

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

UNITED STATES,
Appellee,

v.

JONEL H. GUIHAMA
Master Sergeant (E-7), United States Air Force
Appellant.

Crim. App. No. 40039
USCA Dkt. No. 23-0085/AF

BRIEF ON BEHALF OF APPELLANT

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Issue presented

WHETHER THE MILITARY JUDGE ABUSED HER DISCRETION BY ADMITTING A CONFESSION THAT WAS NOT TRUSTWORTHY BECAUSE IT LACKED SUFFICIENT CORROBORATION?

Statement of Statutory Jurisdiction

The Air Force Court of Criminal Appeals (AFCCA) reviewed this case pursuant to Article 66(c), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(c). This Honorable Court has jurisdiction to review this case pursuant to Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3).¹

Statement of the Case

Master Sergeant (MSgt) Jonel Guihama was tried before a general court-martial composed of a military judge sitting alone at Joint Base Lewis-McChord, Washington, on October 17-18, 2019 and November 16-19, 2020. (JA 063).

Contrary to his pleas, MSgt Guihama was found guilty of one charge and specification of aggravated sexual contact with a child, in violation of Article 120, UCMJ, 10 U.S.C. § 920 (2008 ed.) (2008 *MCM*); one charge and five specifications of possession of child pornography, one specification of viewing child pornography, and one specification of distribution of child pornography, all in violation of Article

¹ Except where indicated, references to the UCMJ, the Rules for Courts-Martial (R.C.M.), and the Military Rules of Evidence (Mil. R. Evid.) are to the *Manual for Courts-Martial, United States* (2019 ed.) (2019 *MCM*).

134, UCMJ, 10 U.S.C. § 934 (2012 ed.) (2012 *MCM*); and one additional charge and specification of aggravated sexual abuse of a child, in violation of Article 120, UCMJ, 10 U.S.C. § 920 (2008 ed.) (2008 *MCM*). (JA 063-64). Consistent with his pleas, MSgt Guihama was found not guilty of one charge and two specifications of sexual abuse of a child, in violation of Article 120b, UMCJ, 10 U.S.C. § 920b (2012 ed.) (2012 *MCM*). (JA 063).

MSgt Guihama was sentenced to reduction to E-1, forfeiture of all pay and allowances, confinement for 10 years, and a dishonorable discharge. (JA 065). The convening authority took no action on the findings and approved the sentence in its entirety. (JA 072).

Before the Air Force of Criminal Appeals (AFCCA), MSgt Guihama raised, *inter alia*, an assignment of error alleging that his confession admitted by the military judge was not adequately corroborated as required by Mil. R. Evid. 304(c). (JA 002). The AFCCA affirmed the findings and the sentence. (JA 3).

Statement of Facts

Background

MSgt Guihama was tailed by a Federal Bureau of Investigation (FBI) agent beginning in early 2018. (JA 074-75). The FBI first became interested in MSgt Guihama based upon a lead that they had received linking a certain Internet Protocol (IP) address to a messaging program known as “Kik.” (JA 076).

Specifically, between April 2017 and May 2017, the FBI had taken over an account owned by another individual on Kik, and surreptitiously entered a Kik chat room. (JA 075; 353). In so doing, they reportedly came across a user sending a Dropbox link to view child pornography. *Id.* The FBI then determined that the IP address associated with the links in the chat room was associated with MSgt Guihama's name, which they ultimately connected to a certain residential address in Washington State. (JA 074-78). After staking out the residence to which the IP address was linked along with other open-source investigation, the FBI concluded that MSgt Guihama was the user in the Kik chat room. (JA 076-77). They followed him to and from work and generally watched his comings and goings. (JA 077-78). Fifteen months after the Kik conversation at issue took place, the FBI agent in charge, Agent P.D., sought a search warrant to search all of MSgt Guihama's digital devices. (JA 073-78; 081; 084).

In the fifteen months between the Kik conversation and Agent P.D.'s application for a search warrant for all of MSgt Guihama's digital devices, the FBI did not obtain any further evidence of criminal wrongdoing on the part of MSgt Guihama. (JA 081; 353-55).

