

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

UNITED STATES  
Appellee

v.

Specialist (E-4)  
**KONNER L. RUHRUP**  
United States Army  
Appellant

SUPPLEMENT TO PETITION FOR  
GRANT OF REVIEW

Crim. App. Dkt. No. 20230282

USCA Dkt. No. \_\_\_\_\_/AR

Andrew M. Hopkins  
Major, Judge Advocate  
Appellate Defense Counsel  
Defense Appellate Division  
U.S. Army Legal Services Agency  
9275 Gunston Road  
Fort Belvoir, Virginia 22060  
(703) 693-1132  
USCAAF Bar No. 37593

Beau O. Watkins  
Major, Judge Advocate  
Branch Chief  
Defense Appellate Division  
USCAAF Bar Number 38068

Kyle C. Sprague  
Lieutenant Colonel, Judge Advocate  
Deputy Chief  
Defense Appellate Division  
USCAAF Bar Number 36867

Frank E. Kostik, Jr.  
Colonel, Judge Advocate  
Chief  
Defense Appellate Division  
USCAAF Bar Number 35108

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

UNITED STATES  
Appellee

v.

Specialist (E-4)  
**KONNER L. RUHRUP**  
United States Army  
Appellant

SUPPLEMENT TO PETITION FOR  
GRANT OF REVIEW

Crim. App. Dkt. No. 20230282

USCA Dkt. No. \_\_\_\_\_/AR

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

**Issue Presented**

**WHETHER THE MILITARY JUDGE ABUSED HER  
DISCRETION BY DENYING APPELLANT’S MOTION FOR  
AN EXPERT WITNESS.**

**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 [UCMJ], 10 U.S.C. § 866 (2024). This Honorable Court has jurisdiction over this matter under Article 67(a)(3), UCMJ, 10 U.S.C. § 867 (a)(3) (2024).

**Statement of the Case**

On August 17 and October 11, 2022, and April 24 and May 15–17, 2023, at Fort Carson, Colorado, an enlisted panel sitting as a general court-martial convicted Appellant, Specialist Konner L. Ruhtrup, contrary to his plea, of one

specification of rape, one specification of sexual assault,<sup>1</sup> one specification of aggravated assault on an intimate partner, one specification of domestic violence by strangulation, and five specifications of domestic violence by battery, in violation of Articles 120, 128, 128b(5), and 128b(1), UCMJ.<sup>2</sup> (R. at 592). The military judge sentenced him to reduction to the grade of E-1, confinement for a total of ten years and eleven months, and a dishonorable discharge. (R. at 633). On September 7, 2023, the convening authority took no action in the case. (Action). The military judge entered judgment on September 18, 2023. (Judgment).

On January 15, 2026, the Army Court affirmed the findings and sentence. *United States v. Ruhrup*, ARMY 20230282, 2026 CCA LEXIS 58 (Army Ct. Crim. App. Jan. 15, 2026) (mem. op.) (contained in App'x A). Appellant was notified of the Army Court's decision. In accordance with Rule 19 of this Court's Rules of Practice and Procedure, the undersigned appellate defense counsel, on behalf of Appellant, file a Petition for Grant of Review contemporaneously herewith. The Judge Advocate General of the Army designated the undersigned military appellate

---

<sup>1</sup> A second specification of sexual assault was dismissed, being subsumed in the greater offense of rape, which was charged in the alternative. (R. at 597, 218).

<sup>2</sup> The panel found Appellant not guilty of one specification of sexual assault, one specification of domestic violence by strangulation, one specification of domestic violence by battery, and one specification of animal abuse, in violation of Articles 120, 128b(5), 128b(1), and 134, UCMJ. (R. at 592).

defense counsel to represent Appellant, who hereby enter their appearance and file a Supplement to the Petition for Grant of Review under Rule 21.

### **Statement of Facts**

Appellant was charged with offenses arising from abusive relationships with two romantic partners, AV1 and AV2. (Charge Sheet). Both women had diagnoses including bipolar disorder, anxiety, and depression, and their allegations formed the basis of the government's case. (R. at 303–05, 397–98 App. Ex. XXX, p. 2-3). During the investigation and at trial, both victims described incidents in which Appellant physically assaulted them and, in separate incidents, strangled them until they lost consciousness. (R. at 247–51 255–58, 261–663, 272–73, 326–27, 334–36, 343–44).

