

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,

Appellee

v.

Brian E. WENZEL
Master Chief Hospital
Corpsman (E-9)
U.S. Navy,

Appellant

SUPPLEMENT TO PETITION FOR
GRANT OF REVIEW

Crim. App. Dkt. No. 202400282

USCA Dkt. No. 26-0270/NA

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

Marc D. Hendel
LCDR, JAGC, USN
Appellate Defense Counsel
Appellate Defense Division, Code 45
1254 Charles Morris Street SE, Suite 100
Washington Navy Yard, DC 20374
(202) 685-7290
marc.d.hendel.mil@us.navy.mil
CAAF Bar No. 37943

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Issues Presented

I.

Did the lower court err in finding the evidence legally sufficient to support Appellant's conviction for false official statement?

II.

Did the lower court err in conducting its factual sufficiency review of Appellant's conviction for false official statement?

III.

Must special findings be given deference as "findings of fact entered into the record by the military judge" under Article 66(d)(1)(B)(ii)(II), Uniform Code of Military Justice?

Introduction

Appellant's Command Master Chief and close friend asked him in a group text message, "Did you provide a [urinalysis] sample this morning?"¹ In the middle of overseeing deliberations for the command's Junior Sailor of the Quarter (JSOQ) Board at another worksite, Appellant texted back "Squared away."²

When he sent that text, Appellant *was* in fact squared away, as he had been excused from providing a urine sample by the command's Urinalysis Program Coordinator due to his participation on the JSOQ Board.³ And the Command Master Chief did not construe Appellant's text to be a lie, then or later.⁴

Nevertheless, the Military Judge found "Squared away" was a false official statement.⁵ Citing no evidence or legal authority, she found in special findings that "squared away" meant "good to go" or "no problem," and then inexplicably found that "[h]aving an excuse is not 'no problem' or 'good to go.'"⁶ The lower court upheld the conviction in a 2-1 decision that drew a stinging rebuke from the

¹ Pros. Ex. 15 at 2.

² R. at 437-38; Pros. Ex. 15 at 2.

³ R. at 437-43, 639-41; Pros. Exs. 4, 15; Appellate Ex. LVI at 1.

⁴ R. at 442.

⁵ R. at 755.

⁶ Appellate Ex. LXII at 3.

dissenting judge for several obvious reasons that this Court should review.⁷

Statement of Statutory Jurisdiction

Appellant's approved special court-martial sentence includes a finding of guilty.⁸ Upon Appellant's timely appeal, the lower court reviewed this case under Article 66(b)(1)(A), Uniform Code of Military Justice (UCMJ).⁹ Appellant invokes this Court's Article 67(a)(3), UCMJ, jurisdiction.¹⁰

Statement of the Case

The Government charged Appellant with failure to obey a general order, making a false official statement, and wrongful use of a controlled substance in violation of Articles 92, 107, and 112a, UCMJ.¹¹ The Government referred the case to a special court-martial consisting of a military judge alone.¹²

At trial, the Military Judge dismissed or found Appellant not guilty of every offense but the Article 107 charge.¹³ She sentenced Appellant to no punishment.¹⁴

⁷ *United States v. Wenzel*, No. 202400282, slip op. (N-M. Ct. Crim. App. May 11, 2026) (unpublished).

⁸ Entry of Judgment (July 29, 2024).

⁹ 10 U.S.C. § 866(b) (2024).

¹⁰ 10 U.S.C. § 867(a)(3) (2024).

¹¹ Charge Sheet (Dec. 7, 2023); 10 U.S.C. §§ 892, 907, 912a (2018).

¹² R. at 9-12; Charge Sheet.

¹³ R. at 170-71, 639-41, 755; Entry of Judgment.

¹⁴ R. at 833; Entry of Judgment.

The convening authority approved the sentence, and the Military Judge entered the findings and sentence into judgment.¹⁵

In his appeal to the lower court, Appellant challenged the legal and factual sufficiency of the evidence supporting his conviction.¹⁶ In a divided 2-1 decision, the lower court upheld the findings and sentence.¹⁷ Appellant moved for en banc reconsideration, which the lower court denied on June 23, 2026.¹⁸ Appellant then filed a timely petition for review with this Court on August 19, 2026.

¹⁵ Entry of Judgment.

¹⁶ *Wenzel*, slip op. at 2 n.1.

¹⁷ *Wenzel*, slip op.

¹⁸ Defense Motion for En Banc Reconsideration, *United States v. Wenzel*, N-M. Ct. Crim. App. No. 202400282 (June 10, 2026); Denial of Defense Motion for En Banc Reconsideration, *United States v. Wenzel*, N-M. Ct. Crim. App. No. 202400282 (June 23, 2026).

Statement of Facts

A. The command UPC excused Appellant from a command urinalysis due to his official duties at an alternate worksite.

On the morning of July 19, 2023, the Urinalysis Program Coordinator (UPC) for Appellant's command excused him from a routine urinalysis because he was chairing a JSOQ Board at an alternate worksite.¹⁹ Later that day, about an hour after urine collection had ended, Appellant's Command Master Chief, Hospital Corpsman Master Chief (HMCM) Delta, texted Appellant in a group text message chain: "Did you provide a sample this morning?"²⁰ Still in the midst of overseeing the JSOQ Board deliberations, Appellant responded back, "Squared away."²¹

B. HMCM Delta did not interpret Appellant's text of "[s]quared away" as either a lie or an attempt to mislead him.

At the time of the command urinalysis, HMCM Delta had known Appellant for more than twenty years.²² When he first received Appellant's text, he assumed "[s]quared away" meant Appellant had provided a urine sample.²³ When he later saw "ALT WORKSITE" by Appellant's name on the urinalysis muster sheet and

¹⁹ R. at 437-38, 601-06, 639-41; Pros. Exs. 4, 15; Appellate Ex. LVI at 1.

²⁰ R. at 438; Pros. Ex. 15 at 2.

²¹ Pros. Ex. 15 at 2.

²² R. at 435.

²³ R. at 438-39.

spoke with Appellant, he understood that Appellant meant he had been excused from providing a urine sample that day.²⁴ When asked at trial if he believed “squared away” was a lie, HMCN Delta testified, “No.”²⁵ He also testified that he “[did]n’t think [Appellant] intentionally misled [him]” and that “squared away” could have initially been “misinterpreted on [his] part.”²⁶

C. Defense witnesses on the merits testified that Appellant is truthful and has good military character.

The Defense called three witnesses at trial who testified about Appellant’s character.²⁷ These witnesses had a combined seventy-one years of service between them and had collectively led thousands of Sailors while serving in a wide range of leadership positions.²⁸ All three testified that Appellant had good military character and was a truthful person.²⁹

The second character witness was HMCN Charlie who, alongside HMCN Delta, received Appellant’s “Squared away” text message.³⁰ HMCN Charlie testified, on the merits, that Appellant had “good military

²⁴ R. at 438-40, 442; Pros. Ex. 4.

²⁵ R. at 442.

²⁶ R. at 802.

²⁷ R. at 641, 651, 657.

²⁸ R. at 643, 652-53, 658-59.

²⁹ R. at 649, 653-54, 660.

³⁰ R. at 651; Pros. Ex. 15.

character” and “is a truthful person.”³¹ Thus, both recipients of Appellant’s text message testified, but neither alleged Appellant was untruthful.³²

D. Despite finding Appellant had been validly excused from the urinalysis, the Military Judge found his text of “[s]quared away” was a false official statement.

The Military Judge found Appellant’s excusal from urinalysis was valid and acquitted him of wrongfully avoiding urinalysis under Rule for Courts-Martial (R.C.M.) 917.³³ She found there was not “even some evidence of wrongfulness” with respect to Appellant not providing a urine sample that day.³⁴

Despite finding his actions were not wrongful when he did not provide a sample, the Military Judge convicted Appellant of making a false official statement for texting “[s]quared away” to HMCM Delta. In her special findings, she found that “‘squared away’ is commonly meant in the Navy as ‘good to go’ and ‘no problem.’”³⁵ She then found that “[h]aving an excuse [from urinalysis] is not ‘no problem’ or ‘good to go.’”³⁶ She found the “brevity” of the “[s]quared away” text

³¹ R. at 653-54.

³² R. at 442, 653-54.

³³ R. at 639-41; Charge Sheet at 1; *Manual for Courts-Martial, United States*, pt. II, R.C.M. 917 (2023 ed.) [hereinafter MCM].

³⁴ R. at 639-41; Charge Sheet at 1; MCM, pt. II, R.C.M. 917.

³⁵ Appellate Ex. LXII at 3.

³⁶ Appellate Ex. LXII at 3.

demonstrated that Appellant “intended to purposely mislead” HCMCM Delta because other texts Appellant had sent in other communications showed he was a “clear communicator.”³⁷

E. The lower court’s 2-1 majority opinion is followed by an eight-page detailed dissent.

The majority begins its legal analysis by crafting a list of elements “as charged”—but in so doing, it does not write that the Government needed to prove “squared away” was totally false or false in certain particulars.³⁸ Instead, the majority crafts an element that required the Government to prove only that Appellant’s text “conveyed” something false.³⁹ The majority then discusses the context of HCMCM Delta’s question, but does not address the context of Appellant’s text.⁴⁰ It then discusses what Appellant’s text “would most reasonably convey” instead of whether it was false.⁴¹ And it concludes that Appellant’s conviction is legally sufficient.⁴²

The minority concludes that Appellant’s conviction was legally and factually

³⁷ Appellate Ex. LXII at 3-4.

³⁸ *Wenzel*, slip op. at 7.

