to object; defense counsel affirmatively declined. *Id.* Finally, when government counsel argued the Discord evidence in closing, improperly or otherwise, defense counsel did not object. *Id.* Each of these points is either

incomplete, inaccurate, or insufficient to establish the defense waived a 404(b) objection in furtherance of its theory of the case.

The assertion “government counsel provided pretrial notice of their intent to introduce evidence of appellant's online chats with respondents purporting to be minors; defense did not file a pre-trial motion to exclude it” does not support the CCA conclusion the chats were relevant to the defense theory of the case. *Id.* M.R.E. 404(b) does not require a motion prior to entry of pleas and is silent as to the timing of any motion in limine to exclude. Furthermore, the lack of objection or silence on the matter does not prove the chats were part of the defense’s theory of the case, as the record indicates the Defense recognized just how damaging this evidence was.

Defense counsel repeatedly objected to the presentation of the wife’s discussion of the discord texts, and only cross-examined her on the matter after they had exhausted all attempts to keep that evidence out. (R. 135-139, 143-149). Defense counsel never mentioned the texts in their opening, and never presented evidence of such during their case in chief. Defense only cross-examined the spouse after the government introduced the evidence on direct after defense counsel’s objection had been overruled. (R. at 39). These text messages were never a part of the defense’s theory.

The assertion, “during the testimony of appellant's wife, the military judge agreed the chats were uncharged conduct and asked defense whether there was a grounds besides hearsay upon which they wished to object; defense counsel affirmatively declined” is inaccurate. (App’x A at 6). In the exchange with the military judge the defense counsel explicitly stated the evidence in contention “is uncharged conduct.” (R. at 137). The military judge, in recognition the statement is a reference to a M.R.E. 404(b) objection, asks the government counsel “Did you give 404(b) notice?” (R. at 137). Once the military judge learned the government gave 404(b) notice, the judge begins to excoriate the defense counsel, asking repeatedly “Did you get 404(b) notice?” While agreeing they received notice, defense counsel stated, “We would object now.” (R. at 137). Contrary to the Army Court’s assertion, appellant’s counsel clearly objected on M.R.E. 404(b) grounds, as shown in the above exchange.

The assertion, “when government counsel argued the Discord evidence in closing, improperly or otherwise, defense counsel did not object,” does not prove the defense intended to use the Discord chats as part of their theory of the case. (App’x A at 6). The lack of objection, or silence ultimately does not say anything. Defense counsel had already objected and, given the military judge’s reaction and demeanor, realized any further objection would have been futile. *U.S. v. Boyd*, 21

C.M.R. 395, 399. Regardless, conflating a lack of objection to a theory of a case is a dubious proposition.

However, assuming the Discord chats were part of the defense's theory of the case, there is no evidence the defense wanted to include the alleged ages of the individuals in the evidence. Furthermore, the alleged ages of the individuals in the chat bring these acts under the purview of 404(b). The supposed ages of the individuals in the chatroom had no relevance to the court's perceived theory of the defense's case where the Discord chat evidence was required to "demonstrate wife's access to appellant's laptop, her ability to place child pornography on it, and her possible motive." (App'x A at 6). Thus, the Court's inference rests on a factual assumption not supported by the record.

II. WHETHER THE MILITARY JUDGE ERRED BY ADMITTING EVIDENCE OF APPELLANT'S ALLEGED COMMUNICATIONS WITH MINORS IN VIOLATION OF M.R.E. 404(B)

Standard of Review

This court reviews a military judge's evidentiary ruling for an abuse of discretion. *United States v. Hyppolite*, 79 M.J. 161, 164 (C.A.A.F. 2019). "Military judges abuse their discretion (1) if the findings of fact upon which they predicate their ruling are not supported by the evidence of record; (2) if they use incorrect legal principles; or (3) if their application of the correct legal principles to the facts is clearly unreasonable." *United States v. Wilson*, 84 M.J. 383, 390 (C.A.A.F.

2024) (citing *United States v. Ellis*, 68 M.J. 341, 344 (C.A.A.F. 2010)). A military judge’s ruling receives “less deference if they fail to articulate their analysis on the record.” *United States v. St. Jean*, 83 M.J. 109, 113 (C.A.A.F. 2023).

Law

“Evidence which is offered simply to prove that an accused is a bad person is not admissible.” *United States v. Diaz*, 59 M.J. 79, 93 (C.A.A.F. 2003) (citing M.R.E. 404(b)). Therefore, evidence of other bad acts “must directly relate to some specific fact that is of consequence to the action, not to the general issue of criminality.” *United States v. Ferguson*, 28 M.J. 104, 108 (C.M.A. 1989).

However, mere invocation of words such as “intent” or “knowledge” in order to secure admission of the other bad acts evidence is improper, therefore the proponent of such evidence must be “particular in the offer of proof [and] supporting arguments for admission.” *United States v. Brannan*, 18 M.J. 181, 185 (C.M.A. 1984).

To be guilty of the offense of possession of child pornography under Article 134, UCMJ, an accused must “knowingly and wrongfully possess child pornography.” Manual for Courts-Martial, United States (2019 ed.) [*MCM*], pt. IV, 95.b.(1). “*Intent* in criminal law has traditionally been viewed as a bifurcated concept embracing either the specific requirement of purpose or the more general one of knowledge or awareness.” *United States v. Johnson*, 24 M.J. 101, 105

(C.M.A. 1987) (citing *United States v. United States Gypsum Co.*, 438 U.S. 422, 445 (1978)) (emphasis added). *Knowledge* can be defined as “an awareness or understanding of a fact or circumstance; a state of mind in which a person has no substantial doubt about the existence of a fact.” *Black’s Law Dictionary* 1043 (11th ed. 2019).

A military judge’s decision to admit evidence under M.R.E. 404(b) is assessed under the three-part *Reynolds* test: “(1) Does the evidence reasonably support a finding by the court members that appellant committed prior crimes, wrongs or acts? (2) What fact . . . of consequence is made more or less probable by the existence of this evidence?” (3) Is the probative value . . . substantially outweighed by the danger of unfair prejudice?” *United States v. Reynolds*, 29 M.J. 105, 109 (C.M.A. 1989) (internal citations omitted). “If the evidence fails to meet any one of these three standards, it is inadmissible.” *Id.*

Prejudice from erroneous evidentiary rulings is reviewed de novo. *United States v. Bowen*, 76 M.J. 83, 87 (C.A.A.F. 2017). “For nonconstitutional errors, the Government must demonstrate that the error did not have a substantial influence on the findings.” *Id.* This court evaluates the harmlessness of an evidentiary ruling by weighing: “(1) the strength of the Government’s case, (2) the strength of the defense case, (3) the materiality of the evidence in question, and (4) the quality of the evidence in question.” *United States v. Kerr*, 51 M.J. 401, 405 (C.A.A.F.1999)

Argument

The military judge abused her discretion by either using the incorrect legal principles or by applying the correct legal principles to the facts in a clearly unreasonable manner. Unfortunately, the military judge did not explain on the record why she denied the 404(b) objection by defense. Therefore, her decision to admit this evidence should be given no deference.

A. The Evidence Does Not Reasonably Support a Finding by the Court that Appellant Committed Prior Crimes, Wrongs or Acts

Assuming an extremely broad definition of “reasonably supports,” the evidence does reasonably support a finding by the court that appellant committed prior crimes, wrongs or acts. However, “An original writing, recording, or photograph is required in order to prove its content unless these rules, this manual, or a federal statute provides otherwise.” M.R.E. 1002. The government admitted this evidence through the vague and clearly biased recollection of appellant’s ex-wife, rather than producing the actual messages themselves. This raised the issue of the requirement for best evidence, something defense alluded to when they argued “[t]here’s no way to verify that,” and by the military judge when she stated the people appellant had allegedly messaged “could have been some old 52-year-old...” (R. at 138). With this last statement, the military judge was tacitly admitting the weakness of the evidence provided.

