

23 July 2026

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

UNITED STATES,
Appellee,

v.

GIORGIO A. SZABO,
Lieutenant Colonel (O-5),
United States Air Force,
Appellant.

USCA Dkt. No. 26-0224/AF

Crim. App. Dkt. No. ACM 40690

SUPPLEMENT TO PETITION FOR GRANT OF REVIEW

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Error Assigned for Review

WHETHER THE MILITARY JUDGE ABUSED HER DISCRETION WHEN SHE OVERRULED THE DEFENSE'S OBJECTION AND ALLOWED THE COMPLAINANT TO RECITE MULTIPLE ALLEGATIONS OF UNCHARGED MISCONDUCT DURING HER R.C.M. 1001(c) UNSWORN STATEMENT.

Statement of Statutory Jurisdiction

The Air Force Court of Criminal Appeals (AFCCA) had jurisdiction over this matter pursuant to Article 66, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866. This Court has jurisdiction under Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3).

Summary of Proceedings

Between 30 April 2024 and 3 May 2024, Appellant was tried and sentenced by a panel of officer members sitting as a general court-martial at Joint Base Andrews Naval Air Facility Washington, Maryland. Record of Trial (ROT), Vol. 1, Entry of Judgment (EOJ), dated 17 June 2024. Consistent with his pleas, Appellant was found guilty of one charge with two specifications of disobeying an order in violation of Article 92, Uniform Code of Military Justice (UCMJ); one charge with three specifications of wrongful use of a controlled substance in violation of Article 112(a), UCMJ; one charge with one specification of fraternization in violation of Article 134, UCMJ; and a charge with one specification of damaging nonmilitary

property in violation of Article 109. *Id.* The members sentenced Appellant to be reprimanded, confined for four months and dismissed from the service. Tr. 1494.

The Convening Authority took no action on the findings and approved the sentence in its entirety. Convening Authority Decision on Action – *United States v. Lieutenant Colonel Giorgio A. Szabo*, dated 29 May 2024. In accordance with Appellant’s request, the Convening Authority deferred Appellant’s automatic forfeitures starting fourteen days from the date the sentence was adjudged until the date the military judge signed the EOJ. *Id.* Commencing the day the military judge signed the EOJ, the automatic forfeitures were waived for a period of four months, release from confinement, or expiration of term of service, whichever was soonest. *Id.* The total pay and allowances were directed to be paid to the ex-spouse of Appellant for the benefit of his dependent. *Id.*

The AFCCA denied relief and affirmed the findings and sentence on April 23, 2026. Appendix at 17-18.

Statement of Facts

Prior to Appellant’s court-martial, he deployed five times and logged an additional 1,184.8 combat air hours. Pros. Ex. 3 at 1. Appellant’s position as a pilot saw him “directly support the Vice President, First Lady, Cabinet Secretaries, and senior U.S. government and military leaders.” Pros. Ex. 2 at 1. During this time he also became a divorced father of a young son. Tr. 1356-60.

After Appellant's marriage ended he, a commissioned officer, met AC, an enlisted member, at the base gym. Tr. 959, 1306, 1356. He learned she was an active-duty flight attendant and, early in their acquaintance, became aware of her enlisted status. Tr. 960. Shortly after meeting, Appellant and AC began a romantic relationship. *Id.*

From the outset, Appellant knew that, as a commissioned officer, engaging in a romantic relationship with an enlisted member of the Air Force was prohibited. *Id.* Appellant and AC served in different squadrons, and Appellant held no administrative or operational authority over AC. *Id.* The relationship was intermittent, continuing from 2018 until it ended in November 2021. *Id.*

Shortly after their relationship ended, AC voluntarily interviewed with the local Air Force Office of Special Investigations. Pros. Ex. 2 at 5. In that interview, she detailed the nature of her relationship with Appellant and disclosed her knowledge of his use of controlled substances. *Id.*

Appellant's commander subsequently issued a no-contact order directing him not to communicate with AC. *Id.* at 2. Appellant, however, failed to adhere to the order and contacted AC on over a hundred occasions. *Id.* at 3. Consequently, a Military Protective Order was issued on 12 September 2024, which Appellant violated multiple times. *Id.* at 4.

Contemporaneously, the criminal investigation into the allegations of substance use proceeded. On 26 August 2022, investigators executed a search of Appellant's residence, where they discovered both cocaine and anabolic steroids. Pros. Ex. 2, Attachment 11; Tr. 900. On the same day, a urinalysis was conducted on Appellant. Pros. Ex. 2, Attachment 10; Tr. 900. The samples tested positive for the cocaine metabolite. *Id.*

In a signed stipulation of fact, Appellant admitted to his fraternization with AC, his use of cocaine and possession of steroids, and to damaging property at AC's residence. Pros. Ex. 2. The damaged property included two broken wine glasses, a bottle of wine, and a mudroom door that Appellant punched during an argument. *Id.*

During the sentencing phase of the trial, Defense counsel timely objected to AC's proposed unsworn victim impact statement that detailed uncharged misconduct and its resulting impact. Tr. 1332. Specifically, separate from the mudroom door incident, AC's unsworn statement alleged that:

- Appellant "broke into [her] home without [her] permission" on multiple occasions and "trashed her house and destroyed a lot of [her] property";
- Following the alleged break-ins referenced above, she had "substantial emotional distress and lingering fear for [her] safety";
- Appellant broke AC's kitchen cabinet;
- Appellant "threw glassware into [AC's] backyard";
- Appellant "took [his] anger out on [AC's] personal vehicle and on a rental vehicle";

- Appellant dented the top of AC's car, broke her steering wheel, and "slashed [her] tire with a steak knife";
- He "punched and cracked the windshield of [AC's] rental vehicle";
- His actions "led to an increase in [AC's] insurance premiums";
- These instances left AC "feeling vulnerable and on edge" where she "lived in perpetual worry that [Appellant was] going to overreact as [he] had in the past and do something more to [AC]";
- Appellant "manipulated" AC into getting a "breast augmentation so that [she] would match [his] image of the ideal woman";
- Appellant "manipulated" AC into working as a stripper;
- Appellant "convinced [AC] to shoot nude content" and place it online where AC made an income from it;
- AC felt humiliated by Appellant after he "manipulated [her] into doing multiple things that [she] was uncomfortable with," and caused "irreparable damage to [AC's] reputation";

App. Ex. CXXVIII. AC then concluded her unsworn by asking the panel of members "to at least try to prevent this man from destroying another woman's life in the future." *Id.* AC delivered both an oral unsworn statement as well as a written one to the members. Tr. 1342-45.

Following the Defense's objection, the military judge granted the Defense a fifteen-minute recess. Tr. 1334. After the break, the trial defense counsel told the judge, "I think we're in agreement on all but one paragraph." Tr. 1336. The Defense then discussed their objection to paragraph five of the unsworn statement, which

consisted only of AC's allegations of Appellant damaging AC's personal and rental vehicles, with a result of AC's insurance premiums increasing. Tr. 1336-41.

The military judge overruled the Defense's objection based on the unpublished AFCCA case of *United States v. Goldsmith*, No. ACM 40148, 2023 CCA LEXIS 8, *19-22 (A.F. Ct. Crim. App. Jan. 11, 2023), which endorsed contents of a victim's unsworn statement that fell within a "continuing course of conduct," a construction that this Court subsequently rejected in *United States v. Campos*, 85 M.J. 310, 316 (C.A.A.F. 2025). The military trial judge, "I am going to overrule your objection, Defense Counsel. I do find under the applicable rights of allocation [sic] of a victim in an unsworn statement, that this reasonably falls within the scope of both destruction of property specification or continuing course of conduct and/or the fraternization specification." Tr. 1341. As a result of the military judge's ruling, AC provided the above-referenced unsworn victim impact statement to the panel members. Tr. 1343-45.