³⁹ *Id.*

⁴⁰ *Id.* at 8-9.

⁴¹ *Id.* at 9.

⁴² *Id.* at 10.

insufficient.⁴³ The dissenting judge first notes that “[t]he record is almost devoid of evidence that Appellant received actual notice of the 19 July 2023 urinalysis” before urinalysis testing had closed for the day.⁴⁴ Then, unlike the majority, the dissent notes the second element of Article 107 is that “the statement was false in certain particulars.”⁴⁵ And instead of tacitly adopting the Military Judge’s definition of “squared away” as the majority did, the dissenting judge provides definitions from independent secondary and scholarly sources.⁴⁶ The minority opinion cites this Court’s holding in *United States v. Evans*: “[t]he prosecution has the burden of negating any reasonable interpretation that would make [the accused’s] statement factually correct.”⁴⁷ It concludes Appellant’s text was true:

Here, once Appellant was excused from participating in the 19 July 2023 urinalysis, he had met his legal obligation regarding providing a urine sample. Put simply, once he was excused from his obligation, Appellant had placed everything into order. As such, when he sent the text message at 1200 to HMCM Delta and HMCM Charlie, one hour after the urinalysis testing closed, he was legally and factually “squared away,” and the text message was a true statement.⁴⁸

⁴³ *Id.* at 13 (McCoy, J., dissenting).

⁴⁴ *Id.* at 13-14 (McCoy, J., dissenting).

⁴⁵ *Id.* at 16 (citing MCM, pt. IV, para. 41.b.(1) at IV-54) (McCoy, J., dissenting).

⁴⁶ *Id.* at 17 & nn.37-39 (McCoy, J., dissenting); *see also id.* at 9 & n.36 (the majority does not propose a definition for “squared away” and instead cites to the Military Judge’s definition).

⁴⁷ *Id.* at 18 (citing *United States v. Evans*, 37 M.J. 468, 471 (C.A.A.F. 1993)) (McCoy, J., dissenting).

⁴⁸ *Id.* at 18 (McCoy, J., dissenting).

Reasons to Grant Review

I.

This Court should review the lower court’s errors in conducting its legal sufficiency review of Appellant’s conviction for false official statement.

This Court should review the issue of legal sufficiency in this case for several reasons. First, the lower court majority’s legal sufficiency holding conflicts with applicable decisions of the Supreme Court and this Court.⁴⁹ Second, this case was decided by a divided vote, wherein the minority appellate judge explicitly (and cogently) found the evidence legally *insufficient* to support Appellant’s conviction.⁵⁰ And third, in reaching its conclusion, the lower court majority applied an incorrect test for legal sufficiency, which “so far departed from the accepted and usual course of judicial proceedings” that this Court should review.⁵¹

A. The lower code incorrectly applied *Arondel De Hayes* and Supreme Court precedent.

The precedent set in *United States v. Arondel De Hayes* and *Bronston v. United States* is clear: the law punishes provably false statements, not ambiguous

⁴⁹ Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces (amended Sept. 26, 2025), Rule 21(b)(5)(B) [hereinafter Rule(s)].

⁵⁰ *Wenzel*, slip op. at 13-20 (McCoy, J., dissenting); Rule 21(b)(5)(E).

⁵¹ Rule 21(b)(5)(F).

or unresponsive ones that a questioner fails to clarify.⁵² In *Arondel De Hayes*, the Court of Military Appeals, citing the Supreme Court, held that “a statement which is technically, literally, or legally true cannot form the basis for [a false official statement] conviction, even if the statement succeeds in misleading or confusing the questioner.”⁵³ Appellant’s statement was technically, legally, and literally true. When HCMC Delta asked Appellant, “Did you provide a sample this morning?” Appellant did not say “yes, I provided a urine sample.”⁵⁴ He said, “Squared away.”⁵⁵ And he *was* squared away—he had been validly excused by the UPC and therefore did not need to provide a sample.⁵⁶

Even the Military Judge found Appellant’s excusal to be valid, and acquitted him of “wrongfully and intentionally avoiding to provide a urine sample for urinalysis.”⁵⁷ Thus, even assuming Appellant actually intended to deceive

⁵² *United States v. Arondel De Hayes*, 22 M.J. 54, 55-56 (C.M.A. 1986); *Bronston v. United States*, 409 U.S. 352, 357-62 (1973).

⁵³ *Arondel De Hayes*, 22 M.J. at 55 (citing *Bronston*, 409 U.S. 352; *United States v. Purgess*, 33 C.M.R. 97 (C.M.A. 1963)); *see also Thompson v. United States*, 604 U.S. 408, 418 (2025).

⁵⁴ Pros. Ex. 15 at 2.

⁵⁵ Pros. Ex. 15 at 2.

⁵⁶ R. at 439-40; Pros. Exs. 4, 15 at 2; *see also* Appellate Ex. LVI at 1 (“You [the Urinalysis Program Coordinator] excused HCMC Wenzel from urinalysis that day because you all were in the board.”).

⁵⁷ R. at 639-41; Charge Sheet at 1; MCM, pt. II, R.C.M. 917.

HCMC Delta with a somewhat ambiguous response, Appellant's conviction cannot stand because there is not legally sufficient evidence that his text of "Squared away" was technically, literally, and legally false.

1. By any judicially-proposed definition of "squared away," Appellant's statement was technically, literally, and legally true.

Under any of the definitions provided by either the Military Judge or the lower court, Appellant was "squared away."⁵⁸ Applying the Military Judge's definition, which was tacitly adopted in the lower court majority's opinion, Appellant was "good to go" and there was "no problem" because he was validly excused from that day's urinalysis.⁵⁹ Thus, he *was* squared away. The same is true under the dissent's definition: Appellant was squared away because his obligation to provide a urine sample had been "put in proper order" and "straighten[ed]."⁶⁰

⁵⁸ *Wenzel*, slip op. at 9 & n.36; Appellate Ex. LXII at 3 (definition created by the Military Judge, tacitly adopted by the majority opinion); *see also* *Wenzel*, slip op. at 17 & nn.37-39 (McCoy, J., dissenting) (definitions derived from secondary and scholarly sources).

⁵⁹ Appellate Ex. LXII at 3; *Wenzel*, slip op. at 9 & n.36; *see also* R. at 639-41; Charge Sheet at 1; MCM, pt. II, R.C.M. 917.

⁶⁰ *Wenzel*, slip op. at 17 & nn.37-39 (McCoy, J., dissenting).

Importantly, even the text message’s recipient, HMCN Delta, testified that he did *not* “believe squared away was a lie.”⁶¹

2. Even when viewed in the light most favorable to the prosecution, Appellant’s text was at worst unresponsive, not false.

The majority opinion relies on an incorrect application of this Court’s decision in *United States v. Arondel de Hayes* and the lower court’s own decision in *United States v. Jacquez*.⁶² In *Jacquez*, the lower court cited *Arondel de Hayes* in concluding that “unresponsive answers to unambiguous questions that are ‘technically, literally, or legally true cannot form the basis for [a false official statement] conviction’”⁶³ The lower court further explained that “‘literally true, but unresponsive answers are to be remedied through more precise

⁶¹ R. at 442. And the other text message recipient, HMCN Charlie, testified on the merits that Appellant “had “good military character” and “is a truthful person.” R. at 653-54.

⁶² *United States v. Jacquez*, No. 201200201, 2012 CCA LEXIS 382 (N-M. Ct. Crim. App. Oct. 10, 2012) (unpublished) (holding that an unresponsive answer about the nature of an appellant’s relationship with a woman was not sufficient evidence to sustain a conviction for false official statement) (applying *Arondel De Hayes*, 22 M.J. 54).

⁶³ *Id.* at *4 (quoting *Arondel De Hayes*, 22 M.J. at 55).

questioning,” not a conviction for false official statement.⁶⁴ This correct reasoning of *Jacquez* and *Arondel de Hayes* applies in this case.

Here, Appellant’s text, even when viewed in the light most favorable to the prosecution, was at worst unresponsive. HMCN Delta asked Appellant, “Did you provide a sample this morning?”⁶⁵ A responsive answer would have been “yes” or “no” (either Appellant *did* provide a sample or he *did not*). But “squared away” is not a yes or no answer; it is a response that lacks the clarity of yes or no and is thus technically unresponsive at worst, but not legally false.

Appellate courts have regularly found unresponsive answers insufficient to sustain convictions for various *crimen falsi*, such as the following:

- During a bankruptcy hearing, an appellant was asked if he had ever had *any* Swiss bank accounts.⁶⁶ He responded, “*The company* had an account there for about six months, in Zurich.”⁶⁷ This unresponsive answer implied that he never

⁶⁴ *Id.* (quoting *Arondel De Hayes*, 22 M.J. at 56).

⁶⁵ Pros. Ex. 15 at 2.

⁶⁶ *Bronston*, 409 U.S. at 354 (emphasis added).

⁶⁷ *Id.* (emphasis added).

had any personal Swiss bank accounts, even though he did. But the unresponsive answer was held insufficient to sustain a perjury conviction.⁶⁸

- An appellant testified that she “would” handle a financial transaction in a certain way, not that she “did” handle the financial transaction in that way.⁶⁹ Because her testimony about what she “would” routinely do was not provably false (although it may have been misleading), one of her convictions for making a false material statement before a federal grand jury was reversed on appeal.⁷⁰

- A law enforcement officer, asking the appellant about his relationship with a woman, asked if there was “anything more to this than friendship.”⁷¹ The appellant told the interrogator it was a “close friendship,” or words to that effect, but failed to disclose the relationship was adulterous and sexual.⁷² The lower court found that the appellant’s answer, which was not fully responsive, was insufficient to support his conviction for making a false official statement.⁷³

⁶⁸ *Id.* at 357. (“[T]he statute does not make it a criminal act for a witness to willfully state any material matter that *implies* any material matter that he does not believe to be true.”).