B. No Fact of Consequence Was Made More or Less Probable by The

Existence of This Evidence

An accused must “knowingly and wrongfully possess child pornography.” *MCM*, pt. IV, ¶95.b.(1). The *mens rea* is the knowing and wrongful possession. Nothing more is required, not an intent to gratify sexual desire, to humiliate, or any other such mental state. The task for the government is to prove the accused knowingly possessed child pornography.

The Government stated its purpose for the evidence was to “demonstrate some type of knowledge or intent to engage in sexual conversations with minors.” (R. at 137). The aforementioned purpose is wholly irrelevant to determining whether or not appellant possessed child pornography. This was propensity evidence used to show the appellant was a bad person... or “manipulator of children” and therefore possessed child pornography. (App. Ex. VIII, p. 2). This attempt to cloak the bad character evidence under a shroud of relevance through “broad talismanic incantations of words such as intent,” is exactly the practice M.R.E. 404(b) and *Reynolds* are meant to prevent. *United States v. Yammine*, 69 M.J. 70, 77 (C.A.A.F. 2010); *see also United States v. Allred*, ARMY 20220141, 2023 CCA LEXIS 366, at *6 (Army Ct. Crim. App. 25 Aug. 2023). This is especially true if the evidence was meant to prove intent to do something that is wholly separate from the charged offense.

Assuming the Government's purported reason is taken without greater question or analysis, it would still not go to prove in any meaningful way appellant knowingly possessed child pornography. Even assuming Ms. Webb's characterizations of the chats were accurate, she never saw appellant solicit pictures from minors, or any evidence appellant had an intent to possess child pornography. (R. at 136-139).

C. The Probative Value of the Evidence Was Substantially Outweighed by the Danger of Unfair Prejudice

Any probative value to this evidence is substantially outweighed by the danger of unfair prejudice. Ms. Webb did not testify to walking in on appellant viewing child pornography, to his telling her he enjoyed viewing child pornography, or to him soliciting child pornography. (R. at 133-150). Instead, this was evidence of a bad act that was logically and temporally separated from the charged act. (Charge Sheet; R. at 135). The government's argument this evidence was relevant to show "some type of knowledge or intent to engage in sexual conversations with minors," does not go to whether appellant was in possession of child pornography. (R. at 137).

The danger of unfair prejudice of this evidence substantially outweighed the probative value. The Government highlighted this with their opening argument, "Your Honor, a West Point graduate, a future pilot, a faith and youth leader in the LDS church here in Enterprise, Alabama. A manipulator of children online. A

collector of child pornography. This case is about the secret life of Justin Robinson.” (R. at 35).² The intent of this opening is to paint the appellant as a Dr. Jekyll and Mr. Hyde figure. A person who on the outside seems good, but who has a secret bad side and acted within accordance of this characterization when he possessed child porn. This type of evidence and argument is exactly what M.R.E. 404(b) was meant to prevent.

D. The Error Had a Substantial Influence on The Finding

The Government’s case on the element of knowing possession was tenuous. Without the prohibited 404(b) testimony, the government’s evidence was based on a series of inferences: because the illicit material was sent from an IP address associated with the appellant’s home, he must have been the one who possessed and sent it.

The Government dedicated significant effort to defend the admissibility of the Discord chat evidence and it was a central narrative of their case. (R. at 35, 39, 137, 149, 218). This disproportionate focus reveals their strategic calculation: they knew their primary evidence was vulnerable and securing a conviction depended on using the 404(b) evidence to paint the appellant as a man of bad character, thereby making it easier for the factfinder to leap to a conclusion of guilt.

² The appellant was never charged with communicating indecent language to children. (Charge Sheet).

The defense case was robust, multi-faceted, and directly challenged the government's core narrative. The defense presented a compelling alibi; the appellant was verifiably engaged in military duties at the time the files were transmitted.

Crucially, the defense also established a viable alternative perpetrator. Ms. Webb who had also used the laptop. (R. at 146). This is not a speculative theory; it is a concrete fact that provides an alternative explanation for the presence of the contraband.

Legally, the Discord chat evidence was immaterial to proving the charged offense. However, in practice, it became a material piece of evidence for the prosecution's narrative. The Government argued the evidence was necessary to prove "intent" and "absence of mistake." This is a classic and, in this case, transparent example of pretext. (R. at 137).

The evidence's true materiality was its power to establish a propensity argument. The Government's central theme of the appellant's "secret life" by branding him a "manipulator of children," the prosecution made his character, not his actions on the day in question, the central issue of the trial. (App. Ex. VIII, p. 2). This strategy made the legally irrelevant evidence the cornerstone of their case, demonstrating its profound and improper materiality.

The quality of the 404(b) evidence was abysmal. The Government failed to adhere to M.R.E. 1002. Instead of producing the chat logs for objective review, the government presented the uncorroborated, second-hand testimony of a witness with a clear bias and potential motive to be fabricate. That is to say the ex-wife of the appellant and the only person to have access to the laptop at the time of transmission.

There was no verification the other parties in the chat were minors, a point the military judge herself noted. This transforms the evidence from a “bad act” into, at best, an unverified allegation. Allowing such low-quality, high-prejudice testimony to be the centerpiece of a criminal prosecution is a clear abuse of discretion. The evidence was pure innuendo, delivered by a biased witness, and its only function was to poison the well against the appellant.

When a weak, circumstantial government case is confronted with a strong defense featuring an alibi and a viable alternative suspect, the introduction of highly inflammatory character evidence can be the only factor that tips the scales of justice. Here, the government hinged its case on low quality, immaterial evidence. This was a calculated strategy that deprived the appellant of his right to be judged on the evidence of the charged offense, not on a prejudicial and unsubstantiated narrative about his character. Therefore, this court cannot be convinced the error did not have a substantial influence on the finding.

Among the enumerated elements for child pornography the government must have proven beyond a reasonable doubt, nowhere listed was there one that read “and that the accused engaged in indecent communications with children.” By feigning that this testimony of alleged child abuse was an element of the charged offense, the government committed a violation of appellant’s right to a fair trial, to be convicted based on legal and competent evidence alone, not evidence of “a general criminal disposition.” *United States v. Burton*, 67 M.J. 150 (C.A.A.F. 2009) at 152. Therefore, the finding and sentence should be set-aside.

III. WHETHER TRIAL DEFENSE COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL

Standard of Review

This court reviews claims of ineffective assistance of counsel de novo. *United States v. Datavs*, 71 M.J. 420, 424 (C.A.A.F. 2012). The Sixth Amendment entitles criminal defendants to representation that does not fall “below an objective standard of reasonableness” considering “prevailing professional norms.” *Strickland v. Washington*, 466 U.S. 668, 688 (1984). An appellant must demonstrate both (1) that his counsel’s performance was deficient, and (2) that this deficiency resulted in prejudice. *Id.* at 687.

Law

“To prevail on an ineffective assistance claim, the appellant bears the burden of proving that the performance of defense counsel was deficient, and that the

appellant was prejudiced by the error.” *United States v. Captain*, 75 M.J. 99, 103 (C.A.A.F. 2016) (citing *Strickland*, 466 U.S. at 698).

To make an ineffective assistance of counsel (IAC) claim, an appellant must rebut the competence presumption “by pointing out specific errors made by his defense counsel” which were unreasonable under prevailing professional norms. *United States v. Scott*, 24 M.J. 186, 188 (C.M.A. 1987) (citing *Cronic*, 466 U.S. 648). The reasonableness of counsel’s performance is to be evaluated from counsel’s perspective at the time of the alleged error and considering all the circumstances. *Id.* “In making [the competence] determination, the court should keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” *Cronic*, 466 U.S. at 690.