On appeal, the AFCCA initially found that the Defense affirmatively waived any objection to any portion of the R.C.M. 1001(c) unsworn statement other than paragraph 5. Appendix at 8. Regarding paragraph 5, the AFCCA acknowledged that the military trial judge's overruling of the Defense's objection was erroneous "*in part* because of a continuing course of conduct with the" destruction of property

offense was error. Appendix at 8 (emphasis in original). However, the AFCCA went on to hold,

Nevertheless, applying the deferential abuse of discretion standard of review, we find the military judge did not err in finding the challenged portion of the unsworn statement was permissible because it fell “within the scope” of the fraternization offense.

Id. at 9. The AFCCA reasoned that because the uncharged misconduct described by AC in her unsworn occurred during the course of the fraternization, it directly related to or arose from the fraternization offense as is required by R.C.M. 1001(c)(2)(B).

Id. The AFCCA further held that even if this reasoning amounted to an abuse of discretion, “Appellant’s material rights were not substantially prejudiced.” *Id.*

Reason to Grant Review

THIS COURT SHOULD GRANT REVIEW OF THIS ISSUE BECAUSE AFCCA’S REASONING CONFLICTS WITH THIS COURT’S DECISIONS REQUIRING THAT A VICTIM’S UNSWORN STATEMENT BE LIMITED TO THE OFFENSES FOR WHICH THE APPELLANT WAS FOUND GUILTY AND THE IMPACT THEREOF.

Standard of Review

This Court reviews the military judge’s ruling on the admissibility of a victim’s unsworn statement for an abuse of discretion. *United States v. Cunningham*, 83 M.J. 367, 371 (C.A.A.F. 2023) (citing *United States v. Edwards*, 82 M.J. 239, 243 (C.A.A.F. 2022)). “A military judge abuses his discretion when he admits evidence based on an erroneous view of the law.” *United States v. Hamilton*, 78 M.J. 335, 340

(C.A.A.F. 2019) (citing *United States v. Barker*, 77 M.J. 377, 383 (C.A.A.F. 2018)). Additionally, forfeited issues are reviewed for plain error. *United States v. Davis*, 79 M.J. 329, 331 (C.A.A.F. 2020) (quoting *United States v. Campos*, 67 M.J. 330, 332 (C.A.A.F. 2009))

Law and Analysis

The right of a victim to make an unsworn statement during sentencing is not a license to introduce unbounded allegations of uncharged misconduct. The scope of such statements is strictly controlled by the R.C.M. 1001(c)(3) is unequivocal: a victim’s unsworn statement “may only include victim impact and matters in mitigation.” RCM 1001(c)(3). The rule does not permit the introduction of aggravating evidence or character attacks disguised as victim impact. *United States v. Edwards*, 82 M.J. 239, 245 (C.A.A.F. 2022) (citations omitted). In the instant case, the military trial judge abused her discretion when she overruled the trial defense counsel’s objection to AC’s unsworn statement under R.C.M. 1001(c). This error substantially influenced Appellant’s sentence.

A. The AFCCA’s incomplete waiver analysis was erroneous because it did not consider this Court’s case *United States v. Campos*, 85 M.J. 310 (C.A.A.F. 2025), which created an “exceptional circumstance” that excused the trial defense counsel’s earlier alleged waiver.

Appellant argued to the AFCCA that the military judge abused her discretion by permitting AC to refer to uncharged misconduct by Appellant in her unsworn statement” against Appellant. Appendix at 8. With no analysis as to how the law

dictated the result, the AFCCA found that Appellant waived his objection to all the portions of the victim's unsworn statement other than the fifth paragraph. *Id.* However, had the AFCCA performed an analysis of this Court's law concerning waiver, rather than just "agree[ing] with the Government that Appellant waived his objection," *id.*, it would have been apparent that waiver did not apply to Appellant's situation.

1. When the law was unsettled at the time of trial, but then becomes settled to the appellant's favor before review at the CAAF, this Court reviews under forfeiture not waiver.

Recently, in *United States v. Ford*, this Court discussed the current state of the law regarding waiver and reiterated the general rule that it is expected that counsel "object when the law is unsettled and a certain interpretation is favorable to their client." __ M.J. __, 2026 CAAF LEXIS 570, at *9 (C.A.A.F. July 1, 2026). But this Court went to explain an exception to this general rule; specifically, "this Court has applied forfeiture as opposed to waiver in a limited number of previous cases involving exceptional circumstances when a convicted servicemember had seemingly waived an issue in the context of an unsettled point of law at the time of trial." *Id.*

This Court then pointed out two such exceptional circumstances. *Id.* One circumstance occurred in *United States v. Oliver*, 76 M.J. 271 (C.A.A.F. 2017), and a second that occurred in *United States v. Sweeney*, 70 M.J. 296 (C.A.A.F. 2011). *Id.*

In *Oliver*, this Court “appl[ied] forfeiture, rather than waiver, where a lesser included offense issue ‘was definitively resolved’ in the appellant’s favor by the time of the appellant’s appeal before this Court.” *Ford*, 2026 CAAF LEXIS 570 at *10 (citing *Oliver*, 76 M.J. at 274). In *Sweeney*, this Court “appl[ied] forfeiture, rather than waiver, despite the appellant’s failure to object on Confrontation Clause grounds where ‘subsequent case law opened the door for a colorable assertion of the right to confrontation where it was not previously available.’” *Id.* (citing *Sweeney*, 70 M.J. at 304). Taking *Oliver* and *Sweeney* together, an “exceptional circumstance” that forgives waiver occurs when the law was unsettled at the time of trial, but then became settled in the appellant’s favor before review by this Court.

2. The law was unsettled at the time of Appellant’s trial.

Application of *Ford*’s exceptional circumstance principle is warranted here because, despite the Defense’s apparent waiver to most of the uncharged content in AC’s unsworn statement, the question of whether it was proper for a victim to discuss an accused’s alleged uncharged misconduct in an R.C.M. 1001(c) unsworn statement as “course of conduct” evidence was still an unsettled area of the law at the time of Appellant’s trial. The only authority the military trial judge relied on for the propriety of the “course of conduct” theory for thThese admission of uncharged misconduct in an R.C.M. 1001(C) unsworn statement was the unpublished AFCCA opinion in *Goldsmith*. Tr. 1339-41 (citing *Goldsmith*, 2023 CCA LEXIS 8). *Goldsmith*, in turn,

relied on *United States v. Mullens*, 29 M.J. 398, 400 (C.M.A. 1990)), and *United States v. Nourse*, 55 M.J. 229 (C.A.A.F. 2001). *Goldsmith*, 2023 CCA LEXIS 8, at *19. However, neither *Mullens* nor *Nourse* involved a victim's unsworn statement. *See Mullens*, 29 M.J. at 400; *Nourse*, 55 M.J. at 232. Indeed, no case at the time discussed a "course of conduct" theory of admission of uncharged misconduct in an RCM 1001(c) unsworn statement. Thus, the law with regard to the area was unsettled at the time the military trial judge made her ruling and the Defense made its objection.

3. The law was then definitively settled in Appellant's favor.

Around ten months after Appellant's court martial, this Court definitively settled the question of whether uncharged misconduct was allowed to be presented in a victim's R.C.M. 1001(c) unsworn statement against an accused as a "course of conduct;" that decision was in Appellant's favor as the answer was a definitive "no." *See Campos*, 85 M.J. at 316. In *Campos* this Court held that the military judge abused his discretion in admitting "allegations of additional misconduct in the unsworn victim impact statement." *Id.* at 312.

Identical to the theory of admissibility in the instant case, the military trial judge in *Campos* specifically admitted the uncharged misconduct under a theory "continuous course of conduct regarding similar crimes" that the appellant was charged with. *Id.* at 313. Thus, the very rationale the military trial judge used to

admit portions of AC's uncharged misconduct-laden unsworn statement was considered and rejected by this Court.

4. Because the law was unsettled at the time of trial, but then became settled to the appellant's favor waiver does not apply to this situation.