In the early morning hours of September 5, 2018, right around 6:00 a.m., thirteen armed FBI, Air Force Office of Special Investigations (AFOSI) and Task Force agents in full tactical gear raided MSgt Guihama's home, ramming in the door

to gain entry as MSgt Guihama and his wife, R.G., were just awakening for the day. (JA 084-86; 383). MSgt Guihama, fearing intruders, grabbed his shotgun and stood at the top of his stairs. (JA 086). After realizing it was law enforcement in his home, MSgt Guihama immediately put down his gun and surrendered. *Id.* The agents arrested and handcuffed MSgt Guihama and placed him in a patrol vehicle outside of his residence. (JA 086-87; 116).

Interrogations

That same morning, MSgt Guihama was held for two hours in a parked police vehicle as he was interrogated initially about possessing, viewing, and distributing child pornography while agents searched his house for all his digital devices. (JA 086; 116-17; 224-39). Then, the agent asked MSgt Guihama if he spent a lot of time around kids. (JA 239). MSgt Guihama relayed that he did not have any kids, but he does have “nieces/nephews.” (JA 240). He went on to say, “I don’t think anything like this. Like what this is all—discussion is about, it’s not like what I look for on the outside.” *Id.* The agent responded, “Yeah. So, look we hear that a lot actually, and that--I totally, I believe you, I understand that that’s--but it’s kind of an evolution right. So, there was, I think, probably a point in your life when you would have said that you would never look at or share images of nude children, right?” *Id.* The agent went on to say then it got “a little bit easier” each time and MSgt Guihama “eventually masturbated” to the images and it kept getting a little bit easier and led

to a point where MSgt Guihama thought about it “in real life” And so, the only thing stopping you is the availability of someone in real life to actually engage in that fantasy.” *Id.* The agent and MSgt Guihama then had the following Q and A:

SA1: And so, I get you’re telling me you think about them as family, but I mean, have you--have you ever--let me ask you just straight out, have you ever put your hands on a child in an inappropriate----

SUBJ: No----

SA1: ----and sexual way?

SUBJ: Mm-mm, I would not. I would not do that, uh-huh.

SA1: Have you ever had the opportunity to?

SUBJ: I mean, if you put it that way, there are opportunities, but it’s not what I want to do, uh-uh.

SA1: Look, I believe that it’s not what you want to do I just think that sometimes people’s--the way that they’re hardwired sort of overcomes what their sort of moral compass tells them to do.

SUBJ: Mm-hm. No, I never--I never would and I never did that. I never----

SA1: No.

SUBJ: No, no, sir, I wouldn’t. That’s going overboard.

SA1: Yeah. You’re getting a little more emotional now than I think you were earlier----

SUBJ: Because I wouldn’t do that.

SA1: Yeah.

SUBJ: I wouldn’t.

...

SA1: Okay. Have you ever attempted to put your hands on a child?

SUBJ: No, not inappropriately

...

SA1: And so, probably 95 time (sic) out of 100, and this is all [we] do, probably 95 times out of 100 you have someone who's viewed these images, they know that they probably shouldn't, and sometimes they've put their hands on kids, even though they know that they shouldn't, and they know this is a bad thing, but that's just the way that they're wired So are you this, you know, the guy that just-you had the chance one time and you did it, and that's why you're kind of getting emotional now, and you've put your hands on someone that maybe you shouldn't have?

SUBJ: No, never. Never ever did I ever do anything like that, uh-uh.

SA1: Never.

SUBJ: Never.

(JA 240-42). The agent noted that it looked to him that MSgt Guihama "was going to start crying, it looked like he became close to starting to cry," and "his mouth was trembling a bit and his eyes got kind of red and watery." (JA 120).