This may be done by showing specific errors that fell outside of prevailing professional norms. *United States v. McConnell*, 55 M.J. 479, 482 (C.A.A.F. 2001). Next, appellant must establish prejudice by showing “a reasonable probability that, but for counsel’s [deficient performance] the result of the proceeding would have been different.” *Captain*, 75 M.J. at 103 (citations and quotations omitted). This does not mean appellant is “required to show that counsel’s deficient conduct more likely than not altered the outcome . . . but rather . . . establish a probability sufficient to undermine confidence in [that] outcome.”

United States v. Akbar, 74 M.J. 364, 436 (C.A.A.F. 2015) (citing *Porter v. McCollum*, 558 U.S. 30, 44 (2009)). “The result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome.” *Strickland*, 466 U.S. at 694.

“When a claim of ineffective assistance of counsel is premised on counsel’s failure to make a motion . . . an appellant must show that there is a reasonable probability that such a motion would have been meritorious.” *United States v. McConnell*, 55 M.J. 479, 482 (C.A.A.F. 2001) (quoting *United States v. Napoleon*, 46 M.J. 279, 284 (C.A.A.F. 1997)).

“In the military context, the appearance of bias principle is derived from R.C.M. 902(a)” *Hasan v. Gross*, 71 M.J. 416, 419 (C.A.A.F. 2012). This rule provides: “[A] military judge shall disqualify himself or herself in any proceeding in which that military judge’s impartiality might reasonably be questioned.” R.C.M. 902(a). The test for identifying an appearance of bias is “whether a reasonable person knowing all the circumstances would conclude that the military judge’s impartiality might reasonably be questioned.” *United States v. Sullivan*, 74 M.J. 448, 453 (C.A.A.F. 2015). This is “an objective standard.” *Id.* “Recusal based on an appearance of bias ‘is intended to promote public confidence in the integrity of the judicial process.’” *Id.* at 453-54 (internal quotation marks omitted) (quoting

Hasan, 71 M.J. at 418). *United States v. Uribe*, 80 M.J. 442, 446-47 (C.A.A.F. 2021).

When a judge erroneously fails to recuse due to an appearance of bias, this Court analyzes three factors to determine if reversal is warranted: “[1] the risk of injustice to the parties in the particular case, [2] the risk that the denial of relief will produce injustice in other cases, and [3] the risk of undermining the public's confidence in the judicial process.” *United States v. Armstrong*, 85 M.J. 31, 34 (C.A.A.F. 2024) citing *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 864 (1988)).

A. Counsel was ineffective for failing to oppose Government’s 404(b) motion.

Should this Court adopt the ACCA’s finding of waiver, then trial defense counsel rendered ineffective assistance by failing to properly preserve the objection through a timely written motion to exclude the government’s M.R.E. 404(b) evidence. This failure was not the result of a valid tactical decision but was an error that fell below the objective standard of reasonableness required by prevailing professional norms. Furthermore, this deficiency was prejudicial, as there is a reasonable probability a meritorious motion to exclude would have been granted, and the result of the proceeding would have been different.

The failure to file a pretrial motion left counsel flat-footed at trial, forced to make a hasty, on-the-spot objection the military judge dismissed. (R. at 137). A

well-reasoned, written motion filed before trial would have compelled the military judge to analyze the issue under the three-part *Reynolds* test and articulate her reasoning on the record, preserving the issue properly for appeal and increasing the likelihood of success at both the trial and appellate levels. The failure to take this basic step to protect Appellant from highly prejudicial character evidence does not constitute a deliberate decision or sound trial strategy, but rather an error that falls outside the prevailing professional norms of military justice practice.

As argued in Issue II, the 404(b) evidence was inadmissible for three reasons. First, the evidence did not reasonably support a finding the act even occurred, as it was based on Ms. Webb’s vague, uncorroborated testimony without the actual messages being produced, a clear violation of the best evidence rule. M.R.E. 1002. Second, the evidence served no purpose other than improper propensity. The government’s stated reason—to show “knowledge or intent to engage in sexual conversations with minors”—is irrelevant to the mens rea of the charged offense, which is knowingly and wrongfully possessing child pornography. (R. at 137). This was a transparent attempt to paint Appellant as a manipulator of children who would act in conformity with that character. Third, the evidence’s minimal probative value was substantially outweighed by the danger of unfair prejudice. The testimony that Appellant, a young Army officer, was “a manipulator of children online” was inflammatory and served only to invite

a conviction based on emotion and character rather than on the evidence of the actual offense. (R. at 35). Given the evidence fails the *Reynolds* test, a timely motion to exclude would have been meritorious.

B. Trial defense counsel rendered ineffective assistance of counsel by not challenging the military judge for bias.

Trial defense counsel’s representation fell below the objective standard of reasonableness when they failed to challenge the military judge for cause after she disclosed numerous bases for challenge, including: (1) her extensive, high-level involvement with national organizations dedicated to the prosecution of child abuse; (2) her involvement as amicus to the U.S. Supreme Court on behalf of that organization; (3) her seven years of work as a trial attorney with the Department of Justice; and (4) her simultaneous role as Chief of Staff with the DOJ’s Office for Victims of Crime at the time she was serving as military judge in appellant’s trial. This was not a tactical decision but an unreasonable error under prevailing professional norms. This error was prejudicial, as a motion to disqualify would have been meritorious and the failure to even question the military judge on these matters undermines confidence in the outcome of the proceeding.³

On September 11, 2023, the military judge disclosed she had worked for the “National District Attorneys Association in the National Center for Prosecution of

³ Ineffective assistance of counsel claim for failure to question the military judge for bias was raised to ACCA in Appellant’s *Grostophon* matters.

Child Abuse,” where she taught courses nationwide on “best practices in investigating and prosecuting child abuse,” and had authored an amicus brief for the U.S. Supreme Court on behalf of the National District Attorneys Association. (App. Ex. II). More importantly, she was working as the Chief of Staff for the DOJ’s Office for Victims of Crime at the time of trial. These are not the activities of a dispassionate, neutral arbiter; they are the credentials of an advocate and expert for the prosecution in the specific niche area of law that was implicated in this case.

To establish prejudice, Appellant must show a reasonable probability that a motion to disqualify would have been meritorious. *McConnell*, 55 M.J. 479, 482. Such a motion would have been meritorious because an objective observer, knowing the military judge’s deep-seated alignment with the prosecutorial mission in this specific legal field, would reasonably question her impartiality.

When a judge erroneously fails to recuse due to an appearance of bias, this Court analyzes three factors to determine if reversal is warranted: “[1] the risk of injustice to the parties in the particular case, [2] the risk that the denial of relief will produce injustice in other cases, and [3] the risk of undermining the public's confidence in the judicial process.” *United States v. Armstrong*, 85 M.J. 31, 34 (C.A.A.F. 2024) citing *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 864 (1988)). All three factors weigh heavily in favor of Appellant.

The risk of injustice is exceptionally high. In a case built on circumstantial evidence where the defense presented a strong alibi and a viable alternative perpetrator, the part-time military judge, an expert in prosecuting such cases, admitted highly inflammatory M.R.E. 404(b) evidence and then returned a guilty verdict in under thirty-three minutes. This swift conviction in the face of a robust defense suggests the very predisposition the recusal rule is designed to prevent. The military judge's well-established passion and expertise for the prosecution of these very types of cases created an unacceptable risk that she viewed the evidence through a prosecutorial lens, resulting in a manifest injustice to Appellant.

Furthermore, denying relief here would set a dangerous precedent. It would signal that clear, extrajudicial alignments with one party's mission are acceptable, so long as the judge does not explicitly profess partiality. This would disincentivize future defense counsel from lodging meritorious challenges and normalize proceedings where the arbiter has a thumb on the scale. Justice requires that this Court firmly repudiate such appearances of unfairness.