When Appellant was tried in April and May of 2024, the law was unsettled regarding whether uncharged misconduct was admissible against an accused in a victim's unsworn R.C.M. 1001(c) unsworn statement. Less than a year later, this Court definitively decided the question in favor of Appellant. In light of this exceptional circumstance, analysis through the lens of forfeiture should govern those portions of AC's unsworn that were not specifically objected to, rather than strict application of waiver. Forfeited issues are reviewed for plain error. *Davis*, 79 M.J. at 331 (quoting *Campos*, 67 M.J. at 332).

B. The military trial judge erred when she found that AC's unsworn statement "reasonably [fell] within the scope of both destruction of property specification or continuing course of conduct and/or the fraternization specification."

As the AFCCA recognized, the military trial judge's use of a "continuous course of conduct" theory to allow AC to use her R.C.M. 1001(c) unsworn statement to present a number of instances of uncharged misconduct against Appellant was an abuse of discretion. Appendix at 8; *United States v. Campos*, 85 M.J. 310, 316 (C.A.A.F. 2025). But the military trial judge's other basis for admissibility—upheld by the AFCCA—that the multiple instances of uncharged misconduct described in

AC's unsworn statement somehow were proper impact of Appellant's fraternization offense, was also error. Appendix at 9; Tr. 1341.

A "crime victim" is "an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense of which the accused was found guilty [.]" R.C.M. 1001(c)(2)(A). R.C.M. 1001(c)(2)(B) defines victim impact as "any financial, social, psychological, or medical impact on the crime victim directly relating to or arising from the offense of which the accused has been found guilty." In *Campos*, this Court held that "victim impact" consists of two elements: the content of the statement must relate to (1) the offenses of which the accused has been found guilty, and (2) the impacts arising from *those specific offenses*. 85 M.J. at 315. Both elements are required. *Id.*

Allegations of uncharged misconduct fail this test on both elements. By definition, they do not concern the offenses for which the accused was convicted. Instead, they introduce new, unproven allegations that serve only to portray the accused as a person of bad character. This Court in *Campos* explicitly stated that "nothing in R.C.M. 1001(c) . . . authorizes a victim's unsworn statement to be used to provide information about the accused's bad character." *Campos*, 85 M.J. at 315.

Here, the disconnect between Appellant's actual convictions and AC's unsworn statement is stark. Appellant was convicted of fraternization, cocaine use, steroid possession, violating lawful orders, and a single, limited specification of

damaging non-military property. Charge Sheet; Tr. 1009. AC, however, was not the victim of the drug offenses, and her unsworn statement barely touched upon the fraternization or the specific property damage of which Appellant was convicted. Instead, she provided an account of completely separate, uncharged allegations. App Ex. CXXVIII; Tr. 1342-45.

She told the members that Appellant “broke into my house on two separate occasions,” “trashed my house, and destroyed a lot of my property.” Tr. 1343. This included allegations that he “broke my kitchen cabinets” and “threw kitchen glassware to my backyard.” *Id.* She then detailed other supposed crimes, describing how Appellant:

[T]ook [his] anger out on my personal vehicle and on the rental vehicle [He] left dents on the roof of my car with [his] fists, broke my steering wheel repeatedly while repeatedly punching it, slashing my tire with a steak knife, and also punched and cracked the windshield of the rental vehicle

Tr. 1344.

These are not “impacts” arising from the convicted offenses. They are descriptions of entirely different, and far more serious, uncharged crimes. The emotional and financial harms AC described were impacts arising from this uncharged conduct. Her “substantial emotional distress” and fear for her safety stemmed from the alleged break-ins. Tr. 1343. The increased insurance premium she mentioned was the result of the alleged vehicle damage. Tr. 1344. None of this was

related to or arising from offenses of which Appellant was convicted. Allowing the members to hear it was a clear violation of R.C.M. 1001(c) and an abuse of discretion.

Further, while the military trial judge did not explain her rationale behind how these instances of uncharged misconduct arose from Appellant's fraternization offense beyond a conclusory statement that "I do find under the applicable rights of allocation [*sic*] of a victim in an unsworn statement, that this reasonably falls within the scope of . . . the fraternization specification," the AFCCA opined because the fraternization involved an "illicit romantic relationship" between Appellant and AC, and at times that relationship was unhealthy and troubled, then the impact AC felt from instances during that poor relationship (regardless of whether those instances were charged) was proper R.C.M. 1001(c) victim impact.

Such a holding is clearly erroneous. Under the AFCCA's theory, the impact from anything that happened during the relationship—no matter how unrelated to the offense of fraternization—would be proper R.C.M. 1001(c) victim impact. The theory amounts to a "but for" theory of causation; but for the fraternization, the litany of uncharged misconduct and all the resulting impacts would not have occurred. However, "but for" theories of causation are generally not used to affix legal liability. *See Palsgraf v. Long Island R. Co.*, 248 N.Y. 339 (1928) (holding that the proximate cause of the plaintiff's injuries was the passenger's exploding fireworks, not the

railroad guard's actions of pushing the passenger onto the train even though but-for the guard's action the fireworks would not have become dislodged and exploded).

It may be the case that but for the fraternization there would not have been a relationship between Appellant and AC; and but for that relationship there would not have been an argument between them; and but for that argument Appellant would not have become upset; and but for Appellant becoming upset he would not have allegedly damaged AC's car; and but for the damage to AC's car she would not have made a claim with her insurance; and but for that insurance claim AC's insurance rates would not have increased. But that does not mean that AC's increased insurance rates are directly related to or arising from the fraternization.

Whether under a theory of "course of conduct," or under a theory of directly relating to or arising from the fraternization, the military judge abused her discretion when she allowed AC to detail to the panel of members a number of instances of alleged uncharged misconduct along with their impact. This Court should grant review to clarify where R.C.M. 1001(c) draws a line in the chain of "but for" causation statements.

C. The uncharged misconduct and its resulting impact from AC's unsworn statement substantially influenced the sentence imposed by the panel of members.

"When a military judge has abused his discretion in rejecting objections to a victim's unsworn statement, the Court will grant relief only if the Court is persuaded

that the improper portion of the victim impact statement ‘substantially influenced the adjudged sentence.’” *Campos*, 85 M.J. at 314 (citing *United States v. Hamilton*, 78 M.J. 335, 342-43 (C.A.A.F. 2019)). Four factors are considered when evaluating prejudice in victim impact statements: “(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.” *Id.* (citing *Hamilton*, 78 M.J. at 343).

When comparing the first two factors against each other, it is apparent that Appellant’s sentencing case was stronger than the Government’s. At the time of his court-martial, Appellant was a pilot who had served almost twenty-two years in the Air Force. Pros. Ex 1. In that capacity he “directly supported the Vice President, First Lady, Cabinet Secretaries, and senior U.S. government and military leaders.” *Id.* He also deployed five times and logged an additional 1,184.8 combat air hours. Pros. Ex. 3 at 1. On the back end of a failed marriage, Appellant entered into a relationship with AC when he should not have. Tr. 1357-60; Pros. Ex 1. That relationship became “toxic” and led to several poor decisions and offenses. *Id.* However, Appellant pleaded guilty and accepted responsibility for these acts. Tr. 871.

Additionally, the third and fourth factors—materiality and quality of the improper statements—factor in favor of Appellant. The materiality of the improper statements here was exceptionally high. Unlike the allegations of yelling or taking a phone in *Campos*, 85 M.J. at 317, AC’s testimony described violent, felonious

conduct: breaking entering and burglarizing AC's home, extensive property destruction, and vandalism with a weapon ("slashing my tire with a steak knife"). Tr. 1343-44. These are not minor acts; they paint a picture of a violent and uncontrolled individual, distinct from and in addition to the charged offenses. The military judge herself confirmed their materiality when she expressly found they fell within a "continuing course of conduct." Tr. 1341.

The quality of the statements was also high, as they were being delivered in front of the members by AC. The vivid and criminal allegations were powerfully prejudicial. Moreover, the military judge's limiting instruction to the members was insufficient to cure the harm. Tr. 1479. An instruction cannot un-ring the bell, let alone one that paints such a wider-ranging and dark picture of an accused. Importantly, the judge's ruling demonstrates that *she* considered the evidence material to sentencing. The instruction to the members did nothing to cure the prejudice that infected the judge's own consideration when she erroneously admitted the statements. The error was therefore prejudicial and warrants relief.