During that portion of the interview, the agent asked MSgt Guihama four times if he had ever touched a minor inappropriately or sexually. (JA 240-42). The agent asked MSgt Guihama if he had ever had the opportunity to once. *Id.* The agent specifically referenced others in some way three times and told MSgt Guihama that those who possessed the child pornography videos like MSgt Guihama had also

touched a minor inappropriately or sexually. *Id.* MSgt Guihama, on the other hand, in response to this questioning said “no” six times; “never” eight times; “uh-uh” three times, that he “would not” eight times; that he did not want to once; and that it never crossed his mind once. *Id.* In total, MSgt Guihama denied, in the first interview alone, touching a minor inappropriately or sexually 27 times. *Id.* Near the end of the field interview in the vehicle, MSgt Guihama agreed to submit to a polygraph examination. (JA 088). MSgt Guihama was then transported approximately fifteen minutes away to an AFOSI detachment, where the agents had an FBI polygrapher, Agent G.W., waiting on stand-by to conduct an examination. (JA 098-99). The purpose of this interview was to “have a discussion around any sexual contact with minors since becoming an adult.” (JA 121). Agent G.W. described the polygraph as having a beginning part, middle part, and end part with only the latter two being recorded. (JA 122). The beginning or initial part began at approximately 9:00 a.m. (JA 128). Each part took place in different locations in AFOSI. (JA 122). For the beginning part, MSgt Guihama was brought into an interview room with Agent G.W. for a pre-polygraph interview. (JA 101; 128). During the pre-polygraph interview MSgt Guihama was asked several times in several different ways if he had ever touched a minor in a sexual manner, which he adamantly denied each and every time. *Id.* At this point in the investigation, law enforcement had repeated denials of sexual abuse of children by MSgt Guihama,

both in the field interview and the initial portion of the secondary interview. (JA 128). However, they did not conclude the interview at this time. (JA 129). Instead, they continued the interview and asked more questions about the potential sexual abuse of children. *Id.*

In the middle part prior to the polygraph examination, MSgt Guihama was asked again several times if he had ever had sexual contact with a minor, or words to that effect. *Id.* MSgt Guihama answered “no” every time. *Id.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] JA 128; 637-39). [REDACTED]

[REDACTED] (JA 127-29; 639). At this point, law enforcement still did not have any evidence of MSgt Guihama ever touching a minor in a sexual manner even after the field interview and the initial and middle portions of the secondary interview. (JA 130). They did not stop the interview there. *Id.* They continued and transitioned MSgt Guihama into a different room for the final portion of the interview. *Id.*

The end part or post-polygraph interview was recorded in Prosecution Exhibit 21 and transcribed in Prosecution Exhibit 22. (JA 632; 262-316). Prior to this end part or post-polygraph interview, law enforcement did not have any

evidence that MSgt Guihama had touched any minor in a sexual way as an adult, nor did law enforcement know the names of MSgt Guihama's nephew and niece. (JA 127).

The first thing the agent said during the post-polygraph interview was, "All right, unfortunately that did not go like I was hoping it was going to go. You were clearly responding to some questions regarding sexual contact with a minor. And I, *again*, I don't know when that occurred in your life, but *I have no doubt that it has occurred at some point in your life.*" (JA 262) (emphasis added). During the post-polygraph interview, the agent said to MSgt Guihama that he didn't think MSgt Guihama was the "kind of person that's out there hunting down kids on playgrounds," (JA 262) that MSgt Guihama was a "predator" or the kind of person who is "scoping out playgrounds, kidnapping kids, raping, torturing, killing them." (JA 264).

It was not until later in the post-polygraph interview, hours after being taken from his home, being held in the custody of the FBI, and repeatedly questioned, that MSgt Guihama provided a story of how he touched his nephew, saying that committing the alleged offense was "just like as if [he] was watching a movie." (JA 127-31; 188; 285). Agent G.W. continued to pressure MSgt Guihama to disclose more instances of touching, asking if MSgt Guihama ever touched one of his nieces. (JA 278). After Agent G.W. repeatedly insisted that "it never happens just once,"

MSgt Guihama told Agent G.W. that he also touched his niece one time. (JA 279; 282). These elicited “confessions” were the only direct evidence the FBI ever obtained that MSgt Guihama committed any sexual abuse of a minor, as both alleged victims denied that MSgt Guihama ever touched them in a sexual manner, and both testified consistent with such denials at trial. (JA 151; 159). The secondary interview ended at approximately 3:15 p.m., over nine hours after MSgt Guihama’s first contact with law enforcement. (JA 084; 131; 192-258; 262-316).