Finally, the very purpose of § 455(a) and R.C.M. 902(a) is to "promote public confidence in the integrity of the judicial process." *Liljeberg*, 486 U.S. 847, 860. Confidence in the military justice system is shattered when a judge, who trains prosecutors and writes pro-prosecution briefs on child abuse, presides over a child sexual abuse material case. Unlike *Armstrong* or *Sullivan*, this case is not

about a personal friendship. *Sullivan*, 74 M.J. 448, *Armstrong*, 85 M.J. 31. It is about a deep, professional alignment with one side's mission. A judge's impartiality has been questioned for far less.⁴ A reasonable observer looking at the totality of the circumstances would not see an impartial judge but rather another member of the prosecution. *United States v. Bergdahl*, 683 F. Supp. 3d 24, 70-71 (D.D.C. 2023). This would deliver a mortal blow to the perception of fairness within the military justice system.

Counsel's failure to challenge the judge was professionally unreasonable and the resulting prejudice undermines the fundamental fairness of the trial.

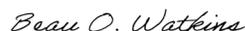
⁴ In *Bergdahl*, the military judge failed to disclose his application to the Justice Department when the Attorney General had been a participant in the case from start to finish resulting in the case being dismissed. *United States v. Bergdahl*, 683 F. Supp. 3d 24, 70-71 (D.D.C. 2023).

Conclusion

In this case the government relied on inflammatory and irrelevant propensity evidence, and weak circumstantial evidence to prove appellant knowingly possessed child pornography. Furthermore, the ineffective assistance of defense counsel unjustly prejudiced the appellant. Therefore, this court should set aside the finding and sentence.



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Appendix A: Army Court Decision

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
FLEMING, COOPER, and SCHLACK
Appellate Military Judges

UNITED STATES, Appellee
v.
First Lieutenant JUSTIN R. ROBINSON
United States Army, Appellant

ARMY 20230640

Headquarters, U.S. Army Aviation Center of Excellence
Pamela L. Jones and Sasha N. Rutizer, Military Judges
Major Kyle V. Burgamy, Acting Staff Judge Advocate

For Appellant: Colonel Philip M. Staten, JA; Lieutenant Colonel Autumn R. Porter, JA; Major Robert W. Rodriguez, JA; Captain Robert W. Duffie, JA (on brief); Lieutenant Colonel Autumn R. Porter, JA; Major Robert W. Rodriguez, JA; Captain Robert W. Duffie, JA (on reply brief).

For Appellee: Colonel Richard E. Gorini, JA; Major Lisa Limb, JA; Captain Vy T. Nguyen, JA (on brief).

12 November 2025

MEMORANDUM OPINION

This opinion is issued as an unpublished opinion and, as such, does not serve as precedent.

SCHLACK, Judge:

A military judge, sitting as a general court-martial convicted appellant, contrary to his pleas, of one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice, 10 USC 934 (2019). The military judge sentenced appellant to a dismissal and sixteen months of confinement.

On appeal, appellant raised three assignments of error; one warrants discussion but no relief.¹ Specifically, appellant argues the military judge erred by admitting evidence of appellant's communications with minors in violation of

¹ We have given full and fair consideration to the matters personally raised by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and determine they merit neither discussion nor relief.

Military Rule of Evidence [Mil. R. Evid.] 404(b). For the reasons set forth below, appellant waived this issue for appellate review.

BACKGROUND

Yahoo! alerted the National Center for Missing and Exploited Children about an email containing child pornography (hereinafter CSAM email) sent from appellant's email account. Eventually the related IP address was subpoenaed. The subpoena results led to the Dale County Sheriff's Office discovering the CSAM email was sent from appellant's residence on Fort Rucker, Alabama. As a result, the Fort Rucker Criminal Investigation Division (CID) detachment executed a search authorization of appellant's home wherein multiple digital devices belonging to appellant and his wife were seized. The search results of appellant's personal laptop revealed child pornography in a folder labeled "Extremism Stand-Down Day."

The day the CSAM email was sent, appellant conducted flight training for some portion of the day, away from Fort Rucker, requiring him to travel via bus back to post afterwards. Appellant's wife, the only other person living in the home, was away at work when the email was sent. The issue at trial was whether appellant knowingly possessed the child pornography at issue.

In opening, the government told the military judge that she would hear from appellant's wife.² Specifically, the government averred wife would testify appellant posed as a minor online and engaged in sexually explicit chats with girls purporting to be minors. Before moving into the merits, the military judge asked the parties whether a marital privilege issue existed. Both parties agreed, it did not. The government added the following:

For the record, the government did provide [Mil. R. Evid]. 404(b) notice of this other conduct of the accused, of what [wife] saw in terms of the accused's conduct in messaging individuals online.

Defense made no Mil. R. Evid. 404(b) objection at that time and reserved opening statement.

The government proceeded, calling witnesses necessary to link appellant to the child pornography and to admit it into evidence. Appellant's wife testified the laptop was appellant's personal property, she did not have routine access to it, she was unaware of what "extremism stand-down" meant, and she was at work when the

² We use the term "wife" to refer to appellant's wife at the time of the investigation, even though they divorced after the CID search of their home.

relevant CSAM email was sent. She also described seeing a chat conversation in appellant's Discord application on his laptop.

The defense objected to wife's testimony concerning the Discord chat on a hearsay basis. The government responded to the objection, identifying non-hearsay purposes for the admission of the statements in the chat. For the appellant's purported statements, the government offered statement of party opponent and for the statements of the responder, "effect on the listener." The following exchange between the military judge and defense counsel followed:

MJ: Okay; and [Defense] response?

DC: So in that respect, if we're looking at the effect on the listener, there's no relevance. This is uncharged conduct.

MJ: It is uncharged conduct.

...

MJ: [Government], [d]id you give 404 notice of this?

STC: Yes, Your Honor. . . .

MJ: Okay; did you get this 404?

DC: We did, Your Honor. We would object now, indicating that the individual didn't know it was a minor, [wife] has no personal knowledge.

...

MJ: Okay. First off, I need to hear what was said before I can do anything else.

At this point, the government proffered through wife that appellant gave her access to his laptop about a month *before* the CSAM email triggered the relevant investigation. While using the laptop, wife saw hidden messages in appellant's Discord application. When she opened these messages, she found sexually suggestive chats from appellant. In these chats, appellant claimed to be 17 years old and the respondents claimed to be 13 and 14 year old girls.

After the proffer, the military judge continued:

MJ: Having heard what I just heard, what objection, if any, do you have?

DC: We'd argue, Your Honor, that is the perception of the [wife's] mind, that whether or not these individuals were minors. There's no way to verify that.

MJ: Sure, so let's deal with your hearsay statement. The things he typed to them, we agree, is [a] statement by a party opponent?

DC: Yes, Your Honor.

MJ: Okay, so whatever they reply back, something having to do with their age, what do you want me to know about that? That it could have been some old 52-year old dude?

DC: That's what we would suggest.

MJ: [Y]ou get to cross-examine on that. . . . Do you have something else?

DC: *No, Your Honor.* (emphasis added).

...

MJ: Very well, that statement is admitted for the value that it deserves.

Once again, defense counsel did not make a Mil. R. Evid. 404(b) objection. Rather, defense continued to pursue a theory that appellant did not *knowingly* possess child pornography—that his wife must have put it there, unbeknownst to him.

The motive for the wife to do so, defense counsel argued, was that she was upset after discovering the Discord chats.³ In further support of this theory, defense called appellant's co-pilot to testify about the training timeline the day of the CSAM email. The testimony suggested appellant got home *after* the CSAM email was sent, making it more conceivable appellant's wife was behind the computer, sending the email that sparked the entire investigation.

³ Defense counsel reasonably argued this angle in his closing. This court does not "second guess strategic or tactical decisions made at trial by defense counsel." *See United States v. Morgan*, 37 M.J. 407, 410 (C.M.A. 1993)(citations omitted). Given that defense counsel demonstrated a strategic interest in the admission of the Discord evidence, we do not find counsel ineffective for failing to raise a 404(b) objection.