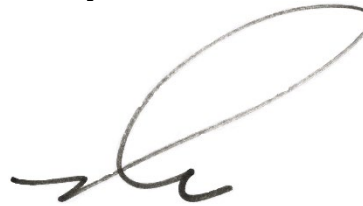
D. Conclusion

The military judge abused her discretion when she permitted AC to deliver an unsworn statement filled with allegations of uncharged misconduct under R.C.M. 1001(c). As this Court made clear in *Campos*, such statements are strictly limited to the impacts of convicted offenses. The error was prejudicial and substantially

influenced Appellant's sentence. Appellant requests that this Honorable Court set aside the portion of his sentence requiring dismissal.

WHEREFORE, Appellant respectfully requests this Honorable Court grant review of this issue.

Respectfully submitted,

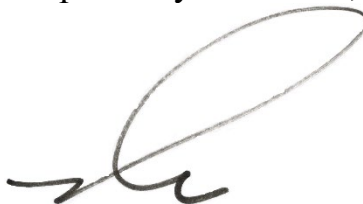
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I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division at af.jajg.afloa.filng.workflow@us.af.mil on 23 July 2026.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'LUKE D. WILSON', with a large, sweeping loop at the end.

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Certificate of Compliance

This brief complies with the type-volume limitation of Rules 21(b) and 21(6) of no more than 9,000 words because it contains approximately 4,289 words.

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

Respectfully submitted,

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Appendix

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

No. ACM 40690

UNITED STATES

Appellee

v.

Giorgio A. SZABO

Lieutenant Colonel (O-5), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary

Decided 23 April 2026

Military Judge: Charles E. Wiedie (arraignment); Pilar G. Wennrich (motions); David M. Cisek (motions); Dayle P. Percle.

Sentence: Sentence adjudged 3 May 2024 by GCM convened at Joint Base Andrews, Maryland. Sentence entered by military judge on 17 June 2024: Dismissal, confinement for 4 months, and a reprimand.

For Appellant: Lieutenant Colonel Allen S. Abrams, USAF; Lieutenant Colonel Luke D. Wilson, USAF; Captain Joyclin N. Webster, USAF.

For Appellee: Colonel Steven R. Kaufman, USAF; Lieutenant Colonel Jenny A. Liabenow, USAF; Major Vanessa Bairos, USAF; Major Kate E. Lee, USAF; Major Jocelyn Q. Wright, USAF; Captain Donnell D. Wright, USAF; Mary Ellen Payne, Esquire.

Before JOHNSON, KEARLEY, and MORGAN, *Appellate Military Judges*.

Chief Judge JOHNSON delivered the opinion of the court, in which Judge KEARLEY and Judge MORGAN joined.

**This is an unpublished opinion and, as such, does not serve as
precedent under AFCCA Rule of Practice and Procedure 30.4.**

JOHNSON, Chief Judge:

The military judge found Appellant guilty, in accordance with his pleas pursuant to a plea agreement, of two specifications of wrongfully disobeying an order on divers occasions, in violation of Article 92, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 892; one specification of wrongfully damaging non-military property of a value of less than \$1,000.00, in violation of Article 109, UCMJ, 10 U.S.C. § 909; one specification of wrongfully using cocaine on divers occasions and one specification of wrongfully possessing anabolic steroids, both in violation of Article 112a, UCMJ, 10 U.S.C. § 912a; and one specification of fraternization, in violation of Article 134, UCMJ, 10 U.S.C. § 934.¹ A general court-martial composed of officer members sentenced Appellant to a dismissal, confinement for four months, and a reprimand. The convening authority approved the entire sentence; deferred automatic forfeitures of pay and allowances until the entry of judgment; waived automatic forfeitures of pay for four months or until Appellant's release from confinement, whichever was sooner, for the benefit of Appellant's child; and provided the language for the reprimand.

Appellant raises four assignments of error on appeal: (1) whether the military judge abused her discretion by overruling a defense objection to a portion of the victim's unsworn statement; (2) whether the military judge abused her discretion by accepting Appellant's plea of guilty to damaging non-military property because matters in the record raised a substantial question regarding Appellant's specific intent to commit the offense; (3) whether Appellant's sentence to a dismissal is inappropriately severe; and (4) whether the record of trial is incomplete and should be remanded for correction.² In addition, we address two additional issues not raised by Appellant: (5) whether Appellant's plea of guilty to damaging a door was improvident because the door constituted real property rather than personal property; and (6) whether Appellant is entitled to relief for appellate delay.

We have carefully considered issue (4) and find it does not warrant discussion or relief. *See United States v. Matias*, 25 M.J. 356, 361 (C.M.A. 1987). As to issue (5), we find Appellant's plea of guilty to damaging non-military property was improvident in part, and we modify the findings and reassess the sentence accordingly. In light of our resolution of issue (5), we do not address issue

¹ Unless otherwise noted, all references in this opinion to the UCMJ, Rules for Courts-Martial, and Military Rules of Evidence are to the *Manual for Courts-Martial, United States* (2019 ed.).

² Appellant personally raises issues (3) and (4) pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

(2). As to the remaining issues, we find no error materially prejudicial to Appellant's substantial rights.

I. BACKGROUND

In early 2018, Appellant was a pilot stationed at Joint Base (JB) Andrews, Maryland. Around that time, Appellant noticed AC at the base fitness center. He initiated a conversation with AC and learned she was an enlisted member also stationed at JB Andrews, although assigned to a different squadron than Appellant.

Appellant and AC began dating in approximately May 2018, and continued an on-and-off romantic and sexual relationship until approximately November 2021. During this time they maintained separate residences, but they frequently stayed the night at each other's homes, and each of them had access to the other's residence. Appellant and AC were introduced to members of each other's families. Multiple enlisted members of Appellant's squadron also became aware of the relationship; Appellant personally asked these individuals not to reveal his relationship with AC to anyone.

In 2019, Appellant became AC's social media "brand manager" and operated commercial Internet and social media accounts in her name. Appellant arranged for professional photographers to create content for these platforms, which included many images of AC in various states of undress. Appellant provided all the proceeds from these activities to AC, who received approximately \$40,000.00 from them in a period of four months.

In September 2019, Appellant told AC he wanted to try cocaine. Appellant used cocaine on multiple occasions between October 2019 and August 2022. AC would later tell the Air Force Office of Special Investigations (OSI) that she observed Appellant use cocaine more than 100 times. During the military judge's guilty plea inquiry, Appellant stated he used cocaine "several" times, that 80 percent of his use occurred during the COVID pandemic between early 2020 and the summer of 2021, and that he used cocaine "most frequently" during the summer and fall of 2020. AC told OSI that Appellant would use cocaine in public and around other people, but he would not use cocaine when he was on flying missions, using flight simulators, or around his family. Appellant's text communications with AC contained multiple references to his desire and intent to use cocaine.

On one occasion during Appellant's relationship with AC, he went to and entered her home to find that she was not there. Appellant got into an argument with AC on the phone. Appellant became angry and punched a hole in the surface of a door inside her house with his fist. Appellant later paid AC \$100.00 to repair the door. On another occasion, Appellant got into an

argument with AC while they were drinking wine in AC's kitchen. Appellant became frustrated and struck the wine glasses and bottle with his arm, knocking them onto the floor where they shattered. These incidents formed the basis for the charge of damaging non-military property.

Beginning in March 2022, after their final breakup, Appellant left AC 22 voice mail messages and sent her hundreds of text messages. On 10 June 2022, Appellant's squadron commander issued him a written order not to contact AC, who by that time had transferred to a different Air Force base. Between 10 June 2022 and 8 October 2022, Appellant violated this order several hundred times by contacting AC by email, text message, phone call, and social media.