Because both alleged victims had significant mental-health diagnoses, the defense sought expert assistance in forensic psychiatry. (App. Ex. VI; App. Ex. IV (sealed)). Defense counsel initially requested the convening authority approve an expert consultant to assist the defense team, but that request was denied. (App. Ex. VI). After referral, defense counsel filed a motion titled “Motion to Compel Expert Witness Production,” requesting the government employ Dr. MN as an expert consultant for the defense. (App. Ex. VI). The motion explained that the expert would assist the defense in evaluating and understanding the various issues related to the victim's mental health and their diagnoses. (App. Ex. VI).

The defense also sought discovery of the victims' mental health records, including diagnoses, treatment records, prescriptions, and privileged communications with their providers. During an Article 39(a) session, the defense called Dr. MN, a forensic psychiatrist, who testified about bipolar disorder, medications, and potential behavioral effects. Dr. MN also testified that a clinician cannot meaningfully assess a person's mental health without access to the individual's medical records.

The judge denied the defense request for an expert consultant, concluding the defense had failed to demonstrate that expert assistance was necessary. (App. Ex. XXX). The judge also found the defense request ambiguous because the motion's title referenced an expert witness while the relief requested an expert consultant. (App. Ex. XXX). Concluding that the defense had not provided sufficient information to evaluate the admissibility of expert testimony under the relevant evidentiary standards, the judge also denied production of an expert witness. (App. Ex. XXX). Defense counsel later moved for reconsideration and clarified that the defense would use Dr. MN as an expert witness, but the judge summarily denied reconsideration. (App. Ex. XXXIII; App. Ex. XXXIV).

The Army Court affirmed. The court concluded the litigation surrounding the defense expert request was marked by ambiguity because defense counsel sought an expert consultant while repeatedly using language associated with expert

testimony. *Id.* Interpreting the motion as a request for an expert consultant, the court held the judge did not err in denying that request because the defense failed to demonstrate the necessity of expert assistance. *Id.* The court further held that the judge did not abuse her discretion in denying an expert witness because the defense had not articulated a concrete theory explaining how such testimony would be relevant or helpful to the defense. *Id.* Accordingly, the court affirmed. *Id.*

### **Reasons to Grant Review**

This Court should grant Appellant's petition because service courts of appeal have adopted a rule of law materially different from that generally recognized in the trial of criminal cases in the United States district courts. C.A.A.F. R. 21(b)(5)(C). Expert assistance in federal courts is governed by 18 U.S.C. §3006A(e), which, like R.C.M. 703(d), states that an indigent defendant may receive expert assistance when the assistance is "necessary for an adequate representation." Indeed, §3006A(e) is "the functional equivalent of RCM 703(d)." *United States v. Kaspers*, 47 M.J. 176, 180 (C.A.A.F. 1997). But unlike in the military courts, this test is satisfied in civilian federal courts simply where "a reasonable attorney would engage such services for a client having the independent financial means to pay for them." *See, e.g., United States v. Goodwin*, 770 F.2d 631, 635 (7th Cir. 1985).

Although Congress intended military courts to apply the procedures parallel to federal criminal trials absent a military necessity to the contrary, *see* Article 36, UCMJ, a military accused has a far greater burden to show necessity for experts than an indigent civilian federal defendant under “equivalent” rules with nearly identical language. The current interpretation of R.C.M. 703(d), thus, violates Article 36, UCMJ. Indeed, government counsel in this case felt entitled to argue that “[a]s laid out by the C.A.A.F. in [*United States v. Anderson*, 68 M.J. 378 (C.A.A.F. 2010)], a fundamentally unfair trial requires outrageous conduct that would have no other outcome than Government advantage.” (App. Ex. X). In *Anderson*, the Court examined unpreserved error under the plain error doctrine, but the prosecution’s rhetoric and the military judge’s actual ruling in this case illustrate how the right of the accused to expert assistance has become a matter of caprice for military judges at trial. *Id.* at 383.

Although Appellant’s Issue warrants reversal under current military case precedent, this Court should set aside the findings and sentence on the basis of the standard generally recognized in criminal trials in the United States district courts.

### **Issue Presented**

**WHETHER THE MILITARY JUDGE ABUSED HER DISCRETION BY DENYING APPELLANT’S MOTION FOR AN EXPERT WITNESS.**

### **Standard of Review**

A military judge's ruling on a request for an expert witness is reviewed for an abuse of discretion. *United States v. Houser*, 36 M.J. 392, 397 (C.A.A.F. 1993). An abuse of discretion occurs if the reviewing court reaches "a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors." *Id.* (internal citations omitted).

To show an expert would be of assistance to the defense, an accused must answer the three prongs of the test in *United States v. Gonzalez*, 39 M.J. 459, 461 (C.A.A.F. 1994): "First, why the expert assistance is needed. Second, what would the expert assistance accomplish for the accused. Third, why is the defense counsel unable to gather and present the evidence that the expert assistant would be able to develop."