⁶⁹ *United States v. Abrams*, 568 F.2d 411, 422 (5th Cir. 1978).

⁷⁰ *Id.* at 423.

⁷¹ *Jacquez*, 2012 CCA LEXIS 382, at *5.

⁷² *Id.* at *2-6.

⁷³ *Id.* at *8-9.

Here, Appellant’s text, when viewed in a light most favorable to the Government, was unresponsive but true. It was the Government’s burden to prove “squared away” was false—but it did not even put forward a definition. Even under the definitions offered by the Military Judge, Appellant’s statement was true—and thus the evidence is legally insufficient to support his conviction.

B. The lower court majority opinion erroneously analyzes an incorrect charged element.

The lower court majority opinion incorrectly described the charged elements as follows:

- (1) That Appellant made to HCMC [Delta] a certain official statement, that is: “Squared away”;
- (2) That such statement was false in that it conveyed that Appellant had provided a urine sample when Appellant had not provided a urine sample;
- (3) That Appellant knew it to be false at the time he made it; and
- (4) That the false statement was made with the intent to deceive.⁷⁴

1. The second element in the lower court’s interpretation of the elements is incorrect and presumes the meaning of “squared away.”

The majority opinion erroneously includes in the second element a clause about what Appellant’s statement “conveyed.” The issue this element should

⁷⁴ *Wenzel*, slip op. at 7 (citing MCM, pt. IV, para. 41.b.(1) at IV-54.).

address is only whether the language of the statement was false—not whether what it “conveyed” was false. In modifying the second element in this legally impermissible way by adding in a clause about what the statement conveyed (“That such statement was false *in that it conveyed that Appellant had provided a urine sample*”), the lower court majority presumes the very thing the Government needed to prove—that Appellant’s statement was false if it “conveyed” that Appellant had provided a urine sample.⁷⁵

The first two elements of Article 107 in the Manual for Courts-Martial are (1) “That the accused signed a certain official document or made a certain official statement;” and (2) “That the document or statement was false in certain particulars.”⁷⁶ Because the charged false official statement was “Squared away,” the second element should be, “That the statement ‘squared away’ was totally false” or “That the statement ‘squared away’ was false in certain particulars, to wit: . . . [what those particulars are].”⁷⁷ The majority opinion’s second element, while based on the erroneous charging language of the specification, departs from the

⁷⁵ *Id.*

⁷⁶ MCM, pt. IV, para. 41.b.(1) at IV-54.

⁷⁷ *Id.*; Charge Sheet.

elements in the Manual for Courts-Martial and the statute.⁷⁸ This error, in turn, tainted the lower court majority's analysis of both legal and factual sufficiency.

2. The Government introduced no direct evidence of the definition of “squared away.”

Despite having the burden to show that the statement “Squared away” was false, the Government presented no direct evidence of its definition or meaning. The Government elicited no testimony about how Appellant used the term in other contexts, how HCMCM Delta interpreted the term in other contexts, or how other Sailors attached to Navy Medicine Readiness and Training Command (NMRTC) Jacksonville generally used the term. The only evidence elicited at trial regarding the meaning of “squared away” was HCMCM Delta's testimony that, in context, it

⁷⁸ 10 U.S.C. §907 (2018); MCM, pt. IV, para. 41.b.(1) at IV-54.

could have meant *either* that Appellant provided a urine sample *or* that Appellant was excused from urinalysis.⁷⁹

When determining whether the Government carried its burden of proof during its factual and legal sufficiency review, appellate courts are “limited to the evidence presented at trial.”⁸⁰ How the term “squared away” was used at NMRTC Jacksonville is not within the Military Judge’s “knowledge of human nature and the ways of the world.”⁸¹ The lack of evidence presented at trial about the meaning of this expression at NMRTC Jacksonville, when combined with HMCM Delta’s testimony that squared away could mean “yes or a no” and “was [not] a lie,” is

⁷⁹ R. at 418, 440-42; *Wenzel*, slip op. at 5 (“HMCM [Delta] did not believe the ‘Squared away’ response was a lie.”); *Purgess*, 33 C.M.R. at 100 (“At best, the Government’s contention amounts to a claim that an admitted ambiguity should be construed in its favor. We decline to do so, believing the correct position to be that doubts as to the meaning of allegedly false testimony should be resolved in favor of truthfulness.”); *see also* R. at 802 (HMCM Delta’s pre-sentencing testimony: “I could see now how squared away could have been misinterpreted on my part. . . . I need to be able to do better on my part about following up and asking more directly is that a yes or a no.”).

⁸⁰ *United States v. Pease*, 75 M.J. 180, 184 (C.A.A.F. 2016) (citation omitted); *United States v. Beatty*, 64 M.J. 456, 458 (C.A.A.F. 2007).

⁸¹ Appellate Ex. LXII at 1; *see also United States v. Frey*, 73 M.J. 245, 250 (C.A.A.F. 2014) (holding that “ways of the world” cannot be argued in lieu of evidence in the record); *United States v. Torres*, No. 201300396, 2014 CCA LEXIS 641, at *16-17 (N-M. Ct. Crim. App. Aug. 28, 2014) (unpublished) (explaining that a military judge may apply the “ways of the world” in weighing the credibility of the evidence that is already in the record).

enough to conclude that the Government failed to carry its burden of proof as to the falsity of the statement employing that term.⁸²

The evidence presented at trial—even when viewed in the light most favorable to the prosecution—did not include a precise definition of “squared away.” In fact, it demonstrated the opposite: that “squared away” could have multiple meanings, including meanings that were true in the context of Appellant’s text. The conviction is therefore not legally sufficient, for which this Court should grant review.

⁸² R. at 442; *see also* R. at 802.

C. For Appellant’s conviction to be legally sufficient, the Government must have proved there is no reasonable interpretation of Appellant’s text that would make it factually true. The lower court majority erroneously misapplied this legal standard.

The legal sufficiency test laid out in *United States v. King* is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”⁸³ Here, the essential element subject to the erroneous analysis is whether “squared away” was false.⁸⁴ In *Evans*, this Court held that a statement is false if there is “[no] reasonable interpretation that would make [it] factually correct.”⁸⁵

Combining *King* and *Evans*, the correct legal sufficiency test for the second element of false official statement is: “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found” that there is “[no] reasonable interpretation that would make [a defendant’s]

⁸³ *United States v. King*, 78 M.J. 218, 221 (C.A.A.F. 2019) (citations omitted).

⁸⁴ MCM, pt. IV, para. 41.b.(1) 41.b.(1)(b) (“That the document or statement was false in certain particulars.”).

⁸⁵ *Evans*, 37 M.J. at 471 (“The prosecution has the ‘burden of negating any reasonable interpretation that would make [Sergeant Evans’] statement factually correct.”) (quoting *United States v. Race*, 632 F.2d 1114, 1120 (4th Cir. 1980)) (alteration in original) (additional citation omitted).

statement factually correct.”⁸⁶ In other words, the correct test is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the *only* reasonable interpretation of Appellant’s statements is not factually correct.

1. The majority opinion fails to properly apply the correct legal sufficiency standard.

The lower court majority failed to properly apply this controlling holding from *Evans*. This majority’s incorrect application is seen in its analogy to a hypothetical superior’s inquiry to a subordinate about completing a report, wherein the majority concluded that “a ‘Squared away’ response would *most reasonably* convey that [the subordinate submitted the report].”⁸⁷ The majority opinion thus creates and applies a new legal rule to the hypothetical—whether the “*most* reasonabl[e]” interpretation of a statement is factually correct. But this rule conflicts with this Court’s actual rule, which requires the government to disprove “*any* reasonable interpretation” of a statement that would make it factually correct.⁸⁸

⁸⁶ *Id.*; *King*, 78 M.J. at 221.

⁸⁷ *Wenzel*, slip op. at 9 (emphasis added).

⁸⁸ *Evans*, 37 M.J. at 471 (citations omitted) (emphasis added).

The lower court majority opinion then incorporates a version of its erroneous new legal test into its legal sufficiency analysis, finding Appellant’s conviction legally sufficient because “a rational trier of fact could have found [Appellant’s text] to be an affirmative, and thus false, response”⁸⁹ But, as outlined above, Appellant’s conviction is legally sufficient only if, when viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the *only* reasonable interpretation of “squared away” is an affirmative, and thus false, response.⁹⁰

This Court should review the erroneous new test created by the majority, which fails whenever a statement could have multiple meanings—some true and some false—because it is wrong to sustain a conviction for an alleged false official statement when only one of multiple *reasonable* interpretations is false. Here, applying its new test, the majority opinion incorrectly answers the wrong question: whether “a rational trier of fact *could* have found [Appellant’s text] to be an affirmative.”⁹¹ This Court should review this error and apply the right legal standard: whether a rational trier of fact, when viewing the evidence in the light

⁸⁹ *Wenzel*, slip op. at 9 (emphasis added).

⁹⁰ *Compare Wenzel*, slip op. at 9, *with Evans*, 37 M.J. at 471.

⁹¹ *Wenzel*, slip op. at 9 (emphasis added).

most favorable to the prosecution, could have found that Appellant's text could *only* be reasonably interpreted to be an affirmative.

2. Because the evidence supports a reasonable interpretation of “squared away” that is factually correct, it is insufficient to support a conviction for false official statement.