SA G.W. admitted that the focus of the interview from the beginning was whether or not MSgt Guihama had touched minors sexually or inappropriately. (JA 132). When asked why that was the focus of this secondary interview, SA G.W. stated, “[o]ur experience is that when individuals look at child pornography, that there is some risk that they may have actually touched children as well. That assessment is based on if there’s an interest to view, there’s a potential risk to victimize.” *Id.*

Despite MSgt Guihama’s alleged confessions, both his niece and his nephew denied any memory of any sexual offenses being committed against them by MSgt Guihama, a position they maintained throughout their testimony at trial. (JA 151; 159-161). Both alleged victims specifically denied that MSgt Guihama had ever sexually abused them, that he had ever touched them inappropriately in any way, that he had ever shown sexual interest in them or in any other minors, that he

had ever made sexual comments in their presence, or that he had ever made them uncomfortable in any way. *Id.* To the contrary, they both testified that they enjoyed spending time with him and had no concerns about his behavior whatsoever. In response to being asked what his relationship was like with MSgt Guihama, his nephew responded, “We love him. He was the fun uncle.” (JA 156). In addition, MSgt Guihama’s niece expressly admitted to being a light sleeper who wakes up easily, even when not directly physically touched. (JA 161).

“Corroboration”

At trial, the defense moved to suppress MSgt Guihama’s confession to child sexual abuse on the ground that his elicited statements regarding touching his nephew and niece were not adequately corroborated, as required by Mil. R. Evid. 304(c). (JA 409). In denying the defense’s motion, the military judge found that the confession had been properly corroborated based upon the following facts: evidence that the alleged victims did live in the state of Missouri at some point in the broad charged timeframe; evidence that MSgt Guihama does, in fact, have a niece and nephew; evidence that the alleged victims had – at unknown dates, times, and locations – watched movies with MSgt Guihama and – also at unknown dates, times, and locations – had fallen asleep while doing so; MSgt Guihama’s leave and travel records over several years showing that he had generally taken leave in locations that could have included the area in which his wife’s family lived; and finally, the

fact that the alleged victims had no memory of the alleged touching. (JA 618-19). The military judge's ruling was silent as to whether the fact that MSgt Guihama was being investigated for child pornography offenses could also serve as corroboration to the touching offenses. (JA 611-19) The military judge's ruling furthermore did not discuss MSgt Guihama's repeated denials of sexually abusing children or the circumstances of his lengthy apprehension and interrogation by FBI agents leading to these statements. *Id.*

The Government charged MSgt Guihama with committing offenses against his nephew and niece “between on or about 28 January 2011 and 27 June 2012,” and, “between 28 June 2012 and on or about 27 August 2013.” (JA 058; 061). MSgt Guihama was convicted of acts during the former timeframe and acquitted of the same conduct that was charged during the latter. (JA 063-64).

Summary of Argument

MSgt Guihama's confession to abusing his niece and nephew—which occurred nine hours into a highly manipulative, stressful, and suggestive FBI interrogation replete with hours of direct denials from MSgt Guihama—was untrustworthy under Mil. R. Evid. 304(c) and the framework in *United States v. Whiteeyes*, 82 M.J. 168 (C.A.A.F. 2022), as it was not sufficiently corroborated. In determining the confession met the standards of Mil. R. Evid. 304(c), the military judge and the AFCCA conveniently ignored significant elements of

MSgt Guihama's so-called confession that did not align with other "independent corroborating evidence," and instead cherry-picked portions of his statements to the FBI while excusing those pieces of his confession that did not fit the corroboration narrative. Through a circuitous interpretation of a selection of MSgt Guihama's compelled statements to the FBI along with otherwise non-specific "corroborating evidence," such as evidence that MSgt Guihama does, in fact, have a niece and nephew and did visit them on some occasions, in some states, over several years, the military judge and the AFCCA overlooked the significant reasonable doubt present in the case to convict and affirm his convictions for acts that no one witnessed, experienced, or otherwise supported.

In addition, the AFCCA improperly and heavily relied upon what they referred to as "consciousness of guilt" evidence in finding that MSgt Guihama's confession was corroborated, though the military judge did not explicitly consider this evidence in her ruling. The AFCCA's strong reliance on this improper consciousness of guilt evidence further deteriorates the credibility of MSgt Guihama's confession and subsequent convictions. More troubling, the military judge and the AFCCA both utilized the alleged victims' lack of memory of the crimes as additional corroboration of the confession. Lastly, both the military judge and the AFCCA failed to adequately consider the extreme circumstances under which the confession arose, which MSgt Guihama posits should have required

even stronger independent evidence of corroboration than a confession offered *sua sponte*.