For expert testimony to be admissible, the proponent must establish the six factors established in *Houser*: (A) the qualifications of the expert, (B) the subject matter of the expert testimony, (C) the basis for the expert testimony, (D) the legal relevance of the evidence, (E) the reliability of the evidence, and (F) whether the probative value of the testimony outweighs other considerations. 36 M.J. at 397.

### **Law and Argument**

**A. The military judge benefitted from Dr. MN's expertise in making her ruling on the production of mental health records.**

“[I]n determining whether the military judge abused his discretion in denying the defense’s request for an expert consultant, each case turns on its own facts.” *United States v. Bresnahan*, 62 M.J. 137, 143 (C.A.A.F. 2005). Here, the value of the forensic psychiatrist’s testimony was demonstrated by his role in the motions practice.

On April 29, 2023, the judge ordered the production of AV1’s and AV2’s diagnoses, treatment, and prescription records related to depression and bipolar disorder. (App. Ex. XXXIII, citing App. Ex. XXVII (sealed)). The judge considered these matters relevant, partly in reliance on Dr. MN’s testimony at the motions hearing, in which he explained how someone with a bipolar disorder would experience manic episodes, in which her inhibitions may be lowered and risk-taking heightened, followed by regret in a depressive state in which “individuals may have a different perception of their behavior.” (App. Ex. XXX, XXXIII). While a layperson might have a rough idea how bipolar disorder might affect someone’s ability to perceive and remember events accurately, such amateur speculation is not a substitute for expertise, and the laity cannot be expected to understand how medications or substance abuse would affect such a disorder.

Thus, the motions practice itself answered the three questions asked by the *Gonzalez* test. First, the expert assistance was needed to supply psychiatric expertise about the accusing witnesses’ diagnoses and medications. Second, the

expert assistance would show how those diagnoses and medications were relevant to the witnesses' perceptions and recollections of events. Third, the defense counsel would be unable to gather and present the evidence owing to a lack of medical training, medical credentials, or professional standing to offer an expert opinion on a psychiatric matter. In the defense motion to compel production of Dr. MN, defense counsel elaborated these arguments, but the military judge evidently did not see the connections asserted by Appellant's counsel. (App. Ex. VI).

**B. Appellant's motion and reconsideration request met the *Houser* factors.**

Trial defense counsel's request for reconsideration restated the relevance of the diagnoses and medications and drug interactions in even clearer terms. (App. Ex. XXXIII). Regarding the *Houser* factors, he noted briefly the military judge's ruling was based on the factor of relevance, and that Dr. MN's professional qualifications had already been established, the subject matter was narrowly defined, the basis for the expert testimony and the reliability of the evidence were scientifically sound, and the probative value outweighed any prejudice. (App. Ex. (App. Ex. XXX, XXXIII).

Regarding relevance, defense counsel noted that Dr. MN's testimony at the motions hearing had aided the court in understanding how a person with a bipolar disorder might recall behavior during the mania with regret, potentially coloring how they interpreted or reported an incident to law enforcement or testified at trial.

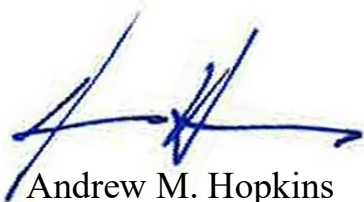
(App. Ex. XXXIII). Defense counsel also recalled that Dr. MN's testimony at the motions hearing established that a bipolar person's other comorbidities, such as depression, a substance abuse disorder, or inappropriate medications, could exacerbate the symptoms of bipolar disorder. (App. Ex. XXXIII).

These explanations completed the clean sweep of the *Houser* factors, and the expert witness ought to have been provided so Appellant would have a fair trial. Notably, the prosecution treated itself to an expert witness on strangulation. (R. at 472). This witness defined strangulation and suffocation for the panel, and the effects of strangulation, and suffocation. (R. at 477–78, 480–87, 488–89). As trial defense counsel noted, the effects of strangulation and suffocation can be found online, so the accusing witnesses' testimony would not necessarily derive from personal experience. (R. at 491). Indeed, choking, strangulation, and suffocation are not entirely outside the experience of laypeople, yet the prosecution provided itself an expert witness to ensure the panel members would hear expert medical testimony about these subjects.

The judge summarily denied the reconsideration in an email. Then the panel, uninformed of the mental health evidence because ethical counsel cannot argue facts not in evidence, took 17 minutes to deliberate on 14 specifications.