It may be true that, when the evidence is viewed in the light most favorable to the prosecution, a rational trier of fact *could* have found that “squared away” could reasonably be interpreted to mean Appellant provided a urine sample. But, applying the correct test, *no* rational trier of fact could have found that the *only* reasonable interpretation of “squared away” is that Appellant provided a urine sample. Rather, even when the evidence is viewed in the light most favorable to the prosecution, a rational trier of fact could have found that “squared away” could reasonably be interpreted to mean *either* “I provided a sample” *or* “I was excused from providing a sample.”⁹² Indeed, the person to whom the statement was texted, HMCN Delta, admitted exactly that during his testimony.⁹³

⁹² Evidence of a truthful reasonable interpretation of “squared away” is found in HMCN Delta's testimony that “squared away was [not] a lie,” HMCN Charlie's testimony that Appellant is a “truthful person,” and the dissenting Judge's same conclusion that “squared away” was not a lie. R. at 442, 653-54; *Wenzel*, slip op. at 13-20 (McCoy, J., dissenting); *see also* R. at 802.

⁹³ R. at 442; *see also* R. at 802.

And because there is a reasonable interpretation that makes Appellant's statement factually correct, the lower court erred by affirming his conviction. In fact, neither the majority opinion nor the Military Judge found that either of HMC Delta's interpretations of "squared away" was unreasonable, thus there is legally *insufficient* evidence under *Evans* to sustain the conviction.⁹⁴ This Court should grant review to address this cascading of errors caused by the lower court majority's invention and application of the wrong legal standard.

D. Appellant's statement was true in the context of the text conversation.

The majority opinion also errs by applying *United States v. Allen* incorrectly when it concludes that Appellant's statement was untrue in the "context" in which it was made.⁹⁵ While it is true that "at least some context is relevant to determining whether a statement is false,"⁹⁶ Appellant's text, in context, was actually true.

The context of HMC Delta's inquiry was a group text conversation about Appellant's schedule *and* the 19 July 2023 urinalysis.⁹⁷ Appellant's response was true in the context of that conversation, and he stated that he "[r]an way late" when

⁹⁴ *Evans*, 37 M.J. at 471 (citations omitted).

⁹⁵ *Wenzel*, slip op. at 8; *United States v. Allen*, 27 M.J. 234, 237 (C.M.A. 1988).

⁹⁶ *Thompson*, 604 U.S. at 418.

⁹⁷ Pros. Ex. 15 at 2.

“scoring and deliberating the JSOQ [Junior Sailor of the Quarter] board.”⁹⁸ Thus, in this context, it would be reasonable to interpret his text—sent while Appellant was chairing a JSOQ board and multitasking—as a quick, undetailed response meaning something other than “yes” to the question. While in hindsight, “excused” may have been a preferable text for Appellant to have sent, as the majority opinion suggests,⁹⁹ that is not the legal standard of criminality for false official statements, which does not require servicemembers to use the most precise language possible at all times (including while chairing a JSOQ board).

The lower court majority opinion arrives at the wrong conclusion by misinterpreting the term “context” in a way that conflicts with the Supreme Court’s use of that term. The majority writes, “Appellant could have been squared away in any other context, but he was not squared away in the only context that mattered: he did not provide a urine sample that morning.”¹⁰⁰ But “context” does not mean “what is the literal answer to the question asked,” which ignores (as opposed to

⁹⁸ Pros. Ex. 15 at 2.

⁹⁹ *Wenzel*, slip op. at 10.

¹⁰⁰ *Id.* at 8.

considers) the surrounding circumstances. Rather, as the Supreme Court has discussed, “context” means the circumstances “in which [a statement] is made.”¹⁰¹

Here, Appellant’s statement was made in the context of a text conversation with HMCM Delta about the day’s urinalysis *and* the JSOQ board running late. And his statement was true in that context: even though the JSOQ board ran late, he was squared away regarding that day’s urinalysis.

¹⁰¹ *Thompson*, 604 U.S. at 419 (“[I]n considering whether a statement is ‘false,’ judges and juries must view the statement in ‘the context in which it is made.’”) (quoting *United States v. Briggs*, 592 U.S. 69, 72 (2020)) (Alito, J., concurring); *see also* Merriam-Webster’s Online Dictionary, <https://www.merriam-webster.com/dictionary/context> (last visited Sept. 15, 2026) (defining “context” as “the parts of a discourse that surround a word, phrase, or passage and that help to explain its meaning” and “the situation in which something happens”).

II.

This Court should review the lower court’s factual sufficiency review, which is premised on the same legal errors discussed above.

This Court should grant review of this issue for the same reasons discussed above: the lower court’s factual sufficiency review conflicts with precedent, is the subject of a split decision, and is a marked departure from the accepted course of judicial proceedings.¹⁰² The entirety of the lower court’s factual sufficiency analysis, upon finding it triggered, is as follows:

We have in turn weighed the evidence subject to appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence, and appropriate deference to findings of fact entered into the record by the military judge, and we are not clearly convinced that the finding of guilty was against the weight of the evidence.¹⁰³

As such conclusory treatment makes it impossible to discern what evidence the court considered or how it satisfied each essential element, this Court should grant review and “provide crisp, clear guidance” to the service courts about how to

¹⁰² Rules 21(b)(5)(B), (E), (F).

¹⁰³ *Wenzel*, slip op. at 11-12.

conduct their statutorily required factual sufficiency review.¹⁰⁴

As analyzed above with respect to its legal sufficiency review, the lower court majority erred in analyzing the second charged element (and various other ways).¹⁰⁵ As such, this Court should not be confident in the court’s analysis of the same legal issues when conducting its factual sufficiency review. Given these errors, this Court should grant review, provide legal guidance as to the appropriate elements and evidence, and remand for the lower court to conduct a new factual sufficiency review in light of its guidance.

¹⁰⁴ *United States v. Flores*, 84 M.J. 277, 284 (C.A.A.F. 2024) (Ohlson, C.J., concurring in part and dissenting in part); *see also United States v. Nerad*, 69 M.J. 138, 147 (C.A.A.F. 2010) (remanding a case where there was an “open question” as to whether a lower court’s review of a case “was consistent with a correct view of the law”).

¹⁰⁵ *Wenzel*, slip op. at 7.

III.

This Court should grant and decide the issue of first impression as to whether “special findings” are or are not “findings of fact entered into the record by the military judge” that must be given appropriate deference under Article 66(d)(1)(B)(ii)(II), UCMJ.

In *United States v. Harvey*, this Court stated:

We note that Article 66(d)(1)(B)(ii)(II), UCMJ, also requires that the CCAs give “appropriate deference to findings of fact entered into the record by the military judge.” Appellant asserts that this provision is not at issue in this case and does not rely on it. Accordingly, we express no opinion on its meaning.¹⁰⁶

The Court has not discussed this subparagraph since *Harvey*. However, the lower court in this case specifically held that “special findings are exactly [the findings of fact referenced in Article 66(d)(1)(B)(ii)(II)].”¹⁰⁷ Accordingly, this issue of first impression presents “a question of law that has not been, but should be, settled by this Court.”¹⁰⁸

It matters whether special findings are afforded deference in a factual sufficiency review. Here, the only place in the Record where “squared away” is

¹⁰⁶ *United States v. Harvey*, 85 M.J. 127, 131 n.2 (C.A.A.F. 2024).

¹⁰⁷ *Wenzel*, slip op. at 12 n.42 (“Appellant disputes that special findings made pursuant to Rule for Courts-Martial 918(b) are ‘findings of fact entered into the record by the military judge’ as used in Article 66(d)(1)(B)(ii)(II). We conclude that special findings are exactly that.”).

¹⁰⁸ Rule 21(b)(5)(A).

defined is within the Military Judge’s special findings, which created and employ a definition of that term drawn from thin air.¹⁰⁹ Thus, this Court should settle whether a military judge’s special findings must be afforded deference in this (or any other) context; whether or not they can be considered evidence that is part of the record during factual sufficiency review; and whether the lower court’s factual sufficiency review was flawed for granting deference to them.

Arguably, the “findings of fact” which must be granted deference under Article 66(d)(1)(B)(ii)(II) do *not* include special findings because factual sufficiency review involves a weighing of “the evidence” and special findings are not “evidence.”¹¹⁰ Only the underlying “evidence at trial,” introduced on the merits, including adjudicative facts, testimony, and documentary evidence, should be weighed in determining if a conviction is factually sufficient—not “facts” invented in the Military Judge’s post-conviction special findings.¹¹¹

¹⁰⁹ Appellate Ex. LXII at 3.

¹¹⁰ 10 U.S.C. § 866(d) (2024); MCM, R.C.M. 918(b). In contrast, an adjudicative fact noticed pursuant to R.C.M. 201, while not applicable in this case, is an example of “evidence” that a court of criminal appeals should weigh to determine the factual sufficiency of the findings.

¹¹¹ 10 U.S.C. § 866(d) (2024); *Pease* 75 M.J. at 185 (“Article 66(c), UCMJ, requires the Courts of Criminal Appeals to conduct a factual sufficiency review by determining whether *the evidence at trial* proves an appellant’s guilt beyond a reasonable doubt.”) (discussing a previous version of Article 66, UCMJ)(emphasis added); *Beatty*, 64 M.J. 64 at 458.

