

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

UNITED STATES,
Appellant,

V.

Airman First Class (E-3)

COLLYN L. LAWRENCE

United States Air Force

Appellee.

FINAL BRIEF ON BEHALF
OF THE UNITED STATES

Crim. App. Dkt. No. 24064

USCA Dkt. No. 26-0237/AF

FINAL BRIEF ON BEHALF OF THE UNITED STATES

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United States Air Force	)	
<i>Appellee.</i>	)	

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

ISSUES PRESENTED

I.

**WHETHER THE PERMISSIVE INFERENCE IS
UNCONSTITUTIONAL FOR MARIJUANA CASES,
BOTH FACIALLY AND AS APPLIED TO THIS
CASE?**

II.

**WHETHER APPELLANT'S CONVICTION FOR
MARIJUANA USE IS LEGALLY INSUFFICIENT?**

STATEMENT OF STATUTORY JURISDICTION

The Air Force Court of Criminal Appeals (AFCCA) reviewed this case pursuant to Article 66, UCMJ. This Court has jurisdiction to review this case under Article 67(a)(3), UCMJ.

STATEMENT OF THE CASE

A military judge sitting as a special court-martial convicted Appellant, contrary to his pleas, of one specification of wrongful use of Delta-9 Tetrahydrocannabinol, a Schedule I controlled substance, in violation of Article 112a, UCMJ. Appellant's statement of the case is generally accepted with one addition. In footnote 2, Appellant incorrectly characterizes the April 2026 federal scheduling action. The 28 April 2026 final rule did not broadly reschedule marijuana from Schedule I to Schedule III as Appellant claims. (*See* App. Br. at 4, "Marijuana is no longer a Schedule I controlled substance.") Rather, it placed FDA-approved marijuana-containing products and marijuana subject to qualifying state-issued medical marijuana licenses in Schedule III. *See* 91 Fed. Reg. 22714 (28 April 2026). The Department of Justice simultaneously initiated a separate proceeding to consider broader rescheduling of marijuana consistent with the President's 18 December 2025 Executive Order – a process that is ongoing. However, at the moment, the federal government has not generally removed marijuana from Schedule I, and the recreational marijuana at issue here was not categorically rescheduled to Schedule III.

STATEMENT OF FACTS

On 9 January 2024, Appellant was selected for a random urinalysis. (JA at 29.) The test returned positive for Tetrahydrocannabinol-9 (THC-9) at a level of

22 ng/ml. (JA at 28.) The Department of Defense cutoff limit for reporting positive results for THC-9 is 15 ng/ml. Appellant was offered nonjudicial punishment (NJP) under Article 15, UCMJ, but demanded a trial by court-martial. (JA at 17.)

At trial, the Government introduced multiple pieces of evidence showing Appellant's knowing and wrongful use of marijuana, including Appellant's urinalysis results. (JA 29-75.) The Government also called Dr. EH from the Air Force Drug Testing Laboratory (AFDTL) to explain the results. (JA at 97-125.) Dr EH, who was qualified as an expert in the field of forensic toxicology and AFDTL procedures, testified that THC-9 is a recreational drug produced by the Cannabis Sativa plant and is a controlled substance, and that it produces psychological effects. (JA at 100-01.)

Dr. EH testified that neither THC-9 nor its metabolite 11 Nor-9-Carboxy Delta-9 Tetrahydrocannabinol (THCA) were normally found in the body and explained how the AFDTL conducts metabolite testing. (JA at 101-16.) Dr. EH also testified that the AFDTL has regular inspections, audits, and protections to ensure their data is scientifically valid, and detailed the specific testing procedures accomplished by the AFDTL. (Id.) Dr. EH also reviewed Appellant's lab report

and testified that all procedures were properly followed and that Appellant's urine contained the metabolite consistent with THC-9 use.¹ (Id.)

Dr. EH testified the DoD cutoff for reporting a specimen as positive for THC-9 is 15 ng/mL and the cutoff was set at this level "based on research in the nineties, about what instrumentation could do." (JA at 103.) Dr. EH continued, "So we got the cutoff [to] be high enough, so it's not, it's not noise. We know it's actually a signal there. And then the cutoff is also set high enough for, at that time, the non-using population is completely separated from a population of known users." (Id.) Dr. EH was later asked, "So, Dr. [EH] based on your understanding, based on what you just told us, if a person used between 27 and 29 December [] and their test came back with these results, what, if anything, would that tell you about their use during that time period?" (JA at 118.) Dr. EH responded, "That they most likely ingested more than 50 milligrams of THC." (Id.)

During cross-examination, Dr. EH agreed that THC was illegal at the federal level but acknowledged it was sold recreationally in some states, at vape shops that were not regulated by the federal government, and that THC could be consumed through vaping. (JA at 119-20.) Dr. EH also acknowledged that he could not testify to the amount of THC-9 ingested. (JA at 121.)

¹ At trial, Appellant did not dispute that the presence of a controlled substance was in his body or that the positive result was due to a lab error. In fact, he largely stipulated that his urine sample was collected and tested properly. (JA at 3.)

The Government also presented testimony from Amn NM, who had worked with Appellant and knew him for approximately a year. (JA at 127.) Amn NM testified that Appellant had told him that he had used marijuana before joining the Air Force. (JA at 128.) Amn NM also testified that he had seen Appellant use a Geek Bar vape and that Amn NM himself used the same brand. (JA at 129.) Amn NM had been drug tested two or three times while using a vape and had never received a positive result. (Id.) He explained that the vapes containing nicotine and vapes containing THC were sold on separate sides of the store and that the packaging clearly identified whether a product contained THC. (JA at 129-30.) Based on that labeling, Amn NM testified that he was not concerned that a vape he purchased might contain THC. (JA at 130.) On cross-examination, Amn NM acknowledged that he had never seen Appellant use THC in the military and was surprised when he learned that Appellant had tested positive. (JA at 131-32.)

The Government further introduced evidence that Appellant was on leave in the weeks preceding the urinalysis – specifically from 27 December 2023 to 29 December 2023. (JA at 25-27.) In addition, the Government presented evidence that vape manufacturers have an economic incentive to clearly label THC vapes as such (that is, to make more money). (JA at 124.) In closing argument, the Government argued that these circumstances supplied additional context for the positive urinalysis and rebutted any innocent-ingestion theory.

The defense presented nine written character statements concerning Appellant's military character. (JA 82–90.) At the time of Appellant's urinalysis testing on 9 January 2024, Appellant had been in the Air Force for just over 16 months and was 22 years old. (JA at 76.) The defense did not identify a particular food, product, event, person, or location as the source of an accidental marijuana exposure. The defense also did not present evidence establishing that Appellant actually encountered or consumed a mislabeled marijuana product.