## Conclusion

WHEREFORE, this Court should take this opportunity to uphold the right of the military accused to equal opportunity to obtain witnesses and evidence as required by Article 46, UCMJ, grant Appellant's petition for review, and set aside the findings and sentence.



Andrew M. Hopkins  
Major, Judge Advocate  
Appellate Defense Counsel  
Defense Appellate Division  
U.S. Army Legal Services Agency  
9275 Gunston Road  
Fort Belvoir, Virginia 22060  
(703) 693-1132  
USCAAF Bar No. 37593



Beau O. Watkins  
Major, Judge Advocate  
Branch Chief  
Defense Appellate Division  
USCAAF Bar Number 38068



Kyle C. Sprague  
Lieutenant Colonel, Judge Advocate  
Deputy Chief  
Defense Appellate Division  
USCAAF Bar Number 36867



Frank E. Kostik, Jr.  
Colonel, Judge Advocate  
Chief  
Defense Appellate Division  
USCAAF Bar Number 35108

## **Appendix A: Army Court Decision**

# UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before  
FLEMING, WILLIAMS, and COOPER  
Appellate Military Judges

**UNITED STATES, Appellee**  
**v.**  
**Specialist KONNER L. RUHRUP**  
**United States Army, Appellant**

ARMY 20230282

Headquarters, Fort Carson  
Jacqueline L. Emanuel, Military Judge  
Colonel Pia W. Rogers, Staff Judge Advocate

For Appellant: Major Bryan A. Osterhage, JA; William E. Cassara, Esquire (on brief and reply brief).

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

15 January 2026

-----  
MEMORANDUM OPINION  
-----

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

WILLIAMS, Judge:

Appellant physically and sexually abused two successive romantic partners, both of whom had mental health diagnoses. During pretrial proceedings appellant's defense counsel requested expert assistance in the field of psychology, though the nature of the assistance—consultant or witness—was ambiguous. The military judge ultimately denied defense counsel's request. Appellant now raises two assignments of error, one of which, whether the military judge abused her discretion when she denied production of an expert witness, warrants discussion but no relief.<sup>1</sup>

---

<sup>1</sup> We have fully and fairly considered the matters personally raised by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982) and determine them to be without merit.

An enlisted panel convicted appellant, contrary to his pleas, of two specifications of sexual assault,<sup>2</sup> one specification of rape, one specification of aggravated assault, and six specifications of domestic violence, in violation of Articles 120, 128, and 128b, Uniform Code of Military Justice, 10 U.S.C. §§ 920, 928, 928b [UCMJ]. The panel found appellant not guilty of one specification of sexual assault, two specifications of domestic violence, and one specification of animal abuse, in violation of Articles 120, 128b, and 134, UCMJ. The military judge sentenced appellant to a dishonorable discharge, confinement for 10 years and 11 months, and reduction to the grade of E-1.<sup>3</sup>

## BACKGROUND

### *A. The Victims*

AV1 and appellant had a violent relationship. Appellant physically assaulted AV1 repeatedly, before and during their marriage. On one occasion, he anally raped AV1 and slammed her forehead into the headboard of the bed. On a different occasion, appellant sexually assaulted AV1 anally. The relationship reached a breaking point after appellant strangled AV1 until she lost consciousness. When AV1 regained consciousness, she witnessed appellant standing over her laughing. After appellant strangled her, AV1 left appellant and moved out of the apartment. Ultimately, they divorced.

Appellant met AV2 through a dating application. Appellant quickly developed a relationship with AV2, and AV2 moved into appellant's apartment. Soon after moving in, appellant began to physically abuse AV2. One time, appellant pushed AV2 into a dresser and then kicked her in the torso after she fell to the ground. On three separate occasions, appellant again kicked AV2 in the torso, suffocated AV2 with a pillow, and strangled AV2 until she lost consciousness. During the strangulation incident, appellant cried and stated he thought he had killed AV2.

Both AV1 and AV2 confronted appellant via phone in May of 2021. AV1 recorded a phone conversation in which appellant made several incriminating statements. When AV1 confronted him with “no means f\*\*\*\*\* no Konner . . . .” appellant replied, “I’m sorry okay” and “I feel like a piece of s\*\*\* . . . .” Appellant later said, “[m]ost guys that beat people . . . [t]hey don’t care. But, my problem was

---

<sup>2</sup> The government moved to dismiss one specification of sexual assault as multiplicitous with appellant's conviction for rape.