Excluding special findings from facts that can be relied upon in factual sufficiency review also prevents the potential conflict that could occur in a judge-alone court-martial where a court of criminal appeals would be mandated to simultaneously provide one level of deference to the military judge as “the trial court [that] saw and heard the witnesses and other evidence” and a different level of deference to the Military Judge as one who enters “findings of fact . . . into the record.”¹¹² As there is no evidence that Congress ever intended to create a potential conflict between the two prongs of Article 66(d)(1)(B)(ii), the existence of special findings should not alter or affect the level of deference given to “the trial court [that] saw and heard the witnesses and other evidence.”¹¹³

Conclusion

Appellant therefore respectfully requests that this Court grant review to address these issues.

¹¹² 10 U.S.C. § 866(d)(1)(B)(ii)(I)-(II) (2024). In a judge-alone court-martial, the Military Judge *is* “the trial court [that] saw and heard the witnesses and other evidence.”

¹¹³ *Id.*

Respectfully submitted.

//s//

Marc D. Hendel
LCDR, JAGC, USN
Appellate Defense Counsel
Appellate Defense Division, Code 45
1254 Charles Morris Street SE, Suite 100
Washington Navy Yard, DC 20374
(202) 685-7290
marc.d.hendel.mil@us.navy.mil
CAAF Bar No. 37943

Appendix

A. *United States v. Wenzel*, No. 202400282, slip op. (N-M. Ct. Crim. App. May 11, 2026) (unpublished).

Certificate of Compliance

1. This brief complies with the type-volume limitations of Rule 21(b) because it contains 6,333 words.
2. This brief complies with the typeface and type style requirements of Rule 37 because it has been prepared in 14-point, Times New Roman font.

//s//

Marc D. Hendel
LCDR, JAGC, USN
Appellate Defense Counsel
Appellate Defense Division, Code 45
1254 Charles Morris Street SE, Suite 100
Washington Navy Yard, DC 20374
(202) 685-7290
marc.d.hendel.mil@us.navy.mil
CAAF Bar No. 37943

Certificate of Filing and Service

I certify that I delivered the foregoing to the Court and opposing counsel at Code46-DAC@us.navy.mil on September 15, 2026.

//s//

Marc D. Hendel
LCDR, JAGC, USN
Appellate Defense Counsel
Appellate Defense Division, Code 45
1254 Charles Morris Street SE, Suite 100
Washington Navy Yard, DC 20374
(202) 685-7290
marc.d.hendel.mil@us.navy.mil
CAAF Bar No. 37943

This opinion is subject to administrative correction before final disposition.

United States Navy-Marine Corps
Court of Criminal Appeals

Before
DALY, HARRELL, and McCOY
Appellate Military Judges

UNITED STATES
Appellee

v.

Brian E. WENZEL
Master Chief Hospital Corpsman (E-9), U.S. Navy
Appellant

No. 202400282

Decided: 11 May 2026

Appeal from the United States Navy-Marine Corps Trial Judiciary

Military Judge:
Rachel E. Trest

Sentence adjudged 25 April 2024 by a special court-martial tried at Naval Air Station Jacksonville, Florida, consisting of a military judge sitting alone. Sentence in the Entry of Judgment: no punishment.

For Appellant:
Lieutenant Commander Marc D. Hendel, JAGC, USN

For Appellee:
Commander John T. Cole, JAGC, USN
Lieutenant Stephanie N. Fisher, JAGC, USN

Senior Judge HARRELL delivered the opinion of the Court, in which Chief Judge DALY joined. Judge McCOY filed a dissenting opinion.

**This opinion does not serve as binding precedent but
may be cited as persuasive authority under
NMCCA Rule of Appellate Procedure 30.2.**

HARRELL, Senior Judge:

After being excused from his command’s two previous urinalyses, Appellant’s name appeared for a third time in 12 days on the urinalysis testing register. Appellant’s command master chief texted him after the testing window closed, asking, “Did you provide a sample this morning?” Appellant did not provide a urine sample that morning, but he replied, “Squared away.” In the Government’s view, that was an affirmative response to the question, and thus, a lie. Appellant claims, as he did at trial for making a false official statement and other offenses, that his statement was true—he was in fact squared away since he was excused from providing a sample that day—and the finding of guilty is thus legally and factually insufficient.¹ We disagree and affirm the findings and sentence.

I. BACKGROUND

Urinalyses for Navy Medical Readiness and Training Command (NMRTC) Jacksonville personnel are conducted at Naval Hospital Jacksonville within a strict time window of 0700–1100.² This applies equally to those personnel working at Branch Health Clinic Jacksonville, “maybe a couple miles away

¹ Appellant raises the following assignments of error:

- I. Is the evidence factually sufficient to sustain Appellant’s conviction for false official statement where Appellant texted “squared away” regarding a urinalysis from which he had been excused?
- II. Is the evidence legally sufficient to sustain Appellant’s conviction for false official statement in light of *Thompson v. United States*, 145 S. Ct. 821 (2025), which held that even statements that are misleading are not necessarily false?

² R. at 453–54.

from the hospital.”³ Random lists are generated the day before a urinalysis, and the Assistant Urinalysis Program Coordinator (UPC) emails notifications with the lists “to all the directorates and the Chiefs Mess and all the [Leading Petty Officers] of the command” between 0500–0515 on testing days.⁴ The UPC also sends the list via text message to the NMRTC chief petty officers on the morning of testing days.⁵

The command conducted a random urinalysis on 7 July 2023, and Appellant’s name appeared on the list. Commander (CDR) Mike,⁶ the Associate Director of the Branch Health Clinics, texted Appellant, the Senior Enlisted Leader of the same, at 0619 that day, “Morning! You are in the urinalysis list this AM, enjoy!”⁷ Appellant responded at 0911, “Crap! I just saw this! I’m at a conference. CAPT knew about but I totally forgot to put it on your calendar. 🙄 My apologies.”⁸ CDR Mike responded with a thumbs up on Appellant’s text message. CDR Mike testified that he was unaware of Appellant’s attendance of a conference that day, but Master Chief Hospital Corpsman (HMCM) Delta, the Command Master Chief, testified that Appellant had told him about it. Appellant was excused from that day’s urinalysis with a notation of temporary additional duty on the urinalysis testing register.⁹

As a matter of policy, since Appellant missed the urinalysis, he was automatically rolled to the next random urinalysis, which occurred on 13 July 2023. He texted HMCM Delta at 0528 that morning, “Having a massive flare up. Been in the bathroom since 3. 🤢 I know I’m on the list. I’ll be there as soon as I can. It’s been like all week. . . . Not going to lie. I feel like absolute 🤡 today.”¹⁰ HMCM Delta responded, “Take your time and be safe. Let me know if you need anything.”¹¹

Appellant texted CDR Mike at 0926:

³ R. at 466, 572–73.

⁴ R. 454, 464.

⁵ R. at 400.

⁶ All names in this opinion, other than those of Appellant, the judges, and counsel, are pseudonyms.

⁷ Pros. Ex. 9.

⁸ Pros. Ex. 9.

⁹ Precisely how this and the other excusals were formally effected is unclear from the record.

¹⁰ Def. Ex. A at 1.

¹¹ Def. Ex. A at 1.

This is bad sir. Like pissing water out of my ass every 20 minutes bad. Can't be something I ate because I didn't eat yesterday. 🤔👁️ I don't know if I've ever asked you but would you mind writing me [a sick in quarters (SIQ)] chit? Just to put it on record to cover [the UPC] for urinalysis. (Trust me, I'm not trying to dodge it!) I haven't felt this crappy (pun intended) in some time. This has been going on since Saturday. Just annoying and tiring up til now. I'm pushing electrolytes and resting. I'm glad Master Chief is there. Thanks boss. I'll be in Mayport tomorrow . . . Sorry for the long text. I'll give you a guess where I'm sitting? 🤔👁️🤔👁️ Thanks again sir.

. . . .

I told [the UPC] to get me on the next pee list so his records are gtg. Think I'm going to close my eyes for awhile. Everything good on your end? . . .¹²

CDR Mike responded, "All good here, feel better."¹³ CDR Mike testified that he knew Appellant suffered from irritable bowel syndrome (IBS). Appellant was excused from that day's urinalysis with a notation of SIQ on the urinalysis testing register.

HMCN Delta texted Appellant later at 1157, asking, "Did you pee for your country?"¹⁴ Appellant responded:

CDR [Mike] placed me SIQ brother. I had him do the paperwork this time (usually it's just "stay home and rest. That's really the only treatment according to GI, so that's what we do) I wanted to make sure [the UPC] accounted for all personnel. I think today is the worst of it. I'm still having episodes after 3 doses of immodium. . . .¹⁵

Appellant was again rolled to the next urinalysis, which occurred on 19 July 2023. The UPC texted the chief petty officers at 0512 that morning with the urinalysis list.¹⁶ Appellant's name was on it. Appellant chaired the Junior Sailor of the Quarter (JSOQ) Board at Branch Health Clinic Jacksonville that

¹² Pros. Ex. 10.

¹³ Pros. Ex. 10 at 3.

¹⁴ Pros Ex. 13; Def. Ex. A at 2.

¹⁵ Pros. Ex. 13; Def. Ex. A at 2.

¹⁶ Pros. Ex. 14 at 1.

morning, which began at approximately 0830.¹⁷ Appellant texted HMC Delta at 0849:

Going on day 8 of this IBS attack. 🙄🙄🙄 Let's just say wearing whites today is risky. I will be at SOQ boards this morning if you need anything. We'll see how I'm feeling after the board is over. I'm spent. Brother, as embarrassing as this is, I didn't make it to the head in time this morning. That's the battle. Just wanted to keep you in the loop. I haven't eaten since dinner Monday night. 😞¹⁸

Appellant did not provide a urine sample on 19 July 2023. He was excused with a notation of alternate worksite on the urinalysis testing register.