On appeal, the Air Force Court of Criminal Appeals (AFCCA) noted that it has previously held that “the permissive inference alone is sufficient to prove the knowledge element,” and that the “permissive inference is still good law and despite Appellant's argument to the contrary, we see no reason to find it unconstitutional, facially, or as applied.” (JA at 8.) AFCCA further found that the Government had satisfied the evidentiary safeguards governing the use of urinalysis evidence. (JA 7-8.) AFCCA specifically found that the three factors required by United States v. Downum, 86 M.J. 200, 204 (C.A.A.F. 2025), United States v. Green, 55 M.J. 76, 80 (C.A.A.F. 2001), and United States v. Campbell, 52 M.J. 386, 388 (C.A.A.F. 2000) were met – namely that THCA was not naturally produced by the body or any substance other than THC-9; the cutoff and reported concentration were sufficiently high to discount unknowing ingestion; and the testing methodology reliably detected the presence and concentration of the

metabolite. (JA at 7.) The court also considered Appellant’s known vape use and scheduled leave, before deciding Appellant’s case was a “textbook case where a permissive inference is allowed.” (JA at 8.)

SUMMARY OF ARGUMENT

This case turns on whether the circumstances that made the permissive inference constitutionally rational in United States v. Ford, 23 M.J. 331 (C.M.A. 1987), have disappeared. They have not. Appellant identifies changes in the civilian marijuana landscape – principally state legalization, increased commercial availability, and the existence of cannabis products that may resemble ordinary consumer products – but those changes do not establish that the considerations supporting Ford no longer apply to marijuana. Marijuana remains a scheduled, controlled substance. It remains prohibited for servicemembers, and servicemembers remain on notice of that prohibition. Marijuana remains capable of producing physiological effects. And ordinary self-preservation continues to provide a rational basis for expecting a person to know what he consumes – especially an airman who knows he is subject to random drug testing. Appellant’s evidence may establish that unknowing ingestion is possible (as it has always been), but it does not establish that such ingestion has become sufficiently prevalent in today’s society to eliminate the rational connection between a positive marijuana urinalysis and a permissive inference of knowing use.

Nor does the civilian market Appellant describes support the premise that marijuana has become an unregulated or indiscriminately available product. Appellant's own sources demonstrate that legal marijuana markets remain subject to licensing, age and identification requirements, regulated points of sale, and other governmental controls. More importantly, civilian legalization does not alter the rule applicable to servicemembers: marijuana remains prohibited under the UCMJ regardless of whether state law permits civilian possession or use. Appellant therefore has not shown that the factual considerations identified in Ford have ceased to exist. Because his stare decisis challenge to Ford under United States v. Quick, 74 M.J. 332 (C.A.A.F. 2015) depends upon that premise, and because the premise is unsupported, there is no basis to overrule Ford.

Finally, this case falls comfortably within the constitutional and evidentiary framework that continues to govern permissive inferences from positive urinalysis results. As applied to Appellant, the Government presented more than the urinalysis alone: the sample contained 22 ng/mL of THC-9, well above the 15 ng/mL reporting cutoff, the Government's expert explained the scientific basis for the result and the reliability of the testing methodology. And additional evidence showed that Appellant used a vape pen and was on leave shortly before the positive test. The permissive inference therefore remained constitutionally

available to the military judge, and Appellant’s constitutional and legal in sufficiency claims should be denied.

ARGUMENT

I.

**THE PERMISSIVE INFERENCE REMAINS
CONSTITUTIONAL FOR MARIJUANA CASES;
APPELLANT HAS FAILED TO SHOW THE
FACTUAL PREMISES SUPPORTING THE
MARIJUANA PERMISSIVE INFERENCE HAVE
DISAPPEARED.**

Standard of Review

This Court reviews questions of law de novo. United States v. Bass, __ M.J. __, No. 25-0149/MC, 2026 CAAF LEXIS 544, *14 (C.A.A.F. 24 June 2026).

Law

“A permissive inference is an evidentiary tool that allows a trier of fact to infer an elemental fact, such as knowledge, from a proved fact, such as the presence of a metabolite in the urine.” Bass, at *14 (citing United States v. Harper, 22 M.J. 157, 161 (C.M.A. 1986)). A permissive inference satisfies due process only if there is a rational connection between the fact proved and the fact inferred such that the inferred fact is “more likely than not to flow from the proved fact on which it is made to depend.” Bass, at *14 (citing Barnes v. United States, 412 U.S. 837, 842 (1973); Leary v. United States, 395 U.S. 6, 36, (1969).)

“Inferences and presumptions are a staple of our adversary system of factfinding.” County Ct. of Ulster Cnty. v. Allen, 442 U.S. 140, 156 (1979). “The most common evidentiary device is the entirely permissive inference or presumption, which allows – but does not require – the trier of fact to infer the elemental fact from proof by the prosecutor of the basic one and which places no burden of any kind on the defendant.” Id. at 157.

“In the Article 112a, UCMJ, context, [this Court has] long approved a permissive inference that a positive urinalysis for a controlled substance supports an inference of knowing and wrongful use.” Bass, at *15 (citing Harper, 22 M.J. at 162; Ford, 23 M.J. at 337 (noting the permissive inference has existed in the military justice system since 1955 and has found “longstanding and consistent judicial approval” in the military and civilian courts)). In Bass, this Court highlighted that the inference “rests on several premises: controlled substances are illegal to possess, are tightly regulated even in lawful channels, and are commonly associated with noticeable psychoactive effects, making unknowing ingestion unlikely and a positive test a rational indicator of knowing, wrongful use.” Id.

In her dissenting Bass opinion, in which Chief Judge Ohlson joined, Judge Johnson specifically discussed the Ford Court’s four considerations:

First, we noted that even though marijuana use and possession was permitted in small amounts by some civilian jurisdictions, it was contraband for servicemembers. Therefore, a servicemember’s “access to

it, which impacts on the probability of innocent ingestion, is greatly reduced.”

Second, we noted that “the military services in recent years have greatly intensified their efforts to eliminate drug abuse and have well publicized this campaign. Therefore, the servicemember is on notice to avoid any and all contact with these substances, a fact which further reduces the possibility of innocent ingestion.”

Third, we observed:

[T]he physiological effects from the internal presence of the drug in the body might serve to alert the user to the presence of a controlled substance in his system. Such recognized common knowledge suggests that the possibility of knowing drug use is great when a servicemember fails to satisfactorily explain the presence of the drug’s constituent elements in his system.

Fourth, we noted that “human experience in terms of self-preservation generally dictates that a person, whether a servicemember or not, generally knows what he consumes.”

Bass, at *27-28 (citing Ford, 23 M.J. at 337.)

When reviewing a permissive inference, the Supreme Court “has required the party challenging it to demonstrate its invalidity as applied to him.” Allen, 442 U.S. at 157.

Analysis

Appellant fails to show the permissive inference’s use in marijuana cases is no longer constitutional or permissible under the Ford construct. While Appellant spends the wealth of his brief identifying changes in civilian marijuana law and the

commercial marketplace, he fails to make the further showing that those changes have made unknowing marijuana ingestion sufficiently common, particularly among servicemembers, such that a positive marijuana urinalysis no longer rationally supports an inference of knowing use. For the reasons set forth below, the rational connection between a positive marijuana urinalysis and an inference of knowing use remains.