<sup>3</sup> Block 12 of the Statement of Trial Results erroneously reflects the total adjudged sentence to confinement as “11 years and 10 months”. We correct said error. The Judgment of the Court is also modified to reflect “05/19/2023” as the date the Statement of Trial Results was signed.

that I did care.” When AV1 asked what she did to warrant being beaten, appellant replied, “this is going to sound real s\*\*\*\*\*, but please get over it.”

AV2 confronted appellant during a phone conversation monitored by Army Criminal Investigation Division special agents. During the conversation, appellant admitted to strangling her until she lost consciousness. Both special agents who observed the call testified at trial. When AV2 asked if appellant would hurt her again, appellant said words to the effect of, “I will never choke you out if I do not have to,” “I will not choke you again, if you do not give me a reason to,” and “I got mad, I choked you, you seized, I put you on the bed, and then I cried over you until you woke up.”

*B. Defense Expert “Consultant” and Discovery Requests*

Both AV1 and AV2 were diagnosed with bipolar disorder, anxiety, and depression. Consequently, defense counsel requested the convening authority approve a request for an expert consultant. The convening authority denied the request.

After referral, defense counsel filed a “Motion to Compel Expert *Witness* Production” and asked the court to order the “[g]overnment to employ Dr. [MN] as an expert *consultant* [for] the defense team in forensic psychiatry.” (emphasis added). Defense counsel wanted to use Dr. MN to “explor[e] . . . issues . . . in developing its theory of the case.” At no point in their motion did defense counsel discuss Dr. MN testifying as an expert witness, nor did defense counsel cite the applicable legal standards for production of an expert witness.

In addition to the request for an expert consultant, defense counsel sought production of AV1’s and AV2’s mental health records. Defense counsel’s request was not limited to diagnoses, treatment records, and prescriptions.<sup>4</sup> Defense counsel requested all records to include privileged communications between AV1 and AV2 and their respective mental health providers.

---

<sup>4</sup> Approximately two months prior to defense counsel filing a motion to compel said evidence, our superior court held diagnoses, treatment records, and prescriptions were not “uniformly privileged” under Military Rule of Evidence [Mil. R. Evid.] 513. *United States v. Mellette*, 82 M.J. 374, 375 (C.A.A.F. 2022). We further note the holding in *Mellette* was already established in this court’s jurisprudence. See *United States v. Rodriguez*, ARMY 20180138, 2019 CCA LEXIS 387, at \*8–9 (Army Ct. Crim. App. 1 Oct. 2019) (mem. op) (“A list of . . . mental health ‘problems’ does not contain any ‘confidential communications’ . . . . Likewise, a list of prescription medications does not contain ‘confidential communications’ . . . .”), pet. denied, 79 M.J. 430.

Defense counsel called Dr. MN to testify during an Article 39a session in support of the request for privileged communications. Defense counsel qualified Dr. MN as an expert forensic psychiatrist and had Dr. MN testify about bipolar disorder, depression, medications, and the potential for drug side-effects and substance abuse. Because defense counsel wanted production of AV1's and AV2's privileged mental health records, counsel also had Dr. MN testify about his ability to comprehensively assess a person's mental health without access to all the pertinent medical records. Dr. MN testified, "[a] diagnosis in and of itself doesn't provide a clinician like myself with a lot of information."

*C. The Military Judge Denies Appellant's Request(s)*

The military judge denied appellant's request for an expert consultant after applying the three-part test articulated in *United States v. Gonzalez*, 39 M.J. 459, 461 (C.M.A. 1994), making detailed findings of fact concluding appellant failed to show expert assistance was necessary. The military judge noted defense counsel's desire to "explore all possibilities" was insufficient to establish necessity.

Additionally, the military judge found the defense request for an expert consultant "ambiguous" because the motion was "titled" as one to compel an expert witness, yet the requested relief only asked for an expert consultant. In light of the ambiguity, the military judge also denied defense an expert witness. The military judge found defense counsel did not submit sufficient detail for the court to evaluate three of the *Houser* factors, "whether an expert [was] needed . . . to understand the evidence, the reliability of that evidence, and whether its probative value [was] substantially outweighed by [Mil. R. Evid.] 403 dangers." See generally *United States v. Houser*, 36 M.J. 392, 397 (C.A.A.F. 1993).

Upon receipt of the military judge's denial of an expert witness and consultant, defense counsel submitted a motion to "Reconsider Denial of Motion [to] Compel Expert Witness Production." Defense counsel adopted the military judge's findings of fact from her previous ruling and acknowledged the prior motion to compel only "sought Dr. [MN] as an expert consultant." Counsel then stated, "if [the] motion to reconsider [was] granted, the Defense would use Dr. [MN] as an expert witness." Contending that Dr. MN's qualifications, the subject matter of Dr. MN's testimony, the basis for his testimony, the reliability of the evidence, and Mil. R. Evid. 403 were not in dispute, defense counsel focused on the relevance of Dr. MN's testimony. Defense counsel briefly discussed that AV1 and AV2 suffered from bipolar disorder and may have regretted their respective behaviors. Additionally, counsel contended AV1 and AV2 may have misperceived appellant's actions.