On 26 August 2022, Appellant provided two urine samples for a urinalysis. Both samples subsequently tested positive for the metabolite of cocaine. During a search of Appellant's residence, OSI agents collected a makeup container and plastic bag containing a white powdery substance and a plastic straw with a white powdery residue. Subsequent testing identified the white powder as cocaine. During this same search of Appellant's residence, OSI agents also found several types of anabolic steroids, which were Schedule III controlled substances.

On 12 September 2022, Appellant's squadron commander issued him a military protective order (MPO) which directed Appellant, *inter alia*, not to contact AC. Between 12 September 2022 and 15 June 2023, Appellant violated the MPO dozens of times by contacting AC by text message and social media.

II. DISCUSSION

A. Victim's Unsworn Statement

1. Additional Background

The Article 109, UCMJ, offense of which Appellant was found guilty alleged, in pertinent part, that "between on or about 1 June 2019 and on or about 30 August 2022," Appellant "willfully and wrongfully damage[d] a door by punching [it] with his fist and a bottle and two [wine] glasses by slamming [them] against a counter with his hand, the amount of said damage being in the sum of less than \$1,000.00" The Article 134, UCMJ, offense of which Appellant was found guilty alleged, in pertinent part, that "between on or about 1 May 2018 and on or about 14 February 2022," Appellant "knowingly fraternized with [AC by] engaging in a romantic relationship with [AC]," in violation of a custom of the Air Force, "to the prejudice of good order and discipline in the armed forces."

During presentencing proceedings, as a victim of Appellant's offenses, AC presented an unsworn statement to the court members both orally and in

writing pursuant to Rule for Courts-Martial (R.C.M) 1001(c). Shortly after she began reading her unsworn statement to the court members, trial defense counsel objected and asked for an Article 39(a), UCMJ, 10 U.S.C. § 839(a), hearing outside the presence of the court members. After the members departed the courtroom, trial defense counsel requested a 15-minute recess to discuss potential defense objections to AC's statement with trial counsel and AC's counsel. The military judge allowed the recess.

When the Article 39(a), UCMJ, hearing resumed, trial defense counsel told the military judge, "I think we're in agreement on all but one paragraph." Trial defense counsel then objected to the following portion of AC's statement:

On other occasions during our relationship, you took your anger out on my personal vehicle and on a rental vehicle I was using after you damaged my personal vehicle. You left dents on the top of my car with your fists, broke my steering wheel by repeatedly punching it, slashed my tire with a steak knife. You also punched and cracked the windshield of the rental vehicle that was loaned out to me. The repairs for this damage led to an increase in my insurance premium.

This paragraph referred to incidents of alleged conduct by Appellant that were not part of the stipulation of fact or otherwise presented as evidence in the court-martial. Trial defense counsel first argued that with respect to this alleged conduct, "there's no timeline or other context that situates this as being properly part of a continuing course of conduct." Trial defense counsel then argued the Defense's "bigger objection" was that these assertions should be excluded under Military Rule of Evidence (Mil. R. Evid.) 403. Trial defense counsel argued, *inter alia*, the Defense's ability to rebut these allegations was limited due to a lack of notice and information about them, and that this uncharged misconduct was "much more inflammatory" than the charged damage described in the stipulation of fact to which Appellant pleaded guilty.

In response, the military judge advised the Defense that Mil. R. Evid. 403 did not apply to AC's unsworn statement, and suggested trial defense counsel address how, if at all, the statement was improper under R.C.M. 1001(c). The military judge then turned to AC's counsel, who argued the paragraph in question was a permissible demonstration of a continuing course of conduct related to the charge of damaging property, citing *United States v. Goldsmith*, No. ACM 40148, 2023 CCA LEXIS 8, at *20 (A.F. Ct. Crim. App. 11 Jan. 2023) (unpub. op.). AC's counsel argued these incidents "show[ed] that when [Appellant] gets upset he has destroyed or damaged [AC's] property and that she has incurred both emotional as well as pecuniary impacts due to his actions."

The military judge then returned to trial defense counsel, who argued these allegations in the unsworn statement did not “legitimately constitute[] a continuing course of conduct” because they were “far worse” than the charged property damage and were not situated in time in relation to the charged misconduct.

The military judge then overruled the defense objection. She explained:

I do find under the applicable rights of alloc[u]tion of a victim in an unsworn statement, that this reasonably falls within the scope of both [the] destruction [sic] of property specification or continuing course of conduct and/or the fraternization specification. Understanding you have the ability to rebut statements within the unsworn or certainly argue the weight or admis – the weight, if any, to be given to these statements. The [D]efense’s arguments tend to go more to how much weight, if any, should be given but not their admissibility under [R.C.M.] 1001(c).

AC then read her entire unsworn statement to the court members, who also received a written version.

The military judge later provided the court members a limiting instruction specifically addressing the uncharged misconduct AC referred to in her unsworn statement:

In her unsworn statement, [AC] made reference to conduct of [Appellant] other than that – other than what he stands convicted of. While that was permissible for her to comment on during her right of allocution, you may not consider this uncharged conduct evidence to consider or impose more severe punishment on account of the uncharged conduct, or that [Appellant] had a criminal propensity, or consider that the value of the other alleged damaged property should affect [Appellant’s] sentence. Although you must give due consideration to all matters properly before you, you must bear in mind [Appellant] is to be sentenced only for the offenses of which he has been found guilty.

2. Law

We review a military judge’s ruling with regard to the presentation of a victim’s unsworn statement for an abuse of discretion. *United States v. Harrington*, 83 M.J. 408, 418 (C.A.A.F. 2023). “Abuse of discretion occurs when the military judge: (1) bases a ruling on findings of fact that are not supported by the evidence; (2) uses incorrect legal principles; (3) applies correct legal principles in a clearly unreasonable way; or (4) does not consider important facts.” *United States v. Ramirez*, 84 M.J. 173, 176 (C.A.A.F. 2024) (citation omitted). “Generally, military judges are, of course, granted a wide degree of deference

when making discretionary decisions during trial.” *Id.* “To find abuse of discretion requires more than a mere difference of opinion—the challenged ruling must be arbitrary, fanciful, clearly unreasonable, or clearly erroneous.” *Id.* (quoting *United States v. Jasper*, 72 M.J. 276, 279–80 (C.A.A.F. 2013)) (additional citation omitted).

“When a military judge has abused [her] discretion in rejecting objections to a victim’s unsworn statement, the Court will grant relief only if the Court is persuaded that the improper portion of the victim impact statement ‘substantially influenced the adjudged sentence.’” *United States v. Campos*, 85 M.J. 310, 314 (C.A.A.F. 2025) (quoting *United States v. Hamilton*, 78 M.J. 335, 340 (C.A.A.F. 2019)). We apply four factors to assess the prejudicial effect of an improper unsworn statement: “(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.” *Id.* (internal quotation marks omitted) (quoting *Hamilton*, 78 M.J. at 343).

R.C.M. 1001(c) provides that the victim of an offense of which the accused has been found guilty may present an unsworn statement to the court-martial—orally, in writing, or both—addressing victim impact or matters in mitigation. “[V]ictim impact includes any financial, social, psychological, or medical impact on the crime victim directly relating to or arising from the offense of which the accused has been found guilty.” R.C.M. 1001(c)(2)(B).