Appellant's argument for invalidating the permissive inference for marijuana ultimately depends on him showing that the four Ford considerations no longer provide a rational basis for the inference. Appellant has not made that showing. His evidence instead addresses various aspects of the modern civilian marijuana market without establishing that the Ford considerations have disappeared. Accordingly, the analysis below addresses each of those considerations in turn. As each factor demonstrates, Appellant fails to establish the critical proposition his constitutional challenge requires: that any societal changes regarding marijuana have made unknowing ingestion sufficiently prevalent that a positive marijuana urinalysis no longer rationally indicates knowing use by a servicemember.

a. Marijuana Remains Contraband for Servicemembers, Regardless of State-Law Changes

The first consideration identified in Ford remains unchanged: although marijuana may be permitted in some civilian jurisdictions, it remains illegal on the federal level and for servicemembers. *See Ford*, 23 M.J. at 337. Indeed, Appellant

concedes the point, stating that “marijuana use remains illegal for servicemembers under the UCMJ despite state-level legalization.” (App. Br. at 26.)

Appellant nevertheless argues that this distinction has become constitutionally irrelevant because marijuana is now broadly available through lawful civilian markets. Appellant repeatedly treats the legalization of marijuana in some fashion across “forty-one states, three territories, and the District of Columbia (D.C.)” as evidence that marijuana has become a “largely unregulated” product that is “pervasive in today’s society” and is “sold in mainstream retail venues.” (App. Br. at 5, 17, 19.) Because of this, Appellant contends that there is no longer a rational connection between a positive marijuana result and a permissive inference of knowing use. Appellant is incorrect.

Ford’s first consideration, however, was not simply that marijuana was illegal for servicemembers. Rather, the Court recognized that, because marijuana is contraband for servicemembers, their “access to it, which impacts on the probability of innocent ingestion, is greatly reduced.” 23 M.J. at 337. Thus, the relevant question is not whether civilians today have greater lawful access to marijuana, but whether servicemembers’ access to marijuana has increased in a manner that materially increases the likelihood of innocent ingestion.

In making his case, Appellant attempts to transform the *state* civilian legalization of marijuana into something more consequential by describing

marijuana as being no longer a “black-market” drug and asserting that it is now “a supermarket or farmer’s market recreational drug” that “can be delivered to someone’s home with no more effort than ordering takeout.” (App. Br. at 14.) However, Appellant’s own source material proves otherwise. For instance, Appellant claims the “requirement to purchase marijuana is the same as alcohol: a valid form of identification showing the purchaser is over twenty-one years old.” (App. Br. at 7, citing *Adult-Use Cannabis FAQs*, MARYLAND CANNABIS ADMINISTRATION, <https://cannabis.maryland.gov/pages/cannabisfaq.aspx>.)

And a review of that very Maryland government webpage about marijuana use in the state shows much more regulation in Maryland than just the age limit Appellant mentions. For instance, the page explains that cannabis may be purchased only from licensed dispensaries, requires purchasers to be at least twenty-one years old, requires valid government-issued identification at the point of sale, limits the amount an individual may purchase, and prohibits interstate transportation. *See Adult-Use Cannabis FAQs*, MARYLAND CANNABIS ADMINISTRATION (last visited 6 October 2026), <https://cannabis.maryland.gov/pages/cannabisfaq.aspx>. The same site also expressly recognizes that cannabis remains unlawful at the federal level and on federal property. Thus, even the state-law source Appellant invokes to show the accessibility of marijuana demonstrates that lawful civilian access still occurs

within a strict regulatory framework. His attempt to conflate marijuana use to alcohol use serves to only highlight the vast differences between the two.

Appellant next attempts to use two District of Columbia business – Don Fuego and Wishing Wellness – to highlight his point. (App. Br. at 8, 20.) Neither help. Appellant identifies Don Fuego, a D.C. cannabis café “one mile from this Court,” as an example of a social-consumption lounge where recreational marijuana may be consumed. (App. Br. at 8.) But Don Fuego’s website describes itself as a “Licensed Dispensary” and notes that while “[r]ecreational cannabis is partially legal in Washington DC . . . commercial sales remain restricted.” *See*, DON FUEGO, <https://donfuegocannabis.com/> (last visited 6 October 2026). The site highlights that legal recreational use is restricted to a certain amount and that it must be consumed on private property. *Id.* The site also confirms that Don Fuego is a license medical cannabis retailer that requires guests to register for a medical card. (*Id.*)

Here again, the very establishment Appellant identifies to demonstrate the supposedly “largely unregulated” market describes itself as a licensed and regulated operation serving qualified consumers with tested and tracked products. Just like his Maryland example, Appellant’s use of Don Fuego does not establish an unregulated market, and it certainly does not establish that servicemembers are likely to encounter marijuana unknowingly. To the contrary, Appellant’s own

example again demonstrates that lawful civilian access operates through identifiable businesses, eligibility requirements, and regulated channels.

The same holds true for Wishing Wellness, which Appellant describes as a “cannabis apothecary” that is “across the street from this Court.” (App. Br. at 20.) Again, however, Wishing Wellness describes itself as a “licensed medical dispensary” that is “fully licensed and compliant under DC ABCA regulations, ensuring product safety, lab transparency, and consistent quality.” *See* WISHING WELLNESS, <https://wishingwellnessdc.com/> (last visited 6 October 2026); <https://wishingwellnessdc.com/about/> (last visited 6 October 2026). The example again proves a narrower proposition than Appellant needs: marijuana may be legally purchased by eligible civilians through a licensed commercial establishment. It does not establish that marijuana is unregulated, that it is indiscriminately available, or that servicemembers are likely to encounter it unknowingly.

This last piece is especially significant to the Ford analysis. Appellant’s own material demonstrates that, even where marijuana is legal for civilian use, access remains subject to laws and regulations governing who may purchase it, where it may be purchased, and how it may be obtained. That matters because, as Ford recognized, a servicemember’s reduced access to marijuana “impacts on the probability of innocent ingestion.” 23 M.J. at 337. Where access remains subject

to the laws and regulations governing lawful civilian access, Appellant has not shown that the probability of innocent ingestion has materially increased for servicemembers simply because civilians in some jurisdictions may lawfully purchase and use marijuana.

Appellant's own circumstances further illustrate the limited relevance of the civilian legalization landscape on which he relies. During the relevant period, Appellant was either stationed in South Carolina or on leave in Texas. Neither State had legalized adult-use marijuana. *See South Carolina Marijuana Laws*, South Carolina Cannabis Information (last visited 6 October 2026), <https://southcarolinastatecannabis.org/laws>; *Cannabis & the Law: Recreational Use*, Texas State Law Library (last visited 6 October 2026), <https://guides.sll.texas.gov/cannabis/recreational-use>. Thus, Appellant's circumstances do not demonstrate the kind of lawful recreational market that he contends has made marijuana so pervasive and readily accessible that the premise underlying Ford has become irrational. Whatever changes may have occurred in other jurisdictions, Appellant has not shown that his own access to marijuana was transformed in a way that materially increased the likelihood of innocent ingestion.