The military judge denied the defense's motion to reconsider the same day. In a single sentence she noted, "[t]he request for reconsideration is denied."

## LAW

We review a military judge’s ruling to deny expert testimony for an abuse of discretion. *Id.* at 397–98 (citation omitted). “An abuse of discretion occurs when the trial court’s findings of fact are clearly erroneous or if the court’s decision is influenced by an erroneous view of the law.” *United States v. Lloyd*, 69 M.J. 95, 99 (C.A.A.F. 2010) (quotation and citation omitted). “[T]he abuse of discretion standard of review recognizes that a judge has a range of choices and will not be reversed so long as the decision remains within that range.” *United States v. Freeman*, 65 M.J. 451, 453 (C.A.A.F. 2008) (quoting *United States v. Gore*, 60 M.J. 178, 187 (C.A.A.F. 2004)).

To admit expert testimony a litigant must establish: (1) the expert’s qualifications; (2) the subject matter of the proffered testimony; (3) the basis for the testimony; (4) the legal relevance of the evidence; (5) the reliability of the evidence; and (6) that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the members, undue delay, waste of time, or is needlessly cumulative evidence. *Houser*, 36 M.J. at 397 (citing Mil. R. Evid. 702, 703, 401, 402, 403; *United States v. Gipson*, 24 M.J. 246 (C.M.A. 1987)).

## DISCUSSION

The litigation and disposition of appellant’s “expert” request is not a model worthy of emulation. Words have meaning, and throughout the litigation of this issue, the parties disregarded the words used. Consequently, we must determine what was presented and what was decided.<sup>5</sup>

As an initial matter, the court must again remind military justice practitioners that requests for expert consultants and expert witnesses are not the same. As this court adroitly stated in *United States v. Roberts*, “[a]lthough an expert consultant frequently morphs into an expert witness . . . like a caterpillar into a butterfly, [these] are separate roles controlled by distinct rules and legal tests.” ARMY 20150023, 2019 CCA LEXIS 501, at \*8 (Army Ct. Crim. App. 11 Dec. 2019) (mem. op. on further review) (citations omitted), *pet. denied*, 80 M.J. 143 (C.A.A.F. 2020); *accord United States v. Tinsley*, 81 M.J. 836, 840–41 (Army Ct. Crim. App. 2021), *pet. denied*, 82 M.J. 372 (C.A.A.F. 2022). Unfortunately, defense counsel injected ambiguity into his request when he mislabeled his motion to compel an expert

---

<sup>5</sup> Furthermore, when trial judges are confronted with an ambiguous motion for relief, they should seek clarification from counsel before issuing a ruling.

consultant as a motion to compel an expert witness, referenced “expert testimony,” and a need for an “expert witness.”<sup>6</sup>

We ultimately find no error in the military judge’s adjudication of defense’s request for an expert consultant. Defense counsel only requested the military judge compel production of an expert consultant. The law cited and relief requested made it clear the defense team sought an expert consultant, regardless of the incorrect caption on his motion.<sup>7</sup> Defense counsel’s intent on this issue was solidified further in its “reconsideration” request when counsel directly stated the original motion was for an expert *consultant*. The military judge adequately analyzed and responded to counsel’s request for an expert consultant.

The military judge complicated the litigation posture when she attempted to address a request that was not actually before her; the military judge addressed the defense motion as both one for a consultant and as one for a witness. However, her attempted resolution of counsel’s phantom expert witness request was convoluted. Her struggle is understandable because she simply had nothing to review.

---

<sup>6</sup> Appellant’s brief continues the ambiguity. Although Assignment of Error II is stylized as: “The Military Judge Abused Her Discretion By Denying Appellant’s Motion For An Expert Witness,” the case law cited in the assigned error includes legal authority for both expert consultants and witnesses. Appellant closes his discussion by noting his need for expert testimony. Though not specifically raised as an assignment of error by appellant, we conclude the military judge did not abuse her discretion when she denied appellant an expert consultant.