In rebuttal, however, the government offered the actual flight training records, showing training concluded much earlier in the day than appellant's co-pilot remembered. Thus, appellant had ample time to travel home from training and access his laptop *before* the CSAM email was sent. The government also offered wife's testimony that she was still at work at the time the CSAM email was sent.

At the end of the trial, both parties referenced the Discord chat testimony in their closing argument. Government counsel began by naming all of appellant's positive, widely known, characteristics: West Point graduate, Army Officer, and aviator. Then the government counsel added: "[W]hat do we also know about [appellant]? We know . . . that he manipulated children online. And finally, we know he possessed child pornography." Defense counsel did not object to the government's statement concerning the uncharged conduct at this time either.⁴ Instead, defense's closing referenced the Discord chats, advancing their theory of the case that the wife put the child pornography on appellant's laptop and appellant did not knowingly possess it.

LAW AND ANALYSIS

Military Rule of Evidence 404(b)(2) permits the admission of "other crimes, wrongs, or acts," when "proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident."

In courts-martial, motions are "application[s] to the military judge for *particular* relief." R.C.M. 905(a)(emphasis added). "A motion shall state the grounds upon which it is made and shall set forth the ruling or relief sought. The substance of a motion, not its form or designation, shall control." R.C.M. 905(a). The Rules for Courts-Martial require defense motions to suppress to be raised "before a plea is entered." 905(b)(3). However, motions to suppress 404(b) evidence may be raised pretrial or during trial. R.C.M. 905(b)(3) Discussion.

⁴ We pause to note appellant's failure to object did not give the government license to improperly argue the Mil. R. Evid. 404(b) evidence. Counsel are well aware that Mil. R. Evid. 404(b)(1) prohibits the use of "other crimes, wrongs, or acts," when offered "to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." The government's presentation of the Discord chat testimony cut close to the heart of exactly what Mil R. Evid. 404(b) prohibits and argued an impermissible 404(b) use of the evidence to the factfinder. We review concerns of improper argument *de novo*, but "if there is no objection at trial, the appellant has the burden of establishing the prejudice." *See United States v. Schroder*, 65 M.J. 49, 58 (C.A.A.F. 2007). Even assuming error here, we find no prejudice.

Any objection pursuant to Mil. R. Evid. 404(b) for uncharged conduct during trial “must be raised before the court-martial is adjourned for that case.” R.C.M. 905(e)(2). “Failure to raise such. . . objection[] shall constitute forfeiture, absent an affirmative waiver.” R.C.M. 905(e)(2). We review “[w]hether an accused waived an issue . . . *de novo*.” *United States v. Ahern*, 76 M.J. 194, 197 (C.A.A.F. 2017)(citation omitted).

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)(citations omitted). We may not review waived issues “because a valid waiver leaves no error for us to correct on appeal.” *United States v. Davis*, 79 M.J. 329, 331 (C.A.A.F. 2020)(quoting *id.*). In determining whether defense counsel waived this issue, “we consider whether the failure to raise the objection at the trial level constituted an intentional relinquishment of a known right.” *Campos*, 67 M.J. at 332 (citations omitted).⁵

Here, the record indicates defense affirmatively waived any Mil. R. Evid. 404(b) objection and did so to advance their defense theory. First, government counsel provided pretrial notice of their intent to introduce evidence of appellant’s online chats with respondents purporting to be minors; defense did not file a pre-trial motion to exclude it. Second, during the testimony of appellant’s wife, the military judge agreed the chats were uncharged conduct and asked defense whether there was a ground besides hearsay upon which they wished to object; defense counsel affirmatively declined. Finally, when government counsel argued the Discord evidence in closing, improperly or otherwise, defense counsel did not object.

Even if there was no waiver, we find no prejudice to the appellant under these facts. We acknowledge the Discord chat evidence could have been potentially prejudicial to appellant if improperly used by the factfinder. However, appellant’s trial strategy required the same evidence to demonstrate wife’s access to appellant’s laptop, her ability to place child pornography on it, and her possible motive. This allowed defense to ultimately argue appellant did not knowingly possess the child pornography. Further, any concern regarding its admission and any improper use by a factfinder is negated in a military judge alone case. “Military judges are presumed to know and follow the law absent clear evidence to the contrary.” *United States v. Mason*, 45 M.J. 483, 484 (C.A.A.F. 1997)(citation omitted). As factfinders, military judges have an easier time identifying and disregarding evidence inappropriate for

⁵ The responsibility to raise objections falls upon counsel, not the military judge. The CAAF has held that even in cases of unlawful command influence, “the mortal enemy of military justice,” it is not the job of the military judge “to intuit possible objections for the defense and then raise them *sua sponte*.” *United States v. Douglas*, 68 M.J. 349, 355 (C.A.A.F. 2010)(citations omitted).

consideration. *United States v. Erickson*, 65 M.J. 221, 224 (C.A.A.F. 2007) (“[W]e . . . presume that the military judge is able to distinguish between proper and improper sentencing arguments.”). Therefore, even if we were to find appellant did not waive his objection to this Mil. R. Evid. 404(b) evidence, this evidence was not prejudicial to appellant as it advanced his theory of the case.

Finally, the government presented substantial evidence, separate and apart from the Discord chat evidence, to support appellant’s conviction beyond a reasonable doubt. We are confident the military judge convicted appellant “on the basis of [that] evidence alone.” *United States v. Fletcher*, 62 M.J. 175, 184 (C.A.A.F. 2005).

CONCLUSION

On consideration of the entire record, the finding of guilty and the sentence are AFFIRMED.

Senior Judge FLEMING and Judge COOPER concur.

FOR THE COURT:



JAMES W. HERRING, JR.
Clerk of Court

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**MOTION FOR
RECONSIDERATION**

v.

Docket No. ARMY 20230640

First Lieutenant (O-2)

JUSTIN R. ROBINSON,

United States Army,

Appellant

Tried at Fort Novosel, Alabama, on 7 September and 11-12 December 2023, before a general court-martial appointed by the Commander, United States Army Aviation Center of Excellence and Fort Novosel, Lieutenant Colonel Pamela L. Jones and Lieutenant Colonel Sasha N. Rutizer, military judges, presiding.

TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES ARMY COURT OF CRIMINAL APPEALS

COMES NOW the undersigned appellate defense counsel, under Rule 31 of this court's Rules of Appellate Procedure, and move for reconsideration of this court's 12 November 2025 memorandum opinion. *United States v. Robinson*, 2025 CCA LEXIS 523 (Army Ct. Crim. App. 2025)([mem op.](#)). There was a material factual matter was misapplied in the decision; Army Court of Criminal Appeals Rule [A.C.C.A. R.] 31.2(b)(1).

Law

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)(citations omitted). The Court may not review waived issues "because a valid waiver leaves no error for us to correct on appeal." *United States v. Davis*, 79 M.J. 329,331 (C.A.A.F. 2020)(quoting *id.*). In determining whether defense counsel waived this issue, the Court would "consider whether the failure to raise the objection at the trial level constituted an intentional relinquishment of a known right." *Campos*, 67 M.J. at 332 (citations omitted).

Statement of the Case

On 18 November 2024, appellant submitted his brief to the court, alleging 3 assignments of error. (Appellant's Br.). On 18 March 2025, the government filed its response brief. (Appellee's Br.). Appellant replied on 25 March 2025. (Appellant's Reply Br.).

On 12 November 2025, this court issued its decision, affirming appellant's findings and sentence. The court served appellant's counsel the same day.

In accordance with Rule 31 of this court's Rules of Appellate Procedure, appellant files this Motion for Reconsideration within the proscribed time limits required to ensure this court retains jurisdiction over the case. The Court of Appeals for the Armed Forces has not acquired jurisdiction over this case.