Appellant's reliance on marijuana-delivery services likewise does not establish an indiscriminate or unregulated market. Appellant cites Eaze, Leafly and Rise Cannabis as examples of delivery services of recreational marijuana

products to individual residences. (App. Br. at 8, 20.) But Eaze’s own description of its service demonstrates what that delivery actually entails: Eaze routes orders to “local, licensed retail partners,” works exclusively with “licensed, compliant brands and retail partners,” requires valid identification before an order is placed, and verifies the customer’s identification again upon delivery. *See* EAZE, <https://www.eaze.com/about/> (last visited 6 October 2026).

Thus, while Appellant claims these companies deliver marijuana “like pizza,”² a closer look at this process shows it involves a regulated commercial transaction between an eligible purchaser and a licensed marijuana retailer. It does not establish that marijuana is indiscriminately available, that it is routinely encountered outside those commercial channels, or – most importantly – that servicemembers commonly encounter it unknowingly.

Although marijuana is now legal for adult recreational use in more jurisdictions, Appellant has not shown that this change has materially increased the likelihood of innocent ingestion by servicemembers. As Ford explained, marijuana’s contraband status matters because a servicemember’s “access to it, which impacts on the probability of innocent ingestion, is greatly reduced.” 23 M.J. at 337. State legalization does not eliminate that distinction: even where marijuana may be lawfully purchased by civilians, those markets remain subject to

² *See* App. Br. at 20.

age restrictions, licensing requirements, purchase limits, identification requirements, and other regulations governing its sale and possession. Thus, increased civilian availability does not establish that servicemembers are likely to encounter marijuana unknowingly, much less that unknowing ingestion has become sufficiently prevalent to render a positive urinalysis irrationally indicative of knowing use. Indeed, Appellant concedes that “marijuana use remains illegal for servicemembers under the UCMJ.” (App. Br. at 26.) The civilian marijuana landscape may have changed since Ford, but Appellant has not shown that the military-civilian distinction underlying Ford has disappeared or that civilian legalization has materially increased the probability of innocent ingestion. The first Ford consideration therefore remains a rational basis for the permissive inference.

b. Servicemembers Remain on Notice That Marijuana Use Is Prohibited

The second consideration identified in Ford also remains intact. In Ford, the Court explained that the military had “greatly intensified their efforts to eliminate drug abuse and have well publicized this campaign,” and that servicemembers were therefore “on notice to avoid any and all contact with these substances, a fact which further reduces the possibility of innocent ingestion.” 23 M.J. at 337. Appellant’s own brief confirms this remains true today.

Appellant’s brief spotlights the military’s continuing efforts to warn servicemembers about marijuana. He quotes a 9 July 2026 memorandum from the Under Secretary of War for Personnel and Readiness reminding servicemembers that the UCMJ prohibits the wrongful use of marijuana “even if a State or local jurisdiction legalizes the use of recreational marijuana or authorizes the sale of marijuana.” (App. Br. at 13.) Appellant likewise cites Department of the Air Force Manual 44-197, *Military Drug Demand Reduction Program* (5 September 2023), which expressly warns that, “[w]hile some jurisdictions have legalized the use of marijuana . . . for recreational or medical purposes,” wrongful use remains prohibited and punishable under Article 112a, UCMJ. (App. Br. at 13–14.)

Those sources do not undermine Ford, but instead readily demonstrate this second consideration remains present. The military has not left servicemembers to determine for themselves whether state legalization changes the rules applicable to them. To the contrary, the military has expressly communicated the opposite: civilian legalization does not authorize marijuana use by servicemembers.

That notice matters to the permissive inference because it bears directly on the likelihood that a servicemember could unknowingly ingest marijuana. As Ford recognized, a servicemember who is specifically warned to “avoid any and all contact” with marijuana is less likely to encounter or consume marijuana inadvertently. 23 M.J. at 337. Because servicemembers are informed that

marijuana use is prohibited – and that they must avoid contact with it – the less likely it is that a positive marijuana result is attributable to innocent ingestion rather than knowing use. Thus, the military continues to put servicemembers “on notice to avoid any and all contact with these substances, a fact which further reduces the possibility of innocent ingestion.” Ford, 23 M.J. at 337.

Appellant recognizes this distinction elsewhere in his brief. In addressing the expectations of servicemembers, he concedes that “marijuana use remains illegal for servicemembers under the UCMJ despite state-level legalization.” (App. Br. at 26.) That concession is difficult to reconcile with Appellant’s contention that the notice consideration underlying Ford has disappeared.

Appellant also points to changes in federal enforcement policy, including the Department of Justice’s decision not to pursue certain marijuana prosecutions. (App. Br. at 5.) But federal prosecutorial priorities do not change the law applicable to servicemembers. Marijuana use remains prohibited under Article 112a, UCMJ, and the military continues to specifically and directly notify servicemembers that marijuana remains illegal. Appellant identifies no change in the rule governing servicemembers, much less any change that would diminish their notice that marijuana use remains prohibited.

Nor does the existence of lawful civilian marijuana markets make the military prohibition any less clear. If anything, Appellant’s own reliance on the

July 2026 memorandum demonstrates why notice remains particularly important in the modern legal landscape. Even as marijuana has become lawful in some civilian jurisdictions, the military has expressly, and continually, reminded servicemembers that those civilian rules do not apply to them.

To this point, Appellant's arguments concerning state laws, dispensaries, cannabis cafés, and commercial availability may bear on the civilian circumstances surrounding marijuana. But none of that evidence establishes that a servicemember is less likely to know that marijuana use is prohibited under the UCMJ. Indeed, Appellant's own evidence establishes the opposite: servicemembers are specifically warned that state-law legalization does not alter the prohibition applicable to them. Nor does Appellant's evidence establish that state-law legalization has made innocent ingestion more likely despite that notice.

Thus, even accepting Appellant's premise that the civilian marijuana landscape has changed substantially since Ford, he has not shown that the military's notice to servicemembers has diminished. The second Ford consideration therefore remains materially intact: servicemembers are expressly placed on notice that marijuana use is prohibited, regardless of whether civilian law permits marijuana use where they live, travel, or spend their leave. That continuing notice supports the use of the permissive inference because it reduces

the likelihood that a positive marijuana result reflects innocent ingestion rather than knowing use.

c. Marijuana Remains Capable of Producing Physiological Effects That May Alert a User to Its Presence

The third consideration identified in Ford likewise remains relevant. In upholding the permissive inference, Ford recognized that the “physiological effects from the internal presence of the drug in the body *might serve to alert* the user to the presence of a controlled substance in his system.” 23 M.J. at 337. (emphasis added.) Appellant does not establish that this consideration has disappeared.

Here, Appellant argues that a “urinalysis alone cannot determine if a marijuana user experiences any psychoactive effect.” (App. Br. at 23.) Appellant relies on the Government’s expert testimony that a positive urinalysis cannot establish whether a servicemember actually “feel[s] the effects” of marijuana. (Id., citing JA at 122.) He likewise cites the dissenting opinion in Downum for the proposition that it is not possible to definitively establish that a user experienced the physical and psychological effects of a controlled substance. (Id.) But that evidence does not establish that marijuana is incapable of producing noticeable effects. Instead, it establishes only that the presence of a metabolite in urine does not permit a forensic determination, after the fact, of whether a particular individual experienced those effects.