Argument

THE MILITARY JUDGE ABUSED HER DISCRETION BY ADMITTING A CONFESSION THAT WAS NOT TRUSTWORTHY BECAUSE IT LACKED SUFFICIENT CORROBORATION.

Standard of Review

A military judge's ruling that Mil. R. Evid. 304(c) does not bar an admission or confession of an accused is reviewed for an abuse of discretion. *Whiteeyes*, 82 M.J. at 172 (citation omitted). A military judge abuses her discretion when: (1) the findings of fact upon which she predicates her ruling are not supported by the evidence of record; (2) she applies incorrect legal principles; (3) she applies correct legal principles to the facts in a way that is clearly unreasonable; or (4) she fails to consider important facts. *United States v. Rudometkin*, 82 M.J. 396, 401 (C.A.A.F. 2022) (citations omitted).

Law and Analysis

1. The circumstances surrounding MSgt Guihama's confession show it is not trustworthy.

The genesis of MSgt Guihama's untrustworthy confession is extremely troubling. During his nine-hour interrogation with the FBI, MSgt Guihama denied any inappropriate or sexual touching of a minor 27 times in his first interview alone.

(JA 240-42). Despite his repeated denials, the interrogation persisted incessantly for over eight more hours. It was not until the fourth interview (the end part of the second interview) after MSgt Guihama had been transported in FBI custody to four different locations that this confession transpired. (JA 122). All told, MSgt Guihama went through hours of manipulating questioning and badgering before he broke down and provided a confession at the literal insistence of the FBI agent.

Throughout the nine-hour ordeal, the agent repeatedly and persistently told MSgt Guihama that he knew for a fact that MSgt Guihama had sexually abused children. During the first interview, while MSgt Guihama was detained in a law enforcement vehicle as FBI agents swarmed his residence and seized his property, the agents told MSgt Guihama that, in their experience, 95 out of 100 times, those who have viewed child pornography had also “put their hands on kids” and “that’s just the way they’re wired”—clearly referring to MSgt Guihama who had images on his devices.² (JA 240-42). The agent also told MSgt Guihama, “this is all [we] do”

² While Charge III and its Specifications are not directly at issue at this time, it should be noted that, when confronted by the FBI agent regarding contraband images allegedly found on his digital devices, MSgt Guihama immediately provided incriminating statements to such conduct, in stark contrast to his response to confrontation about the allegations contained in Charge I, Charge II, and the Additional Charge, which he adamantly denied for nearly nine hours. (JA 008-09)

and posited that MSgt Guihama was “kind of getting emotional now” because he put his “hands on someone that maybe [he] shouldn’t have.” *Id.*

MSgt Guihama was asked if he spent a lot of time around kids. (JA 239). He relayed that he did not have kids, but that he did have nieces and nephews. (JA 240). The agent told MSgt Guihama that he believed MSgt Guihama’s sexual abuse of children was “an evolution” wherein there was a time when MSgt Guihama “would have said [he] would never look at or share images of nude children,” but then it got “a little bit easier” each time and he “eventually [] masturbated” to the images and it kept getting a little bit easier and led to a point where he thought about it “in real life.” (JA 240). MSgt Guihama again adamantly denied ever touching a child in an inappropriate or sexual way. (JA 241). The agent then asked MSgt Guihama if he had ever had the opportunity to do so. *Id.* The agent told MSgt Guihama, “I just think that sometimes people’s (sic)--the way that they’re hardwired sort of overcomes what their sort of moral compass tells them to do.” *Id.*