<sup>7</sup> When trial defense counsel used language consistent with a request for an expert witness, such language was combined with the legal standard or general phraseology of a request for an expert consultant. For instance, trial defense counsel claimed, “failure to provide expert testimony would *result in a fundamentally unfair trial.*” (emphasis added). Accordingly, when referencing “expert testimony,” trial defense counsel highlighted the legal burden of the accused to demonstrate an expert *consultant* was necessary for an adequate defense. *See Freeman*, 65 M.J. at 458 (noting an accused has the burden to show denial of an expert consultant “would result in a fundamentally unfair trial” (citation omitted)). Further, trial defense counsel’s statements that he needed an “expert witness” to “prepare for trial,” “explore necessary defense theories,” and “perform independent analysis of key evidence” clarified counsel’s desire for a member of the defense team to prepare for trial. Conversely, when trial defense counsel used precise language in his motion, his request for an expert consultant vice an expert witness was clear. Indeed, he opened his motion with, “[t]he Defense requests the Court order the Government to employ Dr. MN as an expert consultant to the defense team in forensic psychiatry.” He concluded his motion by specifically “request[ing] that the Court compel production of Dr. [MN] as a defense team expert consultant.”

Adding to the confusion, upon receipt of the military judge’s dual denials, defense counsel requested “reconsideration” of the denial of an expert witness. However, defense counsel had not requested an expert witness. The military judge had preemptively ruled on an expert witness request instead of first resolving the ambiguity she identified in counsel’s initial request.

After denying him a consultant and expert, appellant specified his desire for an expert witness. Accordingly, we now review the military judge’s denial of an expert witness.

As an initial matter, we must determine what amount of deference we owe the military judge. Ultimately, we conclude it is less than what we otherwise might give to a military judge who makes sufficient findings of fact and rationally applies those facts to the applicable law. In this case, the military judge did both of those things in her initial ruling.<sup>8</sup> If that were the end of the litigation, she would warrant full deference.

Unfortunately, she neglected to fully address appellant’s reconsideration request in her denial.<sup>9</sup> In her initial ruling, the military judge posited defense counsel had failed to proffer how expert witness testimony would be relevant to the defense’s theory. Subsequently, defense did proffer a theory in their reconsideration request. Because the military judge’s reconsideration ruling failed to account for defense counsel’s newly offered theory, the military judge is afforded some deference but not full deference.

The military judge did not abuse her discretion when she denied production of Dr. MN as an expert witness. The military judge’s response to appellant’s gossamer

---

<sup>8</sup> Accordingly, we do not find the military judge’s findings of fact were clearly erroneous, nor were her application of the law to the facts unreasonable. Therefore, we focus on whether her “decision [was] influenced by an erroneous view of the law.” *United States v. Anderson*, 68 M.J. 378, 383 (C.A.A.F. 2010) (citations omitted).

<sup>9</sup> Military judges are not always required to restate their factual findings or legal analysis after a party requests reconsideration of a ruling. However, in this case, defense counsel’s first assertion of a basis for an expert *witness* followed the military judge’s denial of an expert witness and created a temporal conundrum. Simply stated, the military judge denied something before counsel asked for it. Largely, the military judge’s preemptive ruling was sound and remained so even in light of the defense counsel’s attempted response to her earlier denial. However, the military judge did not revisit her analysis regarding the *Houser* factors or conduct a Mil. R. Evid. 403 balancing in light of the newly presented defense request and any new, plausible bases raised therein.

wisp of a request for an expert witness cited the appropriate law: *Houser*. In her ruling she focused on the fourth, fifth, and sixth *Houser* factors: legal relevance, reliability of the evidence, and whether the probative value of the evidence would outweigh the risk of prejudice, confusion of issues, etc. *See* 36 M.J. at 397. She highlighted the fact defense counsel had not articulated a case theory that expert testimony would help to advance. The military judge further noted the dearth of information in defense counsel’s motion precluded her from being able to conducting a Mil. R. Evid. 403 analysis.

In his reconsideration request for an expert witness, defense counsel did not address these shortcomings identified by the military judge. Rather than specify a case theory, defense counsel merely referred to the military judge’s findings of fact. Defense counsel’s position appeared to be: because AV1 and AV2 had mental health diagnoses, it was axiomatic that the defense required an expert witness.<sup>10</sup> This is not the standard.