Appellant texted HMC Delta again at 1200, "Ran way late over here at Branch waiting on a Sailor. We're scoring and deliberating the JSOQ board. 11 candidates! Should be done in about 15. . . ."¹⁹ HMC Delta texted back, "Did you provide a sample this morning?"²⁰ Appellant responded, "Squared away."²¹ HMC Delta understood that response to mean that Appellant had provided a urine sample.²² He later discovered, however, that Appellant did not provide a urine sample that morning when he saw the alternate worksite notation by Appellant's name on the urinalysis testing register. He then spoke to Appellant, and Appellant explained that he was excused from the urinalysis. Having received that clarification, HMC Delta did not believe the "Squared away" response was a lie.²³

Appellant was again rolled to the next urinalysis, which occurred on 24 July 2023. This time, he was considered a "must provide," which, according to the Assistant UPC, means that "[n]o matter what, they . . . need to come in. . . . No matter what, they . . . have to give [a urine sample] unless circumstances prevent them from it that were out of the control--acts of God I guess."²⁴ Appellant did provide a urine sample that day.

¹⁷ R. at 573–74.

¹⁸ Pros. Ex. 15 at 1.

¹⁹ Pros. Ex. 15 at 2.

²⁰ Pros. Ex. 15 at 2.

²¹ Pros. Ex. 15 at 2.

²² R. at 418.

²³ R. at 440, 442–43.

²⁴ R. at 517, 519.

The Government charged Appellant with several offenses: making a false official statement to HCM Delta on 19 July 2023; violating a general order by wrongfully avoiding providing a urine sample on 19 July 2023; violating a general order by wrongfully using Delta-8-Tetrahydrocannabinol (THC), a product derived from hemp, on 24 July 2023 and 13 September 2023; and wrongfully using Delta-9-THC, a Schedule I controlled substance, on 24 July 2023.

The military judge dismissed the Delta-8-THC specifications before trial for failing to state an offense. After the Government presented its case, the military judge granted a motion for a finding of not guilty for violating a general order by wrongfully avoiding providing a urine sample on 19 July 2023. At the conclusion of the merits phase of trial, the military judge acquitted Appellant of wrongful use of Delta-9-THC and convicted him of making a false official statement.

II. DISCUSSION

A. Appellant's conviction for making a false official statement is legally sufficient.

We first consider the legal sufficiency of Appellant's conviction according to the following framework:

We review questions of legal sufficiency *de novo*. The test for legal sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. This legal sufficiency assessment draws every reasonable inference from the evidence of record in favor of the prosecution. As such, the standard for legal sufficiency involves a very low threshold to sustain a conviction.²⁵

Additionally,

[i]n performing our legal review we are not limited to appellant's narrow view of the record. Further, the appellate question is not whether the evidence is better read one way or the other, but whether . . . a reasonable factfinder reading the evidence one

²⁵ *United States v. King*, 78 M.J. 218, 221 (C.A.A.F. 2019) (citation modified).

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way could have found all the elements of the offense beyond a reasonable doubt.²⁶

Article 107 provides in relevant part that “[a]ny person subject to [the UCMJ] who, with intent to deceive . . . makes any . . . false official statement knowing it to be false[,] shall be punished as a court-martial may direct.”²⁷ The Government charged Appellant with violating this statute in the following manner:

In that HMCN Brian E. Wenzel . . . did, at or near Jacksonville, Florida, on or about 19 July 2023, with intent to deceive, make to HMCN [Delta], an official statement, to wit: “squared away,” which statement was false in that the statement conveyed that HMCN Wenzel had provided a urine sample when HMCN Wenzel had not provided a urine sample, and was then known by the said HMCN Wenzel, to be so false.²⁸

As charged, the elements of this offense are:

- (1) That Appellant made to HMCN Delta a certain official statement, that is: “Squared away”;
- (2) That such statement was false in that it conveyed that Appellant had provided a urine sample when Appellant had not provided a urine sample;
- (3) That Appellant knew it to be false at the time he made it; and
- (4) That the false statement was made with the intent to deceive.²⁹

Viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found these elements beyond a reasonable doubt.

The thrust of Appellant’s argument is that his “Squared away” response was a true statement since “he had taken care of his urinalysis obligation by obtaining a valid excusal due to his official duties at an alternate worksite.”³⁰

²⁶ *United States v. Gutierrez*, 73 M.J. 172, 175 (C.A.A.F. 2014) (citation modified).

²⁷ 10 U.S.C. § 907.

²⁸ Charge Sheet.

²⁹ *Manual for Courts-Martial, United States* (2023 ed.), pt. IV, para. 41.b.(1) at IV-54.

³⁰ Appellant’s Brief at 11.

As a result, Appellant argues, his “statement was neither false, nor known to be false, nor made with an intent to deceive.”³¹ We primarily focus, then, on the falsity of Appellant’s statement, a determination of which “must be made with reference to the specific language alleged to be false and the context in which it was made.”³²

Considering the legal sufficiency of convictions for false official statements by falsely claiming to be married on official government documents, the U.S. Court of Military Appeals explained in *United States v. Allen*:

[Article 107] does not expressly delineate the standard under which an official statement might properly be found false or untrue. Conceivably, a statement concerning one’s marital status could be evaluated for falsity in light of one’s personal opinion, religious precepts, state law, or even federal law. However, the appropriate standard to determine this factual question at a court-martial is that expressly pleaded by the Government as the basis for its allegation that appellant made a false official statement. In other words, the truth or falsity of an accused’s official statement depends upon the matter asserted in that statement and the governmental context in which the statement was made. If this were not the law, an accused could be found guilty of making a false official statement for providing a truthful answer as requested by the government form but which was nonetheless false for some other purpose not covered by the form.³³

The inverse of that last point is also true. Appellant cannot escape culpability for making a false official statement by conjuring a different context in which it was truthful. HMCM Delta didn’t ask if Appellant had informed the UPC of his whereabouts. He didn’t ask if Appellant obtained another excusal from the urinalysis. He didn’t ask if Appellant was generally in compliance with the command’s urinalysis program. He asked if Appellant provided a sample that morning. Appellant could have been squared away in any other context, but he was not squared away in the only context that mattered: he did not provide a urine sample that morning. Had Appellant later explained that he was referring to his immaculate uniform or tidy workspace as “Squared

³¹ Appellant’s Brief at 23. Appellant does not challenge the legal or factual sufficiency of the first element, that of making the statement and its officiality.

³² *United States v. Evans*, 37 M.J. 468, 471 (C.A.A.F. 1993) (citation omitted).

³³ 27 M.J. 234, 237 (C.M.A. 1988) (citations omitted).

away,” would there be a serious claim that his statement was *technically* true? Of course not.

If a superior asks a subordinate if he submitted a delinquent report to headquarters, a “Squared away,” response would most reasonably convey that he did. It would not convey that the subordinate merely received yet another extension, leaving the task still incomplete. Context is critical.

Appellant is, of course, correct that false and misleading are different adjectives,³⁴ and Article 107 criminalizes only official statements that are false. Relatedly, we have held that “unresponsive answers to unambiguous questions that are ‘technically, literally, or legally true cannot form the basis for such a conviction, even if the statement succeeds in misleading or confusing the questioner.’ Rather, ‘literally true, but unresponsive answers are to be remedied through more precise questioning.’”³⁵ None of this helps Appellant, though, unless we were to conclude that a rational trier of fact could have found the “Squared away” statement to be misleading and nothing more.

Whatever specific definition we were to assign the term “squared away,”³⁶ we conclude that a rational trier of fact could have found it to be an affirmative, and thus false, response to the question of whether Appellant provided a urine sample. Appellant essentially contends that there is a better way to read the evidence, but that is not the standard.

Appellant treats the third element, that of Appellant’s knowledge of the statement’s falsity, as a domino that necessarily falls in succession to the second. We disagree and conclude that a rational trier of fact could have found beyond a reasonable doubt that Appellant knew his statement to be false at the time he made it.

Appellant’s argument regarding the last element, that of intent to deceive, is more nuanced. He highlights evidence of his character for truthfulness and insists upon an absence of motive and any potential material gain. However, in our de novo review, we agree with the military judge in her special findings:

³⁴ See *Thompson v. United States*, 604 U.S. 408, 413 (2025) (“[F]alse and misleading are two different things. A misleading statement can be true. And a true statement is obviously not false. So basic logic dictates that at least some misleading statements are not false.” (citations omitted)).

³⁵ *United States v. Jacquez*, No. NMCCA 201200201, 2012 CCA LEXIS 382, at *4 (N-M. Ct. Crim. App. Oct. 10, 2012) (unpublished) (footnote omitted) (quoting *United States v. Arondel De Hayes*, 22 M.J. 54, 55–56 (C.M.A. 1986)).

³⁶ In her special findings, the military judge defined the term according to its common usage in the Navy as “good to go” and “no problem.” App. Ex. LXII at 3.

[T]he brevity and misleading nature of, “Squared away.” put into context with how the Accused normally interacts with [HMCM Delta], to include letting him know when he has previously been excused from urinalysis on 13 July 2023 . . . in contrast with his answer, “Squared away.” . . . demonstrates beyond a reasonable doubt that the Accused intended to purposely mislead, or cause [HMCM Delta] to believe as true that which is false, that he had provided a urinalysis sample when he knew he did not.³⁷

Why did this verbose, “active communicator”³⁸ suddenly turn elliptical when directly asked if he provided a urine sample? Because of “time pressure” during the JSOQ Board, insists Appellant.³⁹ If that was the impetus (despite just sending a much wordier text message), “No,” or “Excused,” would have been just as succinct as his chosen response, but with the imperative distinction of being true. And if he wanted to dodge the question for the moment, “Explain later,” would have at least been a not false response. We conclude that a rational trier of fact could have found beyond a reasonable doubt that Appellant answered, “Squared away,” with intent to deceive.