“[U]nsworn victim statements are not made under oath, and thus are not evidence,” and therefore are “not subject to the Military Rules of Evidence.” *United States v. Tyler*, 81 M.J. 108, 112 (C.A.A.F. 2021). However, “the military judge has an obligation to ensure the content of a victim’s unsworn statement comports with the parameters of victim impact or mitigation as defined by R.C.M. [1001(c)].” *Id.* (citation omitted).³

Our superior court has held that evidence of uncharged misconduct “involving the same or similar crimes, the same victims, and a similar situs” as charged offenses may demonstrate the true impact of the charged offenses, and therefore constitute proper evidence in aggravation “directly related to the conduct for which appellant was found guilty.” *United States v. Mullens*, 29 M.J. 398, 400 (C.M.A. 1990); see also *United States v. Nourse*, 55 M.J. 229, 232 (C.A.A.F. 2001) (“[W]hen uncharged misconduct is part of a continuous course of conduct involving similar crimes and the same victims, it is encompassed

³ *Tyler* addressed an earlier version of the Rules for Courts-Martial wherein a victim’s unsworn statement was governed by R.C.M. 1001A, see *Manual for Courts-Martial, United States* (2016 ed.), the relevant provisions of which are substantially similar to the version of R.C.M. 1001(c) in effect at Appellant’s court-martial.

within the language ‘directly relating to or resulting from the offenses of which the accused has been found guilty’ under R.C.M. 1001(b)(4).”). However, in *United States v. Campos*, the United States Court of Appeals for the Armed Forces (CAAF) “decline[d] to extend the holding of *Mullens* with respect to evidence in aggravation under R.C.M. 1001(b)(4) . . . to apply to victim impact statements under R.C.M. 1001(c).” 85 M.J. at 316. In *Campos*, the CAAF held the military judge abused his discretion by allowing the victim to accuse the appellant of uncharged misconduct in her unsworn statement. *Id.*

3. Analysis

Appellant contends the military judge abused her discretion by permitting AC to refer to uncharged misconduct by Appellant in her unsworn statement. He contends this error resulted in material prejudice, and asks this court to set aside the adjudged dismissal. The Government contends the military judge did not err in allowing the challenged paragraph because it was directly related to the fraternization offense, and in the alternative, any error did not materially prejudice Appellant.

As an initial matter, we note that on appeal Appellant challenges not only the paragraph quoted above, but another section of the unsworn statement that refers to Appellant entering AC’s residence without permission, “trash[ing]” her house, breaking a kitchen cabinet, and throwing glassware into her backyard. We agree with the Government that Appellant waived his objection to this portion of the unsworn statement. The military judge granted trial defense counsel a 15-minute recess to discuss potential objections with trial counsel and AC’s counsel. Trial defense counsel informed the military judge that counsel were “in agreement on all but one paragraph,” and that the Defense was objecting only to the paragraph alleging damage to AC’s vehicles as quoted above. We find the Defense affirmatively waived objections to the remainder of the unsworn statement, leaving no error to correct on appeal. *See United States v. Davis*, 79 M.J. 329, 331 (C.A.A.F. 2020).

Turning to the preserved objection to the paragraph quoted above, counsel and the military judge evidently approached this issue with a view of the law that was understandable at the time, but incorrect in hindsight. Specifically, AC’s counsel cited this court’s unpublished opinion in *Goldsmith* which applied the “continuous course of conduct” theory of evidence in aggravation from cases such as *Mullens* and *Nourse* to unsworn victim statements under R.C.M. 1001(c). *See Goldsmith*, unpub. op. at *19–22. For their part, trial defense counsel did not challenge the applicability of the “continuous course of conduct” rationale to unsworn statements in principle, but argued it did not fit in this particular case due to uncertainty in the timeline and the relative severity of the alleged misconduct. The military judge overruled the defense objection, *in part* because of a continuing course of conduct with the Article 109, UCMJ,

offense. However, in *Campos*, decided after Appellant’s court-martial, the CAAF specifically rejected the application of the *Mullens* and *Nourse* continuous course of conduct rationale to a victim’s unsworn statements under R.C.M. 1001(c). 85 M.J. at 316.

Nevertheless, applying the deferential abuse of discretion standard of review, we find the military judge did not err in finding the challenged portion of the unsworn statement was permissible because it fell “within the scope” of the fraternization offense. That specification alleged Appellant engaged in a romantic relationship with AC that was to the prejudice of good order and discipline in the armed forces, in violation of Article 134, UCMJ. One of the aspects of that illicit romantic relationship was that Appellant would become angry at AC and damage her property, resulting in emotional and financial harm to her. We find it was not “arbitrary, fanciful, clearly unreasonable, or clearly erroneous” for the military judge to conclude AC’s description of Appellant taking out his anger at her by damaging her vehicles demonstrated psychological and financial impact “directly relating to or arising from” the fraternization offense of which he was convicted. *See* R.C.M. 1001(c)(2)(B).

Assuming *arguendo* the military judge did abuse her discretion by allowing this portion of the unsworn statement, we find Appellant’s material rights were not substantially prejudiced. *See* Article 59(a), UCMJ, 10 U.S.C. § 859(a). After considering the four factors articulated in *Campos* and *Hamilton*, we conclude any such error did not substantially influence the adjudged sentence. *See Campos*, 85 M.J. at 314 (quoting *Hamilton*, 78 M.J. at 340, 343). The military judge provided the court members a strong, tailored instruction that they were not to increase Appellant’s punishment on account of AC’s reference to uncharged conduct, to include considering it for any criminal propensity or additional property damage. Moreover, counsel did not refer to this uncharged conduct during sentencing arguments. Significantly, the court members sentenced Appellant to the minimum term of confinement required by the plea agreement. Given the number, duration, and frequency of Appellant’s charged offenses, to include using cocaine numerous times over an extended period, we do not find AC’s unsworn references to Appellant damaging her vehicles substantially influenced the members’ decision to adjudge the dismissal or the reprimand. Accordingly, we find Appellant is not entitled to relief.

B. Guilty Plea Providency

1. Additional Background

The Specification of the Second Additional Charge alleged, in pertinent part, that Appellant violated Article 109, UCMJ, by “willfully and wrongfully damag[ing] a door by punching said door with his fist and a bottle and two glasses by slamming said bottle and two glasses against a counter with his

hand, the amount of said damage being in the sum of less than \$1,000.00, the property of [AC].”

The stipulation of fact described the door, as well as the glasses and bottle, as “personal property.” The stipulation included the following description of Appellant damaging the door:

During the argument [on the phone with AC], [Appellant] became angry and hit the mud door in [AC’s] home with his fist. This caused a hole in the door. The door was in [AC’s] home and belonged to her. [Appellant] was aware, when he hit his fist against the door, it was likely to cause damage. Damaging the door was the natural result of [Appellant’s] decision to hit his fist against it. [Appellant] paid [AC] approximately \$100[.00] for the damage.

A photograph of the damage to the door was attached to the stipulation of fact. The photograph depicts that the hole was in the surface of one side of the door, but did not go all the way through the door.

During the military judge’s guilty plea inquiry, she described the elements of the Article 109, UCMJ, offense as:

- 1) That at or near Anne Arundel, Maryland, on or about – between on or about 1 June 2019 and on or about 30 August 2022, on divers occasions, you willfully and wrongfully damaged certain *personal property*, that is a door, a bottle, and two glasses, by punching the door with your fist and slamming the bottle and two glasses against the counter with your hand;
- 2) That the property damaged was the property of [AC];
- 3) That the property was a value of a sum less than \$1000.00.

(Emphasis added).

During the military judge’s guilty plea inquiry, Appellant described how he damaged AC’s door:

In my frustration, I hit my fist against the door to her mud room. I had my arm bent at the elbow with my fist parallel to my upper arm, and then used a moderate amount of force to bring my fist down and into the door. Turned out the door was hollow and the impact of my [fist] caused a hole in the door. I didn’t intend to necessarily punch a hole in the door but I was aware that hitting my fist against the door was going to certainly damage it some – the door in some capacity. I was familiar with the door and the

fact that it was not made of the best wood, I knew it would likely impact – the impact of my fist would cause damage to the door.

. . . .

I struck the door and any reasonable person could – would have assumed there would be some damage to the door striking the door the way I did and I knew that.

The military judge accepted Appellant’s pleas of guilty. During the court-martial, neither the military judge nor either party raised a question as to whether the door attached to AC’s house might be real property rather than personal property.