Defense counsel’s proffer on reconsideration that Dr. MN could have testified that individuals suffering bipolar disorder may engage in riskier behaviors during a manic episode and then may look back with regret afterward was not compelling. And, Dr. MN’s testimony, by his own account, would not have been probative. Dr. MN testified a forensic psychologist without access to a patient’s mental health records could only testify generically. Defense counsel, in his attempt to pierce AV1’s and AV2’s psychotherapist privilege, had Dr. MN discount the usefulness of his testimony if he did not have access to their records. Indeed, Dr. MN noted “[a] diagnosis in and of itself doesn’t provide a clinician like myself with a lot of information.” Simply stated, Dr. MN could not have testified whether AV1 or AV2 were or were not in a manic or depressed state when appellant assaulted them. Accordingly, the military judge’s previous conclusion that appellant had not met the

---

<sup>10</sup> Trial defense and appellate defense counsel appear to conflate relevance for the purposes of discovery under Rule for Courts-Martial 703 and relevance for admissibility at trial. At both levels, counsel argue Dr. MN’s testimony at the Article 39a session persuaded the military judge to permit discovery of AV1 and AV2s mental health diagnoses, treatment, and prescription records. Counsel contend—because Dr. MN’s testimony caused the military judge to grant the defense access to certain records—he was therefore relevant and necessary as an expert witness. This assertion is unavailing. Dr. MN’s testimony at the Article 39a session may have influenced the military judge to permit discovery of AV1’s and AV2’s mental health diagnoses, treatment, and prescription records. However, that the records were discoverable does not mean expert testimony was required at trial. *See United States v. Roberts*, 59 M.J. 323, 325 (C.A.A.F. 2004) (“[T]he discovery practice is not focused solely upon evidence known to be admissible at trial.” (citations omitted)).

three *Houser* factors of legal relevance, reliability of the evidence, and Mil. R. Evid. 403 was not an abuse of discretion.

Addressing Mil. R. Evid. 403, the probative value of the proffered evidence was *de minimis*. Defense counsel argued AV1's and AV2's bipolar diagnoses may have caused them to have a "different perception of their behavior," or if in a manic state, may have "engaged in riskier behavior than they otherwise would engage in" and ultimately "look back on their behavior with regret." The probative value of this evidence is low because the case against appellant was about his actions in assaulting, suffocating, strangling, raping, and sexually assaulting his victims. AV1 and AV2 may certainly have looked back and regretted being physically dominated, but it was not their respective behaviors that caused their suffering. Consequently, appellant does not overcome a Mil. R. Evid. 403 balancing test. Moreover, as discussed above, at best, Dr. MN could only testify generically about the victims' mental health conditions and their effects. Such generic testimony would not have been probative of the crimes, to which appellant was charged and convicted.<sup>11</sup>

The military judge did not abuse her discretion when denying Dr. MN as an expert witness because the defense failed to show his testimony would have been relevant or necessary. The military judge's denial was within "the range of choices reasonably arising from the applicable facts and the law." *See United States v. Flesher*, 73 M.J. 303, 311 (C.A.A.F. 2014) (citation omitted) (articulating analysis for abuse of discretion).

## CONCLUSION

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

---

<sup>11</sup> Even if the military judge abused her discretion, appellant does not demonstrate he suffered prejudice. The exclusion of Dr. MN's possible testimony was harmless beyond a reasonable doubt. The panel heard appellant's admissions which corroborated much of AV1's and AV2's allegations. Given the low probative value and poor quality of the testimony Dr. MN could have provided, the exclusion of this testimony—assuming error—was harmless beyond a reasonable doubt. *See United States v. Tovarchavez*, 78 M.J. 458, 462 (C.A.A.F. 2019) (observing "to obviate a finding of prejudice," a constitutional error must be found harmless beyond a reasonable doubt (citation omitted)). Because under the heightened constitutional standard appellant cannot demonstrate prejudice, we need not decide whether the exclusion of Dr. MN's testimony was constitutional or nonconstitutional in dimension.

RUHRUP – ARMY 20230282

Senior Judge FLEMING and Judge COOPER concur.

FOR THE COURT:

  
JAMES W. HERRING, JR.  
Clerk of Court

## **Certificate of Compliance with Rules 24(c) and 37**

1. This Brief on Behalf of Appellee complies with the type-volume limitation of Rule 24(c) because it contains 2, 113 words.
2. This Brief on Behalf of Appellee 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.



Andrew M. Hopkins  
Major, Judge Advocate  
Appellate Defense Counsel  
Defense Appellate Division  
U.S. Army Legal Services Agency  
9275 Gunston Road  
Fort Belvoir, Virginia 22060  
(703) 693-1132  
USCAAF Bar No. 37593

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing in the case of United States v. Ruhrup, Crim. App. Dkt. No. 20230282, USCA Dkt. No. \_\_\_\_\_/AR was electronically filed with the Court and Government Appellate Division on March 13, 2026.



MELINDA J. JOHNSON  
Paralegal Specialist  
Defense Appellate Division  
(703) 693-0736