But those are different propositions. Ford did not hold that a positive urinalysis itself proves that an accused experienced a physiological effect, nor did it make the permissive inference contingent upon the Government proving that effect in every case. The relevant consideration, instead, was simply that marijuana can produce effects that “might serve to alert” a user aware of what he has consumed. Ford, 23 M.J. at 337. As Ford explained, “[s]uch recognized common knowledge suggests that the possibility of knowing drug use is great when a servicemember fails to satisfactorily explain the presence of the drug’s constituent elements in his system.” Id. That rationale remains equally applicable today.

Appellant’s evidence addresses what a urine test can establish about a particular individual’s subjective experience; it does not establish that marijuana has ceased to produce physiological effects that may alert a user to its presence. Nor does it establish that the possibility of experiencing such effects has become irrelevant to whether a servicemember knowingly used marijuana.

To this point, there is an additional problem with Appellant’s attempt to show that this consideration has disappeared. Appellant himself asserts that “the potency of marijuana products has increased four-fold in the last thirty years.” (App. Br. at 12.) Once again, Appellant’s own assertions prove Ford’s continued relevance as he demonstrates that marijuana continues to produce effects that may

alert a user to its presence. Appellant certainly cannot simultaneously rely on marijuana's increased potency as evidence that the modern marijuana landscape differs materially from Ford while also claiming that marijuana's physiological effects no longer "might serve to alert the user to the presence of" marijuana in their system. *See Ford*, 23 M.J. at 337. If anything, Appellant's assertion concerning increased potency reinforces, rather than undermines, the premise that marijuana may produce noticeable effects that can alert a user to its presence.

Ultimately, Ford has never required the Government to prove, through urinalysis or otherwise, that an accused actually experienced a physiological effect.³ Instead, it recognized only that such effects might alert a user to the presence of the drug. Ford, 23 M.J. at 337. And that possibility remains relevant to the inference because, when a servicemember experiences effects that may alert him to the presence of marijuana, and no satisfactory innocent explanation accounts for the marijuana in his system, those effects make knowing use more likely. Appellant has failed to explain how this consideration no longer provides a rational contribution to the inference of knowing use.

³ In fact, Downum specifically clarified that expert testimony need not address whether a defendant would have experienced the physiological effects of the controlled substance for the permissive inference to be used. *See Downum*, 86 M.J. at 204.

d. Ordinary Self-Preservation Continues to Provide a Rational Basis to Expect a Person to Know What He Consumes

The fourth consideration identified in Ford is grounded in ordinary human experience: “self-preservation generally dictates that a person, whether a servicemember or not, generally knows what he consumes.” 23 M.J. at 337. Despite Appellant’s seeming contention that “copy-cat” packaging for THC products has simply made it too hard for servicemembers to recognize the difference between THC products and a normal bag of Doritos, Appellant’s arguments fail to eliminate the ordinary expectation that a person knows what he consumes when it comes to products containing marijuana.

Much of Appellant’s unknowing ingestion arguments center on “inconsistencies in packaging that lead to inadvertent ingestion.” (App. Br. at 21.) Appellant starts with the study about “copy-cat” foods that “mimic common snacks,” but have what he calls “minimal warnings of marijuana content.” (App. Br. at 10, citing Danielle C. Ompad et al., *Copycat and lookalike edible cannabis product packaging in the United States*, DRUG AND ALCOHOL DEPENDENCE, June 2022 (available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC9106923/>)). However, the very picture Appellant embedded in his brief shows no less than four warnings about THC and edibles on the front and back of the packaging. (See App. Br. at 11.)

Appellant also fails to note the underlying data of the Ompad study. The study states, “We collected 1405 photos of 731 cannabis products, of which 267 (36%) of the products were edibles. Among the edibles, we evaluated 22 photo submissions (8%) representing 13 unique edibles that met our definition of copycats or lookalikes of commercial non-cannabis food products.” Danielle C. Ompad et al., *Copycat and lookalike edible cannabis product packaging in the United States*, DRUG AND ALCOHOL DEPENDENCE, June 2022, at 4. In other words, out of 731 products, *only 13* (or 1.8%) met the definition of a “copycat.”

Further, the study states, “All packages provided information to indicate that they were cannabis edibles,” adding that “Twelve of the 13 packages reported total package THC content in mg; two reported mg without clearly indicating it was THC, although, for the purposes of this analysis, we inferred that it was THC.” Id. The study continued, “Ten used a standardized cannabis warning symbol. Twelve had cannabis related warnings and 12 used terms indicating cannabis content.” Furthermore, a review of the study shows the prevailing concern about the packaging was “exposure among youths.” Id. at 2.

Thus, Ompad does not establish that adults commonly mistake cannabis products for ordinary consumer products. It establishes that a small subset of the products examined had packaging resembling commercial food products, while also finding that the products generally contained multiple indications that they

were cannabis products. And although the study identifies the potential for accidental ingestion, its discussion principally concerns exposure among youths – not the frequency with which adults unknowingly consume cannabis products. Most importantly, the study does not measure how often an adult actually mistakes a cannabis product for its non-cannabis counterpart, how often that mistake results in ingestion, or how often such ingestion produces a positive marijuana urinalysis. Thus, while Ompad establishes the mere *possibility* of mistaken ingestion, it does not venture into the *prevalence* necessary to undermine Ford's ordinary-experience premise that a person generally knows what he consumes.

Appellant also discusses vape products whose contents may not be apparent once removed from their packaging. (App. Br. at 9-10.) Yet, Appellant again fails to provide any correlation to unknowing ingestion. His anecdotal evidence does not establish how often adults actually mistake unlabeled vape products or establish how often such a mistake results in ingestion sufficient to produce a positive urinalysis.

Further, evidence provided to the military judge at trial concerning the particular vape product associated with Appellant likewise does not support his claim that THC products are so difficult to distinguish that unknowing ingestion is a reasonable explanation. Amn NM testified that he had seen Appellant use a Geek Bar vape and that Amn NM himself used the same brand. (JA at 128-29.)

Amn NM explained that the store separated nicotine and THC products and that the packaging clearly identified whether a product contained THC. (JA at 130.) He testified that, because of that labeling, he was not concerned that a vape he purchased might contain THC. (JA at 130.) This case-specific testimony further supports the ordinary expectation that a servicemember can exercise reasonable care in determining what he consumes.

Additional evidence introduced at trial established that vape sellers have economic incentives to label their products correctly, so they can charge more for products containing THC. (JA at 124.) Again, the relevant question under Ford is not whether unknowing consumption is possible, but whether the possibility has become so prevalent that ordinary experience no longer supports an inference that a person generally knows what he consumes. When it comes to THC-9/marijuana products, Appellant has failed to make such a showing.

Appellant's other studies present similar shortcomings. For instance, Appellant cites a study for the proposition that "11% of marijuana ingestions reported to the Oregon and Alaska poison centers between 2015-2017 were accidental." (App. Br. at 12, citing Robert G. Hendrickson et al., *Acute cannabis toxicity in older adults*, 4 TOXICOLOGY COMMUNICATIONS 67, 67-70 (2020).) However, that study involved 127 reported acute cannabis toxicity exposures to poison centers in Oregon and Alaska over the course of 17 months. It

did not sample all marijuana use or all marijuana ingestion in the population. A poison center is certainly not a random sample of people who consume marijuana. Instead, it captures people who have experienced or are perceived to have experienced an exposure serious enough to generate a poison-center report. A percentage within that selected population cannot simply be converted into a population prevalence rate, let alone be in some way attributable to servicemembers or positive military urinalyses.