Grounds for Reconsideration

Under A.C.C.A. Rule 31.2(b)(1), reconsideration is appropriate when a material factual matter has been overlooked or misapplied. The Court's statement

“the record indicates defense affirmatively waived any Mil. R. Evid. 404(b) objection and did so to advance their defense theory,” is such a misapplication. *Robinson*, at *6.

The court supports its conclusion through three observations: First, government counsel provided pretrial notice of their intent to introduce evidence of appellant's online chats with respondents purporting to be minors; defense did not file a pre-trial motion to exclude it. Second, during the testimony of appellant's wife, the military judge agreed the chats were uncharged conduct and asked defense whether there was a ground besides hearsay upon which they wished to object; defense counsel affirmatively declined. Finally, when government counsel argued the Discord evidence in closing, improperly or otherwise, defense counsel did not object. Each of these points is either incomplete, inaccurate, or insufficient to establish the defense waived a 404(b) objection in furtherance of its theory of the case. *Robinson*, at *6.

The assertion “government counsel provided pretrial notice of their intent to introduce evidence of appellant's online chats with respondents purporting to be minors; defense did not file a pre-trial motion to exclude it” does not support the chats were relevant to the defenses’ theory of the case. *Id.* Importantly, Mil. R. Evid. 404(b) does not require a motion prior to entry of pleas. The rule is silent on the timing of any motion in limine to exclude. Furthermore, the lack of objection

or silence on the matter does not prove the chats were part of the defense's theory of the case, it is ultimately the lack of any direct assertion, and any evidentiary value as to intent would at best be an assumption built ultimately on silence. To ascribe such a significant trial strategy to silence without greater positive textual evidence such as direct and actual statements would be error.

The assertion "during the testimony of appellant's wife, the military judge agreed the chats were uncharged conduct and asked defense whether there was a grounds besides hearsay upon which they wished to object; defense counsel affirmatively declined" is inaccurate. *Robinson*, at *6. In the exchange with the military judge the defense counsel explicitly stated that the evidence in contention "is uncharged conduct." (R. at 137). The military judge, in recognition the statement is a reference to a Mil. R. Evid. 404(b) objection, asks the government counsel "Did you give 404(b) notice?" (R at 137). Once the military judge learned the government gave 404(b) notice, the judge begins to somewhat excoriate the defense counsel by asking repeatedly "did you get 404(b) notice?" While agreeing they received notice Defense counsel stated, "We would object now." (R. at 137). Contrary to this panel's assertion, the appellant's counsel objected, as shown in the above exchange.¹

¹ However, if this court concludes otherwise, counsel was clearly ineffective as noted in appellant's Grostefon submission. *United States v. Pasay*, No. ARMY 20140930, 2017 CCA LEXIS 590, at *23-24 (A. Ct. Crim. App. Aug. 31, 2017

The argument Defense waived their objection to advance a theory of the case is also inaccurate. Defense counsel continually objected to the presentation of the wife's discussion of the discord texts, and only cross examined her on the matter when they had exhausted all attempts to not let the evidence in. (R. 135-139, 143-149). Defense counsel never mentioned the texts in either their opening, nor presented evidence of such during their case in chief. Defense only cross-examined the spouse, MW, after the government introduced the evidence on direct and defense counsel's objection had been overruled. (R. at 39).

The assertion that "when government counsel argued the Discord evidence in closing, improperly or otherwise, defense counsel did not object", does not prove the defense intended to use the Discord chats as part of their theory of the case. *Robinson*, at *6. The lack of objection, or silence ultimately does not necessarily say anything. Defense counsel had already objected and given the judge's demeanor, any further objection would have been futile. *U.S. v. Boyd*, 21 C.M.R. 395, 399. Regardless, conflating a lack of objection to a theory of a case is a dubious proposition.

However, assuming the Discord chats were part of the defense's theory of the case, there is no evidence the defense wanted the alleged ages of the individuals as part of the evidence. Furthermore, it is the alleged ages of the individuals in the chat that causes these acts to fall under the purview of 404(b).

The supposed ages of the individuals in the chatroom had no relevance to the court's perceived theory of the defense's case that states that the Discord chat evidence was required to "demonstrate wife's access to appellant's laptop, her ability to place child pornography on it, and her possible motive." *Robinson*, at *6. Thus, the Court's inference rests on a factual assumption not supported by the record.

Conclusion

WHEREFORE, appellate defense counsel respectfully request that this court grant the instant motion.



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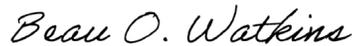
PANEL NO. 2

MOTION FOR
RECONSIDERATION

GRANTED: _____

DENIED:  _____

DATE: 16 December 2025



Beau O. Watkins
Major, Judge Advocate
Branch Chief
Defense Appellate Division

Certificate of Filing and Service

I certify that a copy of the foregoing in the case was electronically filed with
the Court and Government Appellate Division on December 12, 2025.



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Appendix C: 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 this court consider the following matters:

I. WHETHER TRIAL DEFENSE COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY NOT PRESENTING MATTERS IN CROSS-EXAMINATION THAT SHOWED BIAS AND MOTIVE TO FABRICATE OF MS. WEBB

Argument

On January 4, at 9:52 CST, Ms. Webb was notified from Appellant's sister via text message that LT Robinson had all of his restrictions removed. Ms. Webb told Appellant's sister she had called CID to inquire why they removed restrictions and reportedly stated the investigation was still ongoing and the removal of restrictions meant nothing of importance.

Unbeknownst to appellant and his family however, Ms. Webb had just contacted CID 9 minutes later after receiving this text message from appellant's sister not to inquire about restrictions being lifted, but instead sought to give CID more evidence that would implicate LT Robinson further.

Controlled Unclassified Information (CUI)	
AGENT'S INVESTIGATION REPORT	ROI NUMBER 00088-2022-CID083-025195
<i>CID Regulation 195-1</i>	PAGE 1 OF 1 PAGE
<small>DETAILS</small> TELEPHONIC INTERVIEW OF MRS. WEBB: About 1001, 4 Jan 22, Mrs. Webb contacted the FRAL CID office and SA Ericksen telephonically interviewed her. Mrs. Webb stated that while she and 2LT Robinson were either married or engaged, Mrs. Webb stated that 2LT Robinson told her that when he was approximately 14 or 15 years old, he did not like to watch pornography of people who "were older" and tried to find pornography depicting people his own age. Mrs. Webb stated 2LT Robinson related that when he was approximately 5 or 6 years old during a play date with his siblings and other children, 2LT Robinson was approached by a female child approximately his age and told to take off his clothing. Mrs. Webb stated that 2LT Robinson related that the female child tried to have sex with 2LT Robinson after he took off his clothes. Mrs. Webb did not provide any more details and stated that 2LT Robinson related that he could not say with certainty that what he remembered actually happened during the incident when he was 5 or 6 years old.///LAST ENTRY///	

This shows Ms. Webb had some reason for LT Robinson to be the primary suspect in this case and ensure he remains under investigation despite hearing what most spouses would consider to be, good news in LT Robinson's favor. This is a questionable move by someone who felt no need to report this information at the time to CID in her initial interview 3 weeks earlier.

Ms. Webb also threatened to use the investigation against LT Robinson to get an even more favorable outcome for herself if appellant didn't agree to her divorce terms as is resulting in her taking complete ownership of the dog they shared and an extra estimated \$20,000 in assets and financial worth.

Additionally, in her initial interview with CID, Ms. Webb stated in response to being asked about the Discord chats "He showed me these messages he had with random people...from the conversations I saw nothing got super, nothing was sexually explicit but it was inappropriate..... So he did show me that".