The agent made it clear that the interrogation would not cease and that MSgt Guihama would not be released until he provided an admission or confession to sexually abusing minors, telling him, “given the fact that you were trading those pictures of those young kids and teens having sexual contact, given all that stuff that was going on in your life, given account of the confusion that was going on in your own mind at the time, I really need you to be completely honest and tell me what

happened, when it happened, and who it was with, okay. Because the only way to move past this is to acknowledge that and we can move on from there. But until you do, we're just kind of stuck, alright.” (JA 262). Still, MSgt Guihama provided no satisfactory responses, leading the agent to again tell him, “. . . I'm just curious to see when you are going to recognize that ultimately it is in your best interest to take just curious to see when you are going to recognize that ultimately it is in your own best interest to take responsibility for a particular event that occurred that is not part of your character but did happen, right . . . [a]nd until you do that, we just can't move forward.” (JA 269). MSgt Guihama repeatedly denied such conduct over and over, telling the agent he could not think of anything that would align with what the agent was insisting he had done. But the agent was undeterred, reassuring MSgt Guihama that “this is biology” and “Plato and Aristotle slept with eight-year-old boys all the time. And what the other people don't want to acknowledge as well is that the eight-year-old boys usually enjoyed it, all right.” (JA 271).

At trial, the agent conceded that the entire purpose of the second interview “from the very beginning” was to get evidence of MSgt Guihama having touched any minors sexually or inappropriately, despite having absolutely no independent evidence of such at the time of the interrogation or knowledge of any alleged victims – a shot in the dark, as it were. (JA 132).

After being questioned over and over about his alleged sexual abuse of minors for nine hours in four separate locations, while transported in the custody of the FBI, all the while incessantly denying any touching of minors, MSgt Guihama finally broke down and described a situation that was known to him, adding an element of touching that could not be disputed because the children were asleep—the only way to get the questioning to stop. (JA 131-32; 192-258; 262-316; 631-32).

When MSgt Guihama finally caved and provided a story of sexual abuse, he unsurprisingly incorporated real life elements into his narrative while also weaving in details to satisfy the specific demands of the agent—namely, that he had touched a child sexually. If he'd touched a child—as the agent was insisting he had—he would actually have to know and have access to that child. In MSgt Guihama's case, this significantly narrowed the potential options, as he has no children of his own and consequently was not involved in school and other youth events that would put him in such a position.

Ultimately, the fact that the alleged confession was borne out of hours of manipulative and repetitive questioning in four different locations, amidst dozens of adamant denials, and the stated intent of the FBI agent to not stop questioning until MSgt Guihama confessed to a crime of which they admittedly had no other evidence, demonstrates that his confession was untrustworthy. The lack of meaningful corroboration exemplifies this point.

2. The military judge abused her discretion in finding the confession corroborated under the Mil. R. Evid. 304(c) standard in effect at the time of trial.

At trial, MSgt Guihama moved to suppress his admissions to touching his niece and nephew in a sexual manner under Mil. R. Evid. 304(c). (JA 409-537). At the time of MSgt Guihama's court-martial, the military judge was required to determine whether a confession was admissible under Mil. R. Evid. 304(c)(1) by utilizing the following standard: "[a]n admission or confession of the accused may be considered as evidence against the accused on the question of guilt or innocence only if independent evidence, either direct or circumstantial, has been admitted into evidence that would tend to establish the trustworthiness of the admission or confession." Mil. R. Evid. 304(c)(1). "Other uncorroborated confessions or admissions of the accused that would themselves require corroboration may not be used to supply this independent evidence." Mil. R. Evid. 304(c)(2). "If the independent evidence raises an inference of the truth of the admissions or confession, then it may be considered as evidence against the accused." *Id.* "Not every element or fact contained in the confession or admission must be independently proven for the confession or admission to be admitted into evidence in its entirety." *Id.*

The corroboration evidence the military judge relied upon included: prior interviews of the named victims in which they denied the offenses but confirmed

that they had spent some time with MSgt Guihama at some points over several years and in several states; interviews with other family members in which they generally confirmed the familial relationships; sworn Article 32, UCMJ, preliminary hearing testimony, again establishing the relationships; MSgt Guihama's leave records, which did not specifically include a leave destination at or near the alleged victims' homes—or ever in the state of Missouri—but which showed he took some amounts of leave in the years covering the charged offenses; and the fact that the alleged victims did not recall the touchings. (JA 618-19). The military judge concluded that these pieces of evidence showed that MSgt Guihama was potentially in the presence of the victims at the times he claimed to have abused them. *Id.* She also explicitly found that the alleged victims' lack of memory of the offenses “may justify a jury's inference that that the accused's statements were true given the specific way the accused claims to have committed the charged offenses: [his niece and nephew] were asleep and did not wake up when he inappropriately touched them.” (JA 619). Based upon these factors, the military judge found his confession adequately corroborated. (JA 618-19).