After completing our review of the record, this court ordered the parties to provide briefs on the following specified issue:

WHETHER THE DOOR APPELLANT PLEADED GUILTY TO DAMAGING WAS REAL PROPERTY RATHER THAN PERSONAL PROPERTY; IF SO, WHETHER APPELLANT’S PLEA OF GUILTY TO DAMAGING THE DOOR WAS IMPROVIDENT BECAUSE THE DOOR CONSTITUTED REAL PROPERTY RATHER THAN PERSONAL PROPERTY; AND IF SO, WHAT RELIEF, IF ANY, IS APPROPRIATE?

2. Law

We review a military judge’s decision to accept an accused’s guilty plea for an abuse of discretion. *United States v. Saul*, 86 M.J. 30, 33 (C.A.A.F. 2025) (citing *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008)). In the context of accepting a guilty plea, “[a]n abuse of discretion occurs when there is ‘something in the record of trial, with regard to the factual basis or the law, that would raise a substantial question regarding the . . . plea.’” *United States v. Riley*, 72 M.J. 115, 119 (C.A.A.F. 2013) (quoting *Inabinette*, 66 M.J. at 322).

“The military judge must ensure there is a basis in law and fact to support the plea to the offense charged.” *United States v. Soto*, 69 M.J. 304, 307 (C.A.A.F. 2011) (citing *Inabinette*, 66 M.J. at 321–22) (additional citation omitted). The military judge may consider both the stipulation of fact and the inquiry with the appellant when determining if the guilty plea is provident. *United States v. Hines*, 73 M.J. 119, 124 (C.A.A.F. 2014).

“[T]he military judge must explain each of the elements of an offense to the accused and question the accused to ensure that the accused’s acts or omissions constitute the offense to which the accused is pleading guilty.” *Saul*, 86 M.J. at 33 (citing *United States v. Care*, 40 C.M.R. 247, 253 (C.M.A. 1969)). A military judge “has a duty to accurately inform an appellant of the nature of his offense and an essential aspect of informing is a correct definition of legal concepts.”

United States v. Murphy, 74 M.J. 302, 308 (C.A.A.F. 2015) (internal quotation marks, alterations, omission, and citations omitted).

[F]ailure to define correctly a legal concept or explain each and every element of the charged offense to the accused in a clear and precise manner is not reversible error if it is clear from the entire record that the accused knew the elements, admitted them freely, and pleaded guilty because he was guilty.

Id. (internal quotation marks, alteration, and citations omitted).

Article 109, UCMJ, provides, “Any person subject to this chapter who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.” “Through the Manual, the President has created two offenses within the ambit of Article 109, UCMJ, based on the type of property at issue: the wasting or spoiling of real property and the destroying or damaging of personal property.” *United States v. Jeter*, 74 M.J. 772, 775 (A.F. Ct. Crim. App. 2015). These distinct offenses against real property and personal property involve distinct elements.

The elements of “[w]asting or spoiling non-military property” include: (1) “[t]hat the accused willfully or recklessly wasted or spoiled certain real property in a certain manner;” (2) “[t]hat the property was of another person;” and (3) “[t]hat the property was of a certain value.” *MCM*, pt. IV, ¶ 45.b.(1). “The terms ‘wastes’ and ‘spoils’ as used in this article refer to such wrongful acts of voluntary destruction of or permanent damage to real property as burning down buildings, burning piers, tearing down fences, or cutting down trees. This destruction is punishable whether done willfully . . . or is through a culpable disregard of the foreseeable consequences of some voluntary act.” *MCM*, pt. IV, ¶ 45.c.(1).

The elements of “[d]amaging non-military property” include: (1) “[t]hat the accused willfully and wrongfully damaged certain personal property in a certain manner;” (2) “that the property was that of another person;” and (3) “that the damage inflicted on the property was of a certain amount.” *MCM*, pt. IV, ¶ 45.b.(2).

3. Analysis

The Specification of the Second Additional Charge did not explicitly identify any of the property in question—the door, bottle, or glasses—as either real or personal property. However, by asserting Appellant “wrongfully and willfully damage[d]” the property, the specification implied the elements of damaging personal property, rather than wasting or spoiling real property. *MCM*, pt. IV, ¶ 45.b.(1), (2). In addition, both the stipulation of fact and the military

judge’s explanation of the elements of the offense described the property, including the door, as “personal property.”

Neither Article 109, UCMJ, nor the Manual provide specific definitions of “real property” or “personal property” in the context of this offense. More generally, “real property” refers to “[l]and, and generally whatever is growing upon or affixed to land.” *Property*, BLACK’S LAW DICTIONARY (6th ed.); *see also* MERRIAM-WEBSTER, *Property — real property*, <https://www.merriam-webster.com/dictionary/property#legalDictionary> (last visited 16 Apr. 2026) (defining “real property” as “property consisting of land, buildings, crops, or other resources still attached to or within the land or improvements or fixtures permanently attached to the land or a structure on it”). “Personal property” generally includes, “[i]n a broad and general sense, everything that is the subject of ownership, not coming under denomination of real estate.” *Property*, BLACK’S LAW DICTIONARY (6th ed.); *see also* MERRIAM-WEBSTER, *Property — personal property*, <https://www.merriam-webster.com/dictionary/property#legalDictionary> (last visited 16 Apr. 2026) (defining “personal property” as “property (as a vehicle) that is movable but not including crops or other resources still attached to land : property other than real property”).

We find the door attached to AC’s house was part of a building affixed to the land, and constituted real property rather than personal property. *See United States v. McCameron*, No. ACM 40089, 2022 CCA LEXIS 663, at *12–14 (A.F. Ct. Crim. App. 17 Nov. 2022) (unpub. op.) (finding appellant’s guilty plea to willfully and wrongfully damaging personal property improvident where the property in question was a wall in a rented house); *United States v. Dentice*, ARMY 20130591, 2014 CCA LEXIS 589, at *4–7 (A. Ct. Crim. App. 15 Aug. 2014) (unpub. op.) (finding appellant’s plea of guilty to “damag[ing]” the interior walls of his on-post quarters with a knife improvident where the military judge described the walls as “personal property”). The Government contends “reasonable minds may differ about whether this particular door should be classified as real or personal property.” The Government cites this court’s unpublished opinion in *United States v. Kennedy*, where a panel of this court affirmed a conviction based on a plea of guilty to willfully and wrongfully damaging the wall of a dormitory room by punching a hole in it. No. ACM S32660, 2021 CCA LEXIS 575, at *8–12 (A.F. Ct. Crim. App. 1 Nov. 2021) (unpub. op.). *Kennedy* did refer to the wall as “personal property” in passing, but did not specifically come to grips with the Manual’s distinction between damaging personal property and wasting or spoiling real property under Article 109, UCMJ. We find the specific reasoning of *McCameron* and *Dentice* far more persuasive.⁴

⁴ Of course, damaging a door that was not attached to a house or other structure might be a different matter.

We further find a substantial basis in law and fact to question the providency of the plea. As described above, the elements of wasting or spoiling real property and damaging personal property are different, both in terms of the required mens rea and the nature of the damage inflicted. Given the nature of the property in question, the damage to the door was incorrectly charged, and the elements of the offense were incorrectly explained to him. Appellant's admission that he intentionally struck the door knowing the door would be damaged as a result would likely satisfy the "willful[] or reckless[]" mens rea for spoiling or wasting real property. *MCM*, pt. IV, ¶ 45.b.(1). However, spoiling or wasting requires "destruction" or "permanent damage to real property" on the scale of destroying buildings, tearing down fences, or cutting down trees. The stipulation of fact, attached photo, and Appellant's description indicate the extent of the damage in this case was putting a hole in the surface of an interior door. The damage, while perhaps unsightly, does not appear to have impaired the essential functioning of the door. Had Appellant been correctly instructed on the law, he might not have agreed the limited damage he caused the door amounted to wasting or spoiling real property. Even if he had, if the military judge had recognized the distinction between real and personal property, she likely would not have accepted Appellant's plea. Similar to *McCameron* and *Dentice*, we are not confident Appellant understood the nature of the offense with which he was charged and to which pleaded guilty. *McCameron*, unpub. op. at *13; *Dentice*, unpub. op. at *7. Accordingly, we do not affirm the finding of guilty as to the Specification of the Second Additional Charge with respect to damaging the door, and we take corrective action below.