This is a far cry from what she testified of a year later, stating she saw LT Robinson “sexually soliciting” minors and talking about sexually explicit subjects such as masturbation. Ms. Webb's testimony had also changed from LT Robinson showing her these chats, to “hidden messages” Ms. Webb had found, unbeknownst to LT Robinson, implying these messages are more heinous since LT Robinson sought to hide them from his wife (as is used by the prosecution and Governments brief repeatedly). This escalation of events between her initial testimony and what was stated in court should call into question either how accurate her memory of events actually is, or why she would be motivated to shift her testimony to a more damning one against LT Robinson.

Finally, since LT Robinson did not send the emails and if Ms. Webb was the one to have sent the emails and therefore put the CSAM on the laptop, Ms. Webb would have every motivation to secure the guilt of LT Robinson in order to remove any possibility of her involvement to protect herself.

All of this, had it been shown in court, would have strengthened the defense’s theory of a viable alternate suspect who had motive to ensure LT Robinson's guilt. It also would have disproven the proposed theory put forward by ACCA, of the defense requiring Ms. Webb to testify about the discord chats to prove her potential motive to plant CSAM. This warrants CAAF to remand to ACCA to investigate further.

II. WHETHER TRIAL DEFENSE COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY NOT CALLING THEIR DEFENSE DIGITAL FORENSICS EXPERT AS AN EXPERT WITNESS

Argument

The defense had ample opportunity to call their own DFE to testify about the metadata of the CSAM found on the laptop, information that is most commonly used to circumstantially prove guilt in CSAM cases. Had appellants DFE been called to testify, the DFE could have testified the metadata associated with CSAM on the laptop could match the profile of someone planting the CSAM rather than hiding it for personal consumption (due to the severe lack of CSAM activity on the laptop besides the mere presence of CSAM). The DFE could have also testified there were no images of CSAM in the Discord Cache and the file names that were sent in the emails matched file names found on the laptop proving a link. Finally, the DFE could have shown how throughout the entirety of the investigation, CID made the mistake of assuming the emails were sent 5 hours later due to not understanding what UTC time is.

Had the DFE testified on these facts, it would have provided more reasonable doubt to the appellant's guilt. ACCA in their opinion stated: “the government presented substantial evidence, separate and apart from the Discord chat evidence, to support appellant's conviction beyond a reasonable doubt.” This

shows the DFE’s testimony would have been prejudicial and warrants CAAF to remand to investigate further.

III. WHETHER TRIAL DEFENSE COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO CROSS-EXAMINE MS. WEBB ON INCONSISTENCIES BETWEEN HER TRIAL TESTIMONY AND SWORN STATEMENT CONCERNING HER KNOWLEDGE OF APPELLANT’S PASSWORDS TO HIS DEVICE

Argument

When in court and asked about her access to LT Robinson’s devices and knowledge of his passwords, Ms Webb answered she didn’t know and could only guess his passwords to his phone and laptop occasionally (R146,2 and 148,19). Later, Ms. Webb did admit she could have accessed them if she wanted to. Ms. Webb obfuscated enough during these lines of questioning that the government and ACCA were able to put forward, based on Ms. Webb's testimony in court, that Ms. Webb did not know the passwords to LT Robinson’s devices and did not have access without his permission.

However, when talking to CID a year prior, Ms. Webb was able to give the exact passwords to all of his devices and accounts at their request.

AGENT’S INVESTIGATION REPORT <i>CID Regulation 195-1</i>	ROI NUMBER 00088-2022-CID083-025195
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<small>DETAILS</small> forced, but the brother claimed it was consensual. Mrs. Webb stated she did not have any additional information about the incident but stated they were all adults now. Mrs. Webb provided SA Ehrig with passwords 2LT Robinson previously used to secure his devices and accounts: Soccer1, soccer1, 201512 (Cell Phone), and stated he used the username “brobear” when corresponding often.///LAST ENTRY///	

Specifically, in Ms. Webb's initial interview with CID, she not only admitted that she knew about the Yahoo email that triggered the entire investigation, but that she could access it and knew its password and might have had access to the email on one of her other devices that was never searched by CID:

Investigator: Any other yahoo accounts that you know of?

Ms. Webb: I know there is an incriminating yahoo but I don't have access

Investigator: Okay that's fine.

Ms. Webb: Umm, no I don't have it. Not on my phone. I might have it on.... I mean... I can try to log into it? I know his password...

Investigator: That's all right.

This evidence from investigators alone should: 1. Establish that Ms. Webb did have access to LT Robinson's devices and passwords providing an alternative suspect who could have sent the emails and put CSAM on the laptop. 2. Prove that despite ACCA's proposed theory, defense could have used this evidence to show that Ms. Webb did have access to his devices without her needing to testify about the Discord chats, or even testify at court at all. 3. Prove that any obfuscation from Ms. Webb about not having access is misleading and deceptive, revealing some motive. This deception should call into question any other statements that she made in court or previously to CID.

This evidence, if supplied to the court, would have shown Ms. Webb's testimony is riddled with deception, and also provides an alternative suspect to who knowingly put CSAM on the laptop. This evidence would have made ACCA's decisions far less reasonable to propose defense required Ms. Webb to

testify about the discord chats to show access. This warrants CAAF to remand to ACCA.

IV. WHETHER THE ARMY COURT ERRED IN ITS FACTUAL SUFFICIENCY REVIEW

Argument

ACCA stated the following in their background: “The day the CSAM email was sent, appellant conducted flight training for some portion of the day, away from Fort Rucker, requiring him to travel via bus back to post afterwards.” ACCA also stated within the following in their argument: “In rebuttal, however, the government offered the actual flight training records, showing training concluded much earlier in the day than appellant's co-pilot remembered. Thus, appellant had ample time to travel home from training and access his laptop before the CSAM email was sent. The government also offered wife's testimony that she was still at work at the time the CSAM email was sent.”

ACCA’s statements completely ignore the most significant parts of CW Maldonado’s testimony in order to find a justification from the RoT to disbelieve the alibi. The testimony from LT Robinson’s co-pilot is as follows paraphrased: On OCT 20, LT Robinson, CW Maldonado, and their classmates took a bus from Fort Rucker Aviation Museum to Dothan Airport. That day there was flight training in the morning and ground school classes in the afternoon after lunch. LT Robinson flew to Albany and CW Maldonado flew back. Maldonado stated that flight

training ended prior to 12, or sometimes later. After flight training, a lunch break began which lasted from 30-45 minutes or an hour if they were lucky. After lunch, there was a ground school class and then a test taken after the class. The bus then left at 1445, traveling for 45 minutes without traffic to take CW Maldonado and LT Robinson back to the museum on Fort Rucker where each now individually drove home. Maldonado reaffirms several times that without a doubt the bus did not leave until 1445, that LT Robinson was with him through every event of the day including the bus ride, and that LT Robinson had no way to return home earlier.

Prosecution submitted the flight records showing that the flight itself ended at 1030. The Prosecution stated that they disclosed the flight records to the defense prior to trial that day, and when brought before the Military Judge, she herself asked defense if there was any objection because she saw “some version of attestation”. The defense responded with “No objection, Your Honor” (R 215). Defense at no point attempted to object to the flight records (despite there being opportunity to do so on several grounds as the Military Judge made a point to say that Prosecution Exhibit 16 is admitted “without objection”). At no point during appellate review has the appellant claimed IAC for defense not objecting to the submission of flight records. CAAF should be curious as to why the defense did not feel threatened at all by the submission of flight records.

ACCA has presumed without any evidence that because the flight itself ended at 1030, that flight training also ended, no lunch break occurred, ground school classes didn't occur, no test occurred, and that either LT Robinson somehow "had ample time to travel home" despite having no means of personal transportation, or that the bus left Dothan soon after 1030. This erroneous presumption completely ignores testimony and evidence from a non-biased co-worker to completely dismiss the central theory to the defense which presumably is the reason for ACCA not conducting a factual sufficiency review.