The military judge's application of the law to the facts in this case was clearly unreasonable and she failed to consider important facts. *United States v. Rudometkin*, 82 M.J. at 401. Instead of looking at the specific statements that MSgt Guihama provided in his confession, the military judge took a sweeping view of the

overall statements, picking and choosing parts of the confession that were supposedly supported by independent evidence (such as the fact that MSgt Guihama did, in fact, have a niece and nephew) and excusing the pieces of the confession that did not line up with other independent evidence at all. For example, MSgt Guihama relayed to the FBI that the first incident of the supposed touchings occurred in the state of Missouri, but the testimony adduced at trial showed that the alleged victims' residency in Missouri did not align with the dates that MSgt Guihama claimed he visited them there and engaged in sexual abuse. (JA 150; 157; 160). Moreover, neither alleged victim even recalled watching movies and falling asleep near MSgt Guihama at any time in the state of Missouri. Or, according to his nephew, any time at all—in response to the military judge's question, "Do you have any memory of a time when you and your sisters and the accused, Sergeant Guihama, would've fallen asleep together watching movies, period, ever?" he responded, "No." (JA 155). In addition, the grandparents who owned the home in which MSgt Guihama claims the abuse occurred did not recall MSgt Guihama visiting them in Missouri at any point. (JA 616).

The military judge's reliance upon the alleged victims' denials of the touchings as corroborating evidence was also clearly unreasonable. An absence of evidence cannot operate as "independent evidence" necessary to satisfy the standards of Mil. R. Evid. 304(c). There is limited case law analyzing this specific

issue. The closest comparison comes from *United States v. Seay*, 60 M.J. 73, 80 (C.A.A.F. 2004), where this Court determined that, when corroborating an accused's confession to stealing a wallet from a murder victim, the lack of a wallet on the victim's body was properly considered as independent evidence of the truth of the confession. But this precedent is wholly inapplicable here: a missing wallet is, in fact, some evidence that a wallet was taken; an alleged sexual assault victim's denial of being abused is not evidence of anything except—perhaps—the innocence of the accused. Additionally, just as this Court noted in *Whiteeyes*, the language of Mil. R. Evid. 304 has changed over time so any case applying the corroboration rule in Mil. R. Evid. 304 based upon previous versions of the rule “must be approached with caution.” 82 M.J. at 174.

The military judge's mixed findings also belie the untrustworthiness of the confession. During his interrogation, MSgt Guihama provided the following information with respect to the timing of his claims of sexual abuse: “Oh my God, that was a long time ago, 2000--when we moved to Texas, and then we ended up going to visit them in Missouri a couple times, but I never--that never happened until maybe--maybe later that summer 2011. When did I get back?” (JA 274). The agent responded “2011ish?” and MSgt Guihama continued, “Yeah. Somewhere shortly after that we made a road trip to visit them in Missouri and then we were just hanging out at their place” (JA 274). After additional badgering, MSgt Guihama then

relayed he “kind of did it to my niece too, but not as much. It was one time and that was it.” (JA 282). He later clarified that the touching of his niece allegedly occurred on the same day in 2011 in Missouri as the incident with his nephew. (JA 283). MSgt Guihama relayed that there was a second instance involving his nephew. In clarifying the timeframe of the alleged touchings, MSgt Guihama explained, “Had to be before they went back to school in the summer time, summer of 2011. Because I came back 2011 from the deployment in the winter, so January/February timeframe we visited them during my R and R, *that’s when the first time it happened*. Then summer, not that summer, but the next summer had to be 2012, we visited them again and that’s when it happened again in 2012 I think, I can’t remember. Yeah, it had to be the next year and then that was it.” (JA 284) (emphasis added).

The Government charged MSgt Guihama in Charge I, Specification 2 of sexually abusing his niece on one occasion between on or about January 28, 2011 and June 27, 2012; they also charged him in an Additional Charge