Appellant also repeatedly references a study that reviewed “self-reported cannabis use in the United States from 1979 to 2022,” for the proposition that “adults are using [marijuana] more regularly than alcohol.” (App. Br. at 6, 20-21, citing Jonathan P. Caulkins, *Changes in Self-Reported Cannabis Use in the United States from 1979 to 2022*, 119 ADDICTION 1648 (2024).) The study does report that, in 2022, the number of people reporting daily or near-daily cannabis use exceeded the number reporting daily or near-daily alcohol use – 17.7 million compared with 14.7 million. But that is not the same as finding that more people regularly use cannabis than alcohol. To the contrary, the authors expressly state: “Far more people drink, but high-frequency drinking is less common.” Jonathan P. Caulkins et al., *Changes in self-reported cannabis use in the United States from 1979 to 2022*, *Addiction* (2024).

More important, however, is the fact that this study analyzed self-reported, intentional cannabis use. It does not measure unknowing ingestion, accidental consumption, mistaken consumption of cannabis products, or the frequency with which a person who tests positive for THC did not know that he consumed marijuana. In short, the study establishes prevalence of *intentional* use, not unknowing use.

Ultimately, Appellant's packaging and prevalence arguments rest on an unstated assumption in his brief that adults – including servicemembers – can no longer reasonably be expected to recognize what they are consuming when it comes to marijuana. But Appellant has failed to show that is actually the case. Instead, the ordinary expectation of self-preservation is still as pertinent today as it was when Ford was decided. The existence of a small percentage of products that may resemble familiar foods does not make that expectation irrational, especially when, as in Appellant's own example, the products resembling ordinary food are plastered with multiple cannabis-specific warnings or other indicators that they were cannabis edibles. The evidence therefore does not establish that an adult who encounters one of these products cannot reasonably be expected to recognize what it is.

That expectation is particularly reasonable in the military context because servicemembers know that they are subject to random drug testing. A

servicemember therefore has an additional reason to exercise care about what he consumes and to avoid products, foodstuffs, vapes, or other substances whose contents are unknown or uncertain. In that context, it is rational to expect a servicemember to take reasonable precautions to avoid unknowingly consuming marijuana. And where marijuana is nevertheless detected in a servicemember's system, the ordinary expectation that he knows what he consumes provides a rational basis to infer knowing use, absent a satisfactory explanation for how the marijuana entered his system.

Taken together, Appellant has not shown that the circumstances supporting Ford have disappeared in relation to marijuana. His propositions do not establish that a servicemember is commonly exposed to marijuana unknowingly, that such exposure commonly produces a positive urinalysis, or that knowing use is no longer the more rational inference from a scientifically confirmed positive test. Indeed, given servicemembers' awareness that they are subject to random drug testing, it remains rational to expect them to exercise reasonable care in consuming products whose contents may be uncertain. Thus, when the metabolite for marijuana is found in a servicemember's system, it is rational to draw the inference that the servicemember knowingly used marijuana. In the end, Appellant has failed to establish that this Ford consideration has materially changed.

e. Quick Does Not Support Overruling Ford

Appellant invokes Quick to argue that Ford should be overruled. (App. Br. at 24–27.) Quick identifies four considerations relevant to whether this Court should depart from precedent: whether the precedent is unworkable or poorly reasoned; whether there have been intervening changes in the law; whether overruling the precedent would upset reasonable expectations; and whether retaining it would undermine public confidence in the judiciary. Quick, 74 M.J. at 336–37. None supports overruling Ford.

But these considerations reflect a broader principle: stare decisis counsels adherence to precedent absent a strong justification for departing from it. The doctrine of stare decisis is “the preferred course because it promotes the even handed, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” United States v. Rorie, 58 M.J. 399, 406 (C.A.A.F. 2003) (citing Payne v. Tennessee, 501 U.S. 808, 827 (1991)). Thus, the question under Quick is not simply whether circumstances surrounding Ford have changed since 1987; it is whether those changes are sufficient to overcome the reasons for adhering to precedent. They are not. That is particularly true where, as here, the precedent has been repeatedly applied, remains workable, and has recently been

recognized by this Court as part of the longstanding law governing permissive inferences. *See Bass*, at *15-16.

First, Appellant has not shown that Ford is unworkable or poorly reasoned. While Appellant contends that Ford was poorly reasoned “the day it was decided,”⁴ that characterization is difficult to square with this Court’s “long approved” use of the inference since 1955 or its most recent treatment of Ford in Bass. In Bass, decided only months ago, all five judges of this Court addressed Ford in positive terms. *See Bass*, at *15-16, 26-29. The majority described the permissive inference as one this Court has “long approved” and cited Ford as authority for the longstanding rule. *Id.* at *15–16. And the dissent likewise relied upon the considerations identified in Ford, applying those considerations in concluding that the permissive inference was constitutionally permissible for THC-8. *Id.* at *26-29. Not one of the five judges characterized Ford as poorly reasoned or questioned the soundness of its underlying rationale.

Appellant may argue that subsequent developments have changed the circumstances surrounding marijuana use, but that is different from asserting that Ford and its considerations as a whole were poorly reasoned when decided. The Court’s recent treatment of Ford provides no support for that proposition. To the

⁴ *See App. Br.* at 26-27.

contrary, Bass confirms that Ford remains a recognized and analytically significant part of this Court’s permissive-inference jurisprudence.

Second, Appellant identifies no intervening change in law that invalidates Ford. Bass did not hold the marijuana inference unconstitutional; rather, it recognized that, in the Article 112a context, this Court has “long approved” a permissive inference that a positive urinalysis for a controlled substance supports an inference of knowing and wrongful use and declined to extend that inference to THC-8 under the particular circumstances presented there. Nor has state legalization or changes in federal enforcement altered the rule applicable to servicemembers. Marijuana remains prohibited under Article 112a, UCMJ. Further, while Appellant claims the “underlying facts, perceptions, and assumptions of Ford’s analysis have changed,” the analysis above shows that is incorrect. (*See App. Br. at 25.*)

Third, Appellant does not identify any reasonable servicemember expectation that Ford is no longer controlling. On the contrary, servicemembers continue to receive express notice that marijuana use remains prohibited regardless of state or local legalization. Appellant himself acknowledges that prohibition. (*App. Br. at 13–14, 26.*) The military has therefore preserved, rather than undermined, the expectation that marijuana use remains prohibited.