But both the prosecution in their closing argument, and the government's brief against appellant validated the reality of the alibi despite the admission of the flight records. In their closing argument, Trial counsel stated "The defense references that he couldn't have been behind the computer on the date that the e-mails were sent". The government's brief against appellant stated: "Defense argued (i) appellant did not send the email triggering NCMEC, ICAC, and the CyberTip because he did not return home until after 1530 CDT ", and offered no rebuttal against this fact. The MJ gave no indication in her special findings as to how she resolved the alibi evidence which should give her less deference.

For the first time at any point in appellant's trial and appeal, ACCA is asserting that the prosecution disproved the alibi, a claim that not even the

prosecution made in their closing arguments. Trial counsel, government, the defense, and presumably the Military Judge did not arrive at that same conclusion.

In addition ACCA mistakenly presumes that since the ex wife testified that she was not home when the emails were sent (testimony that would be expected if it was the ex wife who sent the emails) that this somehow further disproves the alibi of appellant.

When defense asked CID: “If it would have been impossible for Lieutenant Robinson to send an e-mail, would you have gone back, or would you have investigated the wife?” the CID agent responded: “If it would have been impossible? Yes, sir. We would have looked at other suspects” (R185). This statement shows that even the CID agent recognized that the alibi immediately warrants investigation into other suspects.

This fallacy of a false dichotomy that ACCA suggests is prejudicial to the appellant. Since ACCA doesn’t believe the Ex wife sent the emails, they assert it therefore had to have been appellant to have sent the emails so the alibi must not be true. This grossly shifts the burden of proof to the appellant to prove his innocence because it requires him to now disprove the alibi of his Ex wife, or prove who sent the emails. Trial counsel providing evidence of an alibi of a different suspect does not suddenly disprove appellant's own alibi. Especially when considering that there could be other viable alternative explanations for who sent

the emails not investigated by CID, or when the strength of each alibi is weighed against each other. Had appellant taken the stand to self-testify that he was at training when the emails were sent, it would have hardly been a credible alibi to the factfinder if it was the only evidence put forward to suggest so. But ACCA giving such credibility to the ex-wife is demonstrably prejudicial and biased since it was used to justify not believing the alibi put forward by appellant.

This mistake warrants CAAF to remand to ACCA to conduct a full factual sufficiency review while affirming that since it was impossible for LT Robinson to have sent those emails, that someone else with access to CSAM, his laptop, and his account passwords did send those emails for some reason.

V. IAC claims for not submitting more evidence of the alibi, namely, the class and bus schedules that would have clearly shown the prosecution submitting flight records actually proves the alibi further instead of disproving it as ACCA suggested in their opinion.

Argument

To the extent that CAAF might concur with ACCA that the flight records disprove the alibi, then evidence not submitted that would show that the flight records actually further prove the alibi rather than disproving would be 1. Plain error on the defense and 2. Highly prejudicial and substantial to how ACCA and presumably the military judge would rule on factual sufficiency. In addition, the defense would be more deficient for not submitting any additional evidence that could have supported the alibi.

CW Maldonado’s testimony clearly references flight school training being conducted in the morning, then a lunch period, and then a separate ground school training in the afternoon that ended just prior to the bus leaving at 1445 CST. The prosecution tried to conflate the actual “flight” and “flight training” as a singular event dishonestly when they asked CW Maldonado (who had been talking about flight training for the duration of his testimony) when the flight ended, who responded by saying “just prior to 12”. Without going into discussion about the length of time that would reasonably encompass “Just prior to 12”, presumably since ACCA sees here from the record that the flight ended at 10:30 and CW Maldonado is saying that it ended just prior to 12 (R213), that Maldonado’s testimony is in error and the actual events that day occurred much earlier than his memory serves (or not at all according to ACCA). The class and bus schedule shown below disprove ACCA’s assertion.



17 Oct

Student Pickup Schedule

CAE

	Mon, 17 Oct	Tue, 18 Oct	Wed, 19 Oct	Thur, 20 Oct	Fri, 21 Oct
IFPW 22-010 - E	0500 A	0500 A	0500 A	0515 A	0500 A
Bus (17-6698) - TR	1445 E	1445 E	1445 E	1445 E	1315 E
IFPW 22-012 - G	0615 A	0615 A	0915 A	0500 A	0615 A
Bus (17-6698) - TR	1600 E	1445 E	1745 E	1315 E	1445 E
IFPW 23-915 - F	0715 A	1115 A	1115 A	1115 A	0615 A
Bus (17-6698) - TR	1445 E	1745 E	1745 E	1745 E	1315 E

As can be seen, the prosecution's submission of flight records aligns with LT Robinson's personal training schedule for that week. The flight ended at 1030 followed by a debrief that was conducted until 1130, or just prior to 12. This debrief includes a post flight inspection, traveling to and from the airport to the classroom, assigning and signing grades for the day, discussing and giving feedback from one instructor to two students individually, reviewing techniques to prepare for the upcoming test flight, and then flight planning for the next day to include drafting and submitting a flight plan for ATC. CW Maldonado could have testified to these details that would have explained away the apparent discrepancy to show that the brief prior to the flight, the flight itself, and the debrief period following the flight all make up the flight training for the morning schedule. The class and bus schedules would have also confirmed the reality of the ground school class and test in the afternoon, and the bus leaving at 1445 preventing ACCA from disregarding it.

Prosecution simply offered the flight record of the aircraft to at most imply that it countered the alibi and ACCA completely accepted it. The defense did not

see any problem or discrepancy with this as they knew the flight records disclosed to them didn't disprove but rather corroborated Maldonado's intended sequence of events. Even if the flight did end earlier than remembered, that had nothing to do with the testimony confirmed by the prosecution in their cross that the bus did not leave until 1445 and that LT Robinson was on that bus with CW Maldonado. A flight or flight training that ended early would have resulted in a longer lunch.

Evidence that would have further proved the alibi was also available to the defense such as:

1. Phone call records between Ms. Webb and appellant that would have shown when LT Robinson was driving his personal vehicle from the bus location to home matching when CW Maldonado stated the bus dropped them off.
2. Personal credit card purchases from Ms. Webb disproving her recollection of events for her personal schedule on the day the emails were sent.
3. The class moved the ground school test from Friday to Thursday so they were double booked on OCT 20 for ground school training allowing Friday to be the day to be released after flight training, not Thursday.
4. Having to share the bus with another class of students at 1445 showing that another section of students had to finish their classes as well before leaving.
5. Showing that the earliest bus leaving Dothan that day was at 1445 leaving no chance that appellant could have arrived home on an earlier bus.

6. 4 additional witnesses (Appellants classmates) were also available but not used by the defense to testify in support of the alibi and CW Maldonado's recollection of events.

Should CAAF accept ACCA did not err in not conducting a full factual sufficiency review, CAAF should be curious as to why the defense did not submit more evidence that would have further proved the alibi to include the class and bus schedules. All of this information warrants CAAF to remand to ACCA to investigate a full IAC claim for evidence that clearly would have had a demonstrable effect on the court proceedings as ACCA and the Military Judge clearly recognized the significance of the alibi.

A full alibi defense in CSAM cases is almost unheard of. Since these cases are almost entirely based on circumstantial evidence against the defense to prove guilt, direct evidence in the form of an alibi that gives a fair and rational hypothesis except for that of guilt deserves the full attention of the courts when reviewing. ACCA stated in their opinion: “The testimony suggested appellant got home after the CSAM email was sent, making it more conceivable appellant's wife was behind the computer, sending the email that sparked the entire investigation.” This statement shows that had ACCA believed the alibi, reasonable doubt would have been achieved by appellant resulting in a different outcome.

Certificate of Compliance with Rules 21 and 37

1. This Supplement to Appellant's Petition complies with the type-volume limitation of Rule 21(b) because it contains 7,764 words.
2. This Supplement to Appellant's Petition 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. Robinson, Crim. App. Dkt. No. 20230640, USCA Dkt. No. 26-0130/AR was electronically filed with the Court and Government Appellate Division on March 17, 2026.



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