B. Appellant’s conviction for making a false official statement is factually sufficient.

Article 66(d)(1)(B), Factual Sufficiency Review, provides:

- (i) In an appeal of a finding of guilty . . . the Court [of Criminal Appeals] may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.
- (ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—
 - (I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and
 - (II) appropriate deference to findings of fact entered into the record by the military judge.
- (iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against

³⁷ App. Ex. LXII at 4.

³⁸ R. at 395.

³⁹ Appellant’s Brief at 21.

the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.⁴⁰

The U.S. Court of Appeals for the Armed Forces interpreted various portions of this statute as follows:

If the two express trigger conditions (i.e., an assertion of an error and a showing of a deficiency) are not met, then nothing in amended Article 66, UCMJ, either requires or allows a CCA to review the factual sufficiency of the evidence. . . .

. . . .

. . . [W]e construe the requirement of “appropriate deference” when a CCA “weigh[s] the evidence and determine[s] controverted questions of fact” to imply that the degree of deference will depend on the nature of the evidence at issue. We reach this conclusion because Article 66(d)(1)(B)(ii)(I), UCMJ, now addresses not just the testimony of witnesses but also all other evidence. For example, a CCA might determine that the appropriate deference required for a court-martial’s assessment of the testimony of a fact witness, whose credibility was at issue, is high because the CCA judges could not see the witness testify. In contrast, when the CCA can assess documents, videos, and other objective evidence just as well as the court-martial, the CCA might determine that the appropriate deference required is low. The statute affords the CCA discretion to determine what level of deference is appropriate

. . . .

. . . [F]or a CCA to be “clearly convinced that the finding of guilty was against the weight of the evidence,” two requirements must be met. First, the CCA must decide that the evidence, *as the CCA has weighed it*, does not prove that the appellant is guilty beyond a reasonable doubt. Second, the CCA must be clearly convinced of the correctness of this decision.⁴¹

Appellant has made a specific showing of a deficiency in proof regarding the falsity of the statement and the intent to deceive. We have in turn weighed the evidence subject to appropriate deference to the fact that the trial court

⁴⁰ 10 U.S.C. § 866(d)(1)(B).

⁴¹ *United States v. Harvey*, 85 M.J. 127, 130–32 (C.A.A.F. 2024) (emphasis in original).

saw and heard the witnesses and other evidence, and appropriate deference to findings of fact entered into the record by the military judge,⁴² and we are not clearly convinced that the finding of guilty was against the weight of the evidence.

III. CONCLUSION

After careful consideration of the record and briefs of appellate counsel, we have determined that the findings and sentence are correct in law and fact and that no error materially prejudicial to Appellant's substantial rights occurred.⁴³

The findings and sentence are **AFFIRMED**.

⁴² Appellant disputes that special findings made pursuant to Rule for Courts-Martial 918(b) are "findings of fact entered into the record by the military judge" as used in Article 66(d)(1)(B)(ii)(II). We conclude that special findings are exactly that, as this Court implicitly did in the published opinion in *United States v. Dillenburg*, 85 M.J. 599, 606 (N-M. Ct. Crim. App. 2025), *review denied*, 86 M.J. 250 (C.A.A.F. 2025).

⁴³ Articles 59 & 66, UCMJ.

McCOY, J. (dissenting):

I respectfully dissent. For the reasons discussed below, I would find that a reasonable factfinder could not have found that “squared away” was false with the evidence presented at trial in the light most favorable to the prosecution. I would find the evidence is therefore legally insufficient to support a conviction for making a false official statement. For the reasons discussed below, I would also find Appellant’s conviction is factually insufficient as I am clearly convinced that the finding of guilty is against the weight of the evidence.

I. BACKGROUND

On 19 July 2023, Appellant was assigned as the Senior Enlisted Leader for the Directorate for Branch Health Clinics at the Naval Medical Readiness and Training Center (NMRTC) Jacksonville, Florida.¹ That morning at 0512, Chief Hospital Corpsman (HMC) Alpha, the UPC, sent a message to a senior enlisted personnel group chat that included the urinalysis personnel list for 19 July 2023. Appellant was on the urinalysis list.²

OPNAV Instruction 5350.4E is the Navy instruction governing drug prevention and serves as the governing instruction for NMRTC’s drug prevention instruction.³ The Internet Forensic Toxicology Drug Testing Laboratory Portal (iFTDTL) is the system NMRTC uses for its drug testing and results. On urinalysis testing days, Directorate Leading Petty Officers or above would send a list of individuals on the urinalysis list that were on leave, temporary duty, etc., at 1000 to the Assistant UPC, Hospital Corpsman First Class (HM1) Bravo. Corpsman First Class Bravo would compile the list during the last hour of testing and mark the reason for the absence on the testing roster.⁴ NMRTC conducts urinalyses at the main hospital in a strict four-hour window from 0700–1100.⁵ If members selected for a urinalysis are not present during the testing window, without excuse, it is marked as an unauthorized absence (UA).

¹ R. at 653; Def. Ex. C at 7.

² Pros. Ex. 14; R. at 413.

³ R. at 455; Pros. Ex. 21.

⁴ R. at 465–66.

⁵ R. at 453–54.

In addition to the chat messages, the Directorates, Chiefs Mess, and the Leading Petty Officers of NMRTC receive notification of personnel required to participate in the urinalysis by email.⁶

HM1 Bravo testified that OPNAV Instruction 5350.4E gives options for excused absences, “. . . but not all of them.”⁷ HM1 Bravo testified that all of the other excuses are “. . . in the IPO system as a – it’s a dropdown menu when I’m closing out.”⁸ One of the options for being absent from urinalysis in the iFTDTL is alt (alternate) worksite.⁹ The reason that a member on the urinalysis list does not provide a sample must be provided to the Assistant UPC by an E-7 or above prior to anything being recorded in the excused section.¹⁰

Historically, there were multiple senior enlisted group chats to include one for all senior enlisted E-7 and above assigned to NMRTC, a group chat for all Command Master Chiefs assigned to Naval Air Station Jacksonville, and a group chat for NMRTC Senior Enlisted Leaders (SEL), all of the Directorates and the Command Master Chief.¹¹ On the mornings of required urinalysis collection, the UPC would send a generated email to NMRTC leadership. HMC Alpha would also send urinalysis notifications to the group chats. At some point, the Chiefs Mess at NMRTC voted that there would be one inclusive group chat.¹²

The record is almost devoid of evidence that Appellant received actual notice of the 19 July 2023 urinalysis, with the scant exception that Appellant had been excused from the urinalysis under the iFTDTL category of “alt worksite.”¹³ However, HMC Delta trusted that Appellant was on notice that he needed to provide a urinalysis sample on 19 July 2023.¹⁴ HMC Delta also advised that if a Sailor were to show up at 1101 for the urinalysis, they would be marked UA.¹⁵

⁶ R. at 422, 454.

⁷ R. at 522.

⁸ R. at 522.

⁹ R. at 521–23.

¹⁰ R. at 505.

¹¹ R. at 398.

¹² R. at 403.

¹³ Pros. Ex. 4

¹⁴ R. at 421–22.

¹⁵ R. at 429.

On the morning of 19 July 2023, Appellant was located at the Jacksonville Branch Health Clinic, serving as the Chair of a Junior Sailor of the Quarter Board. The Branch Health Clinic was located approximately two miles from the hospital.¹⁶ HMC Sierra, HMC Water, and HMC Alpha (UPC) were also members of the board. The board was set to start at 0800 but was delayed approximately 30 minutes due to air conditioning issues. The board lasted between four and four and a half hours.¹⁷

At 0849, Appellant sent two text messages to HMCM Delta, and advised, in part, “I will be at SOQ boards this morning if you need anything.”¹⁸ As Appellant had been excused from urinalysis, the 19 July 2023 testing register listed Appellant as “alt worksite.”¹⁹ Subsequently, at 1200, after the urinalysis testing period closed, Appellant sent the following text message to HMCM Delta and HMCM Charlie, “Ran way late over here at Branch waiting on a Sailor. We’re scoring and deliberating the JSOQ board. 11 candidates! Should be done in about 15. It’s me, [Tango, November, Water and Echo].”²⁰ In response to Appellant’s text message, HMCM Delta texted, “Did you provide a sample this morning?”²¹ HMCM Delta was aware that Appellant had previously been on the urinalysis list and excused from providing urine samples on 7 July 2023 and 13 July 2023.²² Appellant responded, “Squared away.”²³ Appellant was never marked UA for failing to provide a urine sample.²⁴

HMCM Delta, one of the recipients of Appellant’s text message forming the basis for his conviction for false official statement, testified that at the time he received the message, “Squared away,” he believed that Appellant had provided a urine sample.²⁵ HMCM Delta also testified that Appellant advised that he had been excused from the urinalysis, and once HMCM Delta received clarification from Appellant, he understood that “squared away” did not mean he

¹⁶ R. at 572; Pros. Ex. 15.

¹⁷ R. at 573–74, 604.

¹⁸ Pros. Ex. 15.

¹⁹ R. at 440; Pros. Ex. 4.

²⁰ Pros. Ex. 15.

²¹ Pros. Ex. 15.

²² R. at 404, 406, 410–19, 428–30, 433–40, 442; Pros. Ex. 11, 12, 13, 14, and 15.