Finally, Appellant has not shown that retaining Ford would undermine public confidence in the judiciary. Contrary to Appellant’s claim, drug use convictions using the permissive inference have never been “automated by a lab machine rather than proved by prosecutorial investigation.” (App. Br. at 26.) Instead, the laboratory testing establishes the basic fact that THC was present in Appellant’s urine. The permissive inference merely allows the *trier of fact* to infer knowing use from that fact; but it does not require them to do so. Ford, 23 M.J. at 337. The trier of fact remains free to reject the inference based on the evidence presented at trial, and the Government retains the burden of proving every element beyond a reasonable doubt. The inference therefore does not replace the factfinder’s judgment with a laboratory result; it permits the factfinder to draw a conclusion from the evidence that the law recognizes as rational, while leaving the ultimate determination of knowing use to the factfinder.

f. Bass Does Not Impact the Ford Analysis for Marijuana

In Bass, this Court addressed THC-8, a substance whose legal status and availability differ greatly from marijuana. The Bass majority concluded that the Ford premises supporting the permissive inference did not hold for THC-8, where the substance was derived from federally lawful hemp, was lawfully available to civilians through mainstream commercial channels, and could be sold in products whose labeling was recognized as potentially inaccurate. Bass, at *15–16.

THC-9 remains materially different. Unlike THC-8, THC-9 is a controlled substance, and it remains unlawful federally and under Article 112a, UCMJ.

Appellant's own materials establish that marijuana products are highly regulated and sold through restricted civilian channels, not through "mainstream retail venues, such as grocery stores, [and] gas stations" as this Court found THC-8 was available. Id. Further, as shown by Appellant's own examples, packaging of marijuana edibles provide clear THC warnings. Put simply, the concerns this Court's majority detailed for THC-8 in Bass are not applicable to marijuana.

g. The Permissive Inference Was Not Unconstitutional as Applied to Appellant

Appellant alternatively argues that, even if the permissive inference remains facially constitutional, it was unconstitutional as applied to him for two reasons. (App. Br. at 28.) Appellant first claims the "presumed fact (that Appellant knowingly used marijuana) does not, more likely than not, flow from the proved fact (his urinalysis results)." (Id.) Appellant claims the connection is "irrational for the reasons described above: the premises supporting the permissive inference for marijuana are no longer present in our society." (Id.) Appellant remains mistaken. The four Ford factors – (1) servicemembers' still limited access to marijuana, (2) the well-publicized nature of the military's prohibition on marijuana use, (3) the expected physiological effects of marijuana use, and (4) the continuing instinct for self-preservation among servicemembers who are regularly drug tested

– still make the inference of knowing use more likely than not to flow from a positive urinalysis for THC-9. In sum, the circumstances that supported the inference in Ford remain sufficiently present to provide a rational connection between a positive urinalysis and knowing use. *See Ford*, 23 M.J. at 337.

Moreover, Appellant’s own circumstances do not demonstrate the kind of lawful adult-use marijuana environment on which he relies. During the relevant period, Appellant was either stationed in South Carolina or on leave in Texas, neither of which had legalized adult-use marijuana. *See South Carolina Marijuana Laws*, South Carolina Cannabis Information (last visited 6 October 2026), <https://southcarolinastatecannabis.org/laws>; *Cannabis & the Law: Recreational Use*, Texas State Law Library (last visited 6 October 2026), <https://guides.sll.texas.gov/cannabis/recreational-use>. Thus, even apart from the broader changes discussed above, the particular circumstances of Appellant’s case show he was not in a jurisdiction where recreational marijuana was legal.

For his second reason, Appellant claims “the urinalysis was the sole basis for a finding of guilt and using it in this case violates the requirements of Fifth Amendment Due Process.” (Id.) Appellant is again incorrect.

To start, Appellant’s entire premise is flawed because he again claims the urinalysis test was the “sole basis for a finding of guilt.” It was not. Appellant’s reliance on Allen is misplaced. (*See App. Br.* at 29.) In Allen, the Supreme Court

analyzed a statute that permitted an inference that an illegal firearm found in a vehicle was possessed by all occupants of the vehicle. 442 U.S. at 142. In doing so, the Court explained that “[i]nferences and presumptions are a staple of our adversary system of factfinding.” Id. at 156. Allen distinguished a permissive inference, which the factfinder may accept or reject, from a mandatory presumption, which the factfinder must accept. Id. at 157, 167. The Court explained:

In the [mandatory presumption] situation, since the prosecution bears the burden of establishing guilt, it may not rest its case entirely on a presumption unless the fact proved is sufficient to support the inference of guilt beyond a reasonable doubt. But in the [permissive presumption] situation, the prosecution may rely on all of the evidence in the record to meet the reasonable-doubt standard. There is no more reason to require a permissive statutory presumption to meet a reasonable-doubt standard before it may be permitted to play any part in a trial than there is to require that degree of probative force for other relevant evidence before it may be admitted. As long as it is clear that the presumption is not the sole and sufficient basis for a finding of guilt, it need only satisfy the test described in Leary.

Allen, 442 U.S. at 167.

Appellant’s attempt to place this case in the latter category by characterizing the urinalysis as the “sole basis for a finding of guilt” is unsuccessful because the Government did not introduce a bare laboratory result and rely upon the permissive inference as the sole proof of knowing use. Instead, the Government introduced

the positive urinalysis together with expert testimony establishing the scientific basis and reliability of the result, explaining the significance of the reporting cutoff, and providing an opinion concerning the amount of THC Appellant most likely ingested. The Government also introduced evidence that Appellant used a vape pen and was on leave during the relevant period, and that vape shops have economic incentive to label THC products correctly. And Amn NM, a colleague of Appellant's, testified that the colleague had used the same vape pen as Appellant, that he had never tested positive for THC, that the THC vapes were well-labeled at the vape store he used, and that he had no fear of testing positive for THC. (JA at 128-31.) The Government also introduced evidence that Appellant had used marijuana before joining the military which decreased the probability of unknowing use, since Appellant knew what marijuana looked like, smelled like, tasted like, and felt like. (JA at 128.) The military judge was entitled to consider all of that evidence in determining whether the Government proved knowing use beyond a reasonable doubt.

The evidence also provided a rational basis for concluding that knowing use was more likely than not to flow from Appellant's positive urinalysis. The laboratory testing established the presence of a marijuana metabolite at a concentration 47% above the DoD reporting cutoff; Dr. EH explained why that cutoff distinguished actual drug use from mere laboratory noise and separated non-

users from known users; and the evidence established that Appellant had a means and opportunity to use marijuana during the relevant period. Under those circumstances, it was rational to conclude that knowing marijuana use was more likely than not to flow from the confirmed presence of the marijuana metabolite in his urine. Appellant has identified no individualized circumstance suggesting that his particular positive result was unusually likely to have resulted from an unknown or accidental exposure.

In sum, this was not a case in which a bare positive urinalysis was the sole and sufficient basis for guilt. The Government presented evidence that made the positive urinalysis meaningful and probative of knowing use, and the military judge was entitled to consider that evidence in determining whether the Government proved the charged offense beyond a reasonable doubt. Appellant's Allen argument therefore provides no basis for finding the permissive inference unconstitutional as applied to him.

For the reasons set forth above, the permissive inference is and remains constitutional for marijuana cases, both facially and as applied to Appellant's case. Accordingly, this Court should deny Appellant's claim and affirm his conviction.

II.

THE EVIDENCE WAS LEGALLY SUFFICIENT TO SUPPORT APPELLANT’S CONVICTION.