C. Sentence Severity

1. Additional Background

Appellant's plea agreement provided the court members were required to sentence Appellant to at least four months, but no more than nine months, in confinement. The plea agreement did not limit Appellant's sentence in any other way.

During presentencing proceedings, the Government entered a stipulation of fact with numerous attached documents describing Appellant's offenses. In addition, the Government played relevant portions of the military judge's guilty plea inquiry with Appellant for the court members. AC testified as a prosecution witness and also provided oral and written unsworn statements describing how Appellant's fraternization, damaging property, and failure to obey the no-contact order and MPO negatively impacted her. The Defense called Appellant's sister as a character witness, offered 34 character statements on Appellant's behalf, introduced other evidence of his military achievements and education, and provided photos of his career and family. Appellant also provided written and oral unsworn statements.

During sentencing argument, trial counsel recommended the members sentence Appellant to a dismissal and nine months in confinement. Trial defense counsel contended a dismissal was not appropriate, and recommended four to six months of confinement instead. The members sentenced Appellant to a dismissal, four months in confinement, and a reprimand.

2. Law

Courts of Criminal Appeals review issues of sentence appropriateness *de novo*. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006) (footnote omitted). We may affirm only as much of the sentence as we find correct in law and fact and determine should be approved on the basis of the entire record. Article 66(d), UCMJ, 10 U.S.C. § 866(d). “We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense[s], the appellant’s record of service, and all matters contained in the record of trial.” *United States v. Sauk*, 74 M.J. 594, 606 (A.F. Ct. Crim. App. 2015) (en banc) (per curiam) (alteration in original) (citation omitted). We are required “to review the appropriateness of each punishment in the adjudged sentence.” *United States v. Flores*, 84 M.J. 277, 281 (C.A.A.F. 2024) (citations omitted). Although the CCAs are empowered to “do justice[] with reference to some legal standard,” we are not authorized to grant mercy. *United States v. Guinn*, 81 M.J. 195, 203 (C.A.A.F. 2021) (quoting *United States v. Nerad*, 69 M.J. 138, 146 (C.A.A.F. 2010)).

3. Analysis

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), Appellant contends his dismissal is inappropriately severe and asks this court to set it aside. Appellant concedes “[t]he seriousness of the offenses to which [he] pleaded guilty is not in dispute,” but contends the members “failed to give adequate weight to the overwhelming evidence presented in mitigation and extenuation.” He cites, *inter alia*, his 21-year Air Force career, his record of strong duty performance, and the numerous positive character letters from officers, enlisted members, and others, including the former squadron commander who issued the no-contact order and MPO Appellant violated.

Having carefully considered the record, we do not find Appellant’s dismissal inappropriately severe for his offenses. Appellant engaged in several offenses over an extended period, displaying a remarkable intentional disregard for the law and his obligation to maintain good order and discipline. Appellant might have been a technically proficient pilot and personally well-liked, but his dismissal is appropriate in light of the scope of his misconduct, including his extensive drug abuse, flagrantly inappropriate relationship with AC, and other crimes.

D. Appellate Delay

Appellant’s record was docketed with this court on 30 September 2024. Appellant requested and received 13 enlargements of time, over the Government’s objection, before filing his assignments of error on 29 December 2025. The Government timely filed its answer brief on 26 January 2026. Appellant filed a reply brief on 4 March 2026 after receiving an additional enlargement of time.

On 11 March 2026, this court specified issue (5), ordering the parties to file briefs not later than 25 March 2026. The Government filed its specified issue brief on 25 March 2026. Appellant filed his specified issue brief on 30 March 2026, after receiving a further enlargement of time.

“[C]onvicted servicemembers have a due process right to timely review and appeal of courts-martial convictions.” *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006) (citations omitted). In *Moreno*, the CAAF established a presumption of facially unreasonable delay where, *inter alia*, “appellate review is not completed and a decision is not rendered within eighteen months of docketing the case before the [CCA].” 63 M.J. at 142. Where there is a facially unreasonable delay, we examine the four factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972): “(1) the length of the delay; (2) the reasons for the delay; (3) the appellant’s assertion of the right to timely review and appeal; and (4) prejudice [to the appellant].” *Id.* at 135 (citations omitted). The CAAF identified three types of cognizable prejudice for purposes of the right to timely post-trial review: (1) oppressive incarceration; (2) “particularized” anxiety or concern “that is distinguishable from the normal anxiety experienced by prisoners awaiting an appellate decision;” and (3) impairment of the appellant’s grounds for appeal or ability to present a defense at a rehearing. *Id.* at 138–40 (citations omitted). Where there is no qualifying prejudice from the delay, there is no due process violation unless the delay is so egregious as to “adversely affect the public’s perception of the fairness and integrity of the military justice system.” *United States v. Toohey*, 63 M.J. 353, 362 (C.A.A.F. 2006). We review de novo an appellant’s entitlement to relief for post-trial delay. *United States v. Livak*, 80 M.J. 631, 633 (A.F. Ct. Crim. App. 2020) (citing *Moreno*, 63 M.J. at 135).

Over 18 months have elapsed since Appellant’s record of trial was docketed with this court. Therefore, under *Moreno* there is a facially unreasonable delay, although we note the 18-month threshold has been exceeded by less than one month. Accordingly, we have considered the *Barker* factors and find no due process violation. Appellant has not specifically alleged cognizable prejudice from appellate delay, and we do not find any. Absent prejudice, we find the post-docketing delay involved in Appellant’s case has not been so egregious as to adversely affect the perception of the military justice system. The delay is primarily attributable to numerous defense requests for enlargements of time in which to file their briefs. In addition, we note the record is quite large,

including 18 volumes and a transcript of nearly 1,500 pages. We find no egregious delay and no violation of Appellant’s due process rights. *See Toohey*, 63 M.J. at 362.

Recognizing our authority under Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2), we have also considered whether relief for excessive post-trial delay is appropriate in this case even in the absence of a due process violation. *See United States v. Valentin-Andino*, 85 M.J. 361, 366 n.4 (C.A.A.F. 2025). We find no such relief is warranted.

E. Sentence Reassessment

Having modified the findings of guilty as to the Specification of the Second Additional Charge, specifically with respect to damaging a door in AC’s residence, we have considered whether we can reliably reassess Appellant’s sentence in light of the non-exclusive factors identified in *United States v. Winckelmann*, 73 M.J. 11, 15–16 (C.A.A.F. 2013). We find that we can. The penalty landscape has not dramatically changed; the remaining offenses capture the gravamen of the criminal misconduct; and the remaining offenses are of a type the judges on this court are familiar with. *See id.* The fact that Appellant was sentenced by court members rather than a military judge weighs in favor of resentencing, but only slightly in this case. Significantly, the court members sentenced Appellant to four months of confinement, the minimum term permitted by the plea agreement. We also note the parties stipulated Appellant paid AC to repair the damage to the door. We are confident that without the conviction for damaging AC’s door, the court members would have sentenced Appellant to the same punishment for the remaining offenses.⁵ Accordingly, we reassess Appellant’s sentence to the same sentence originally adjudged by the court members.

III. CONCLUSION

The findings of guilty as to the Specification of the Second Additional Charge are affirmed, excepting the words “a door by punching said door with his fist and.” The findings of guilty as to the excepted words are **SET ASIDE**, and the excepted words are **DISMISSED**. We reassess the sentence to a dismissal, confinement for four months, and a reprimand. The findings, as entered and modified, and the sentence, as entered and reassessed, are correct in law and fact, and no error materially prejudicial to Appellant’s substantial rights occurred. Articles 59(a) and 66(d), UCMJ, 10 U.S.C. §§ 859(a), 866(d).

⁵ We note the language of the adjudged reprimand does not refer to the damaged door.

Accordingly, the findings, as modified, and sentence, as reassessed, are **AF-FIRMED**.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court