²³ Pros. Ex. 15

²⁴ Pros. Ex. 4.

²⁵ R. at 418.

had provided a urine sample.²⁶ Significantly, HMCM Delta testified that having received clarification, he did not believe “squared away” was a lie.²⁷

Three character witnesses with 71 years of combined service testified to Appellant’s good military character and character for truthfulness.²⁸

II. DISCUSSION

A. Appellant’s conviction for false official statement is legally insufficient.

We review questions of legal sufficiency de novo and ask whether, “considering the evidence in the light most favorable to the prosecution, a reasonable fact-finder could have found all the essential elements beyond a reasonable doubt.”²⁹ “Beyond a reasonable doubt” does not “mean that the evidence must be free from any conflict or that the trier of fact may not draw reasonable inferences from the evidence presented.”³⁰ The standard for legal sufficiency therefore “involves a very low threshold to sustain a conviction.”³¹

The elements of false official statement are: (1) that the accused made a certain official statement; (2) that the statement was false in certain particulars; (3) that the accused knew it to be false at the time; and (4) that the statement was made with the intent to deceive.³²

In order to prove Appellant guilty of the Specification of Charge I, the Government had to prove beyond a reasonable doubt that on or about 19 July 2023, Appellant made, with intent to deceive, an official statement “squared away,” that the statement was false in that it conveyed to HMCM Delta that Appellant had provided a urine sample, when he had not, and was then known by Appellant to be false.³³

²⁶ R. at 439.

²⁷ R. at 440, 442–43.

²⁸ R. at 649, 653–54, 660.

²⁹ *United States v. Turner*, 25 M.J. 324, 324 (C.M.A. 1987) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); see also *United States v. Gutierrez*, 73 M.J. 172, 175 (C.A.A.F. 2014); *United States v. King*, 78 M.J. 218, 221 (C.A.A.F. 2019).

³⁰ *King*, 78 M.J. at 221.

³¹ *Id.*

³² *Manual for Courts-Martial, United States* (2023 ed.), pt. IV, para. 41.b.(1) at IV-54.

³³ Charge Sheet.

Evidence at trial established beyond a reasonable doubt that HCMC Delta was Appellant's supervisor as the Command Master Chief of NMRTC Jacksonville. When HCMC Delta inquired as to whether Appellant had provided a urine sample, the question was clearly asked in HCMC Delta's official capacity and Appellant's response, "Squared away," was an official statement.³⁴

In her special findings, the military judge ruled that "squared away" had a common meaning in the Navy as "good to go," and "no problem."³⁵ The military judge then determined that having an excuse [for the urinalysis] is not "no problem" or "good to go," thereby making the term "squared away" totally false, because the term conveyed to HCMC Delta that Appellant had provided a urine sample, when Appellant had not provided a sample.³⁶

Webster's Third New International Dictionary defines the term "square away" as "to put everything in order or readiness."³⁷ Similarly, *The Blue-Jacket's Manual* defines "square away" as "to put in proper order; to make things shipshape."³⁸ Finally, *Benedict on Admiralty* defines the term "square away" as "to straighten, make shipshape, or to get settled in a new job or home."³⁹

Evidence at trial showed that Appellant had been excused from the urinalysis on 19 July 2023, and the testing register indicated "alt worksite," which was an excuse available under the iFTDTL.⁴⁰ In her reasoning granting Appellant's R.C.M. 917 motion to dismiss Specification 1 of Charge II, the military judge reasoned that Appellant had an excusal for missing the urinalysis and was not subsequently marked UA even after HCMC Delta had reviewed the register with the marking of "alt worksite," and as such the military judge would not consider the excusal from urinalysis unlawful.⁴¹

³⁴ R. at 396, 418, 439–40, 442 ; Pros. Ex. 14.

³⁵ App. Ex. LXIII at 3.

³⁶ App. Ex. LXIII at 3.

³⁷ *Square away*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1991), at 2241.

³⁸ Thomas J. Cutler, et al., *The Bluejacket's Manual*, Appendix A, at 1482–83 (25th ed. 2017).

³⁹ 8 RICHARD J. NIKAS, BENEDICT ON ADMIRALTY, Nautical Glossary (Joshua Force ed. 2026) (accessed via: <https://plus.lexis.com/api/permalink/20be6f5c-f097-4449-899a-385ec2aaf3b5/?context=1530671>).

⁴⁰ R. at 439–40, 522; Pros. Ex. 4.

⁴¹ R. at 640–41.

In prosecutions for false official statements, “[t]he prosecution has the burden of negating any reasonable interpretation that would make [the accused’s] statement factually correct.”⁴² In the instant case, testimony and evidence showed that subsequent to Appellant’s 1200 text message, HMCM Delta, one of the two recipients of the text message, sent a text message that stated, “[d]id you provide a sample this morning?”⁴³ Appellant responded, “Squared away.”⁴⁴ HMCM Delta, initially interpreted the term “squared away” to mean that Appellant had provided a urine sample. However, once he was able to discuss the matter later that afternoon in person with Appellant, HMCM Delta was able receive clarification on the meaning of “squared away” and did not believe it was a lie.⁴⁵

“Determination of falsity must be made with reference to the specific language alleged to be false and the context in which it was made.”⁴⁶ Here, once Appellant was excused from participating in the 19 July 2023 urinalysis, he had met his legal obligation regarding providing a urine sample. Put simply, once he was excused from his obligation, Appellant had placed everything into order. As such, when he sent the text message at 1200 to HMCM Delta and HMCM Charlie, one hour after the urinalysis testing closed, he was legally and factually “squared away,” and the text message was a true statement. A true statement cannot form the basis for a false official statement. Appellant was responsive to HMCM Delta’s inquiry. That the receiver of the message initially misconstrued what was conveyed by Appellant does not convert a true statement into a falsehood. “[F]alse and misleading are two different things. A misleading statement can be true. And a true statement is obviously not false.”⁴⁷

“With respect to the second element, unresponsive answers to unambiguous questions that are ‘technically, literally, or legally true cannot form the basis for such a conviction, even if the statement succeeds in misleading or

⁴² *United States v. Evans*, 37 M.J. 468, 471 (C.M.A. 1993) (internal citations and quotations omitted).

⁴³ R. at 418, 436–38; Pros. Ex. 15.

⁴⁴ R. at 418, 439; Pros. Ex. 15.

⁴⁵ R. at 418, 440, 442–43

⁴⁶ *Evans*, 37 M.J. at 471 (citing *United States v. Allen*, 27 MJ 234, 237 (C.M.A. 1988)).

⁴⁷ *United States v. Thompson*, 604 U.S. 408, 413 (2025) (citation omitted).

confusing the questioner.’”⁴⁸ Case law is clear that the listener, or in this case the recipient of the text message, must seek clarification to ameliorate any confusion. “Literally true, but unresponsive answers are to be remedied through more precise questioning.”⁴⁹ Which is exactly what happened in this case and the reason that HMC Delta, the recipient of the text message, “Squared away,” did not believe it was a lie.⁵⁰

Considering the evidence presented at trial in the light most favorable to the prosecution, a reasonable factfinder could not have found that “squared away” was false. As such the second element cannot be found beyond a reasonable doubt. Since the second element of making a false official statement cannot be found beyond a reasonable doubt, the third and fourth elements of making a false official statement also cannot be found beyond a reasonable doubt. The evidence, therefore, is legally insufficient to sustain a conviction for making a false official statement.

B. The evidence is factually insufficient to sustain Appellant’s conviction of false official statement.

Appellant must first make a request and show a specific deficiency in proof to trigger the Court’s review of a specification for factual sufficiency.⁵¹ If these requirements are met, we then weigh the evidence with, “appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence” and with “appropriate deference to findings of fact entered into the record by the military judge.”⁵²

A general disagreement with a verdict falls short of showing a deficiency in proof. To trigger the factual sufficiency analysis, “an appellant must identify a weakness in the evidence admitted at trial to support an element (or more than one element) and explain why, on balance, the evidence (or lack thereof) admitted at trial contradicts a guilty finding.”⁵³

I would find that Appellant has met his burden to trigger a factual sufficiency review of the finding of guilt for the sole specification of conviction. After

⁴⁸ *United States v. Jacquez*, No. NMCCA 201200201, 2012 CCA LEXIS 382, at *4 (N-M. Ct. Crim. App. Oct. 10, 2012) (unpublished) (quoting *United States v. Arondel De Hayes*, 22 M.J. 54, 55 (C.M.A. 1986)).

⁴⁹ *Arondel De Hayes*, 22 M.J. at 55 (citation modified).

⁵⁰ R. at 442–43.

⁵¹ 10 U.S.C. § 866(d)(1)(B).

⁵² 10 U.S.C. § 866(d)(1)(B).

⁵³ *United States v. Valencia*, 85 M.J. 529, 535 (N-M. Ct. Crim. App. 2024).

a complete review of the evidence and using the appropriate standard of deference, including as to the special findings of the military judge, as required, I would conclude that the Government did not present sufficient evidence to prove Appellant's guilt beyond a reasonable doubt as it relates to the second element of the offense. Namely, that the statement was false in certain particulars. For the same reasons the conviction is legally insufficient, it is also factually insufficient. Therefore, I am "clearly convinced that the finding of guilty was against the weight of the evidence."⁵⁴

Accordingly, I respectfully dissent.



FOR THE COURT:


MARK K. JAMISON
Clerk of Court

⁵⁴ *United States v. Harvey*, 85 M.J. 127, 131 (C.A.A.F. 2024); 10 U.S.C. § 866(d)(1)(B).