Standard of Review & Law

This Court reviews legal sufficiency de novo. United States v. Moore, 86 M.J. 308, 312 (C.A.A.F. 2026) (citing United States v. King, 78 M.J. 218, 221 (C.A.A.F. 2019)). “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 a crime beyond a reasonable doubt.” United States v. Robinson, 77 M.J. 294, 297-98 (C.A.A.F. 2018) (quoting United States v. Rosario, 76 M.J. 114, 117 (C.A.A.F. 2017)). Thus, “[t]he standard for legal sufficiency involves a very low threshold to sustain a conviction.” United States v. George, 86 M.J. 38, 42 (C.A.A.F. 2025) (quoting King, 78 M.J. at 221 (alteration in original) (internal quotation marks omitted) (citation omitted).) Applying this test, this Court draws every reasonable inference from the evidence in the record of trial in favor of the prosecution. United States v. McGinty, 38 M.J. 131, 132 (C.M.A. 1993).

Analysis

Appellant’s legal-sufficiency argument largely repackages the arguments addressed within Issue I above. He contends that the Government could not rely on the permissive inference because its factual premises no longer hold, that the

Government failed to satisfy the second Campbell factor, and that his good-military-character evidence precluded a finding of guilt. (App. Br. at 31–35.) None of these arguments establishes legal insufficiency.

a. The Evidence Was Sufficient to Permit the Military Judge to Draw the Permissive Inference

Appellant’s first argument – that the Government failed to prove the premises necessary for the permissive inference – depends entirely on his facial and as-applied constitutional challenges from Issue I. (App. Br. at 32.) For the reasons discussed above, those challenges fail. Ford remains good law, and Appellant has not shown that the circumstances supporting the inference have disappeared.

Moreover, the evidence in this case provided a rational basis for the military judge to draw the inference – especially when this Court, as it must, considers the evidence in the light most favorable to the Government. The Government established through laboratory testing that Appellant’s urine contained 22 ng/mL of a marijuana metabolite, 47% above the 15 ng/mL DoD reporting cutoff. Dr. EH explained the scientific basis for the result, the reliability of the testing procedures, and the significance of the cutoff, and testified that, if Appellant had used marijuana during the relevant period, he most likely ingested more than 50 milligrams of THC. (JA at 97-125.) The Government also presented evidence that Appellant used a vape pen and was on leave during the relevant period, providing

both a means and an opportunity for marijuana use. Amn, NM, a colleague of Appellant's, further testified that the colleague used the same vape pen as Appellant and had never tested positive for THC. (JA at 129.) Amn NM had no fear of a false positive for THC, because, in his experience, THC products were clearly marked. (JA at 129-30.) The Government reinforced this testimony with additional evidence that vape shops had an economic incentive to correctly label THC products so they could charge more for them. And the Government also offered evidence that Appellant had used marijuana before and thus was familiar with how it looked, smelled, tasted, and felt, which would make the chance of unknowing use less likely. (JA at 128.) All these pieces of evidence assisted the Government in establishing that innocent ingestion was unlikely and supported the military judge's drawing of the permissive inference.

Finally, nothing in the evidence provided an alternative explanation for how marijuana entered Appellant's system. There was no evidence in the record that he unknowingly consumed marijuana, that someone else caused him to ingest it, or that his positive urinalysis resulted from some other identified source. Thus, viewing the evidence in the light most favorable to the Government, the military judge had a rational basis to infer that Appellant knowingly used marijuana from the confirmed positive urinalysis and the surrounding circumstances.

b. The Government Satisfied the Campbell Factors

Appellant next contends that the Government failed to satisfy the second Campbell factor because Dr. EH testified that the 15 ng/mL cutoff was designed to eliminate analytical “noise,” rather than to exclude unknowing ingestion. (App. Br. at 32–35.) Appellant misconstrues Dr. EH’s testimony.

The three Campbell considerations are whether (1) the metabolite is not naturally produced by the body or another substance; (2) the cutoff level and reported concentration are high enough to reasonably discount unknowing ingestion; and (3) the testing methodology reliably detected the presence and concentration of the drug or metabolite. Downum, 86 M.J. at 204.

The Government satisfied each consideration. Dr. EH testified that neither THC-9 nor its metabolite is normally present in the body, explained the AFDTL’s testing methodology and quality controls, and confirmed that the laboratory properly followed those procedures in Appellant’s case. (JA at 101–16.) As to the cutoff, Dr. EH testified that the cutoff was established at a level high enough to distinguish an actual signal from “noise” and, based on the research underlying the cutoff, separated the non-using population from known users. (JA at 103.) He also testified that Appellant’s specimen contained 22 ng/mL – seven ng/mL (or 47%) above the established 15 ng/mL cutoff level.

While Appellant focuses on Dr. EH's use of the word "noise," he completely discounts his further statement that the cutoff was "set high enough" to "completely separate[]" the "non-using population" from the "population of known users." (Id.) This testimony specifically meets the second Campbell factor because it addresses and explains that the "cutoff level and reported concentration are high enough to reasonably discount the possibility of unknowing ingestion." See Downum, 86 M.J. at 204; Campbell, 52 M.J. at 388.

Considering the "very low threshold to sustain a conviction," Dr. EH's testimony readily meets the Campbell factors to establish the permissive inference's use and that Appellant's conviction is legally sufficient. See George, 86 M.J. at 42. Thus, Appellant's claim must fail.

c. Appellant's Good Military Character Evidence Did Not Render the Evidence Legally Insufficient

Finally, Appellant argues that his good military character evidence precluded a finding of guilt. (App. Br. at 35.) It did not. The value of this good military character evidence is limited at best since Appellant, who was 22 years old at the time of the use, had less than two years of service and was only in his first assignment as a military member. (JA 82-90.) This is hardly sufficient to negate guilt when the other substantial evidence in this case included (1) a positive urinalysis result, (2) circumstantial evidence of vape use, and (3) economic incentives for stores that sell vape to clearly mark their THC products as

containing THC. A rational factfinder could have reasonably given little weight to Appellant's good military character defense in light of his youth and very short term of military service. Considering this evidence and the standard of review, Appellant has failed to show his conviction is legally insufficiency based on any good military character evidence.

In sum, the Government has shown the Ford premises for the continued use of the permissive inference for marijuana, Dr. EH's testimony met the Campbell requirements, and any evidence of good military character fails to show Appellant's conviction is legally insufficient. Here, the record shows the specification is legally sufficient and that a reasonable factfinder could have found all the essential elements beyond a reasonable doubt. In drawing every reasonable inference from the evidence in the record of trial in favor of the prosecution, the Court should deny Appellant's claim.

CONCLUSION

WHEREFORE, the United States respectfully requests that this Court deny Appellant's claims and affirm AFCCA's decision.



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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate counsel, and the Air Force Appellate Defense Division on 6 October 2026.



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CERTIFICATE OF COMPLIANCE WITH RULE 24(b)

1. This brief complies with the type-volume limitation of Rule 24(b) because:

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2. This brief complies with the typeface and type style requirements of Rule 37 because:

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/s/

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Date: 6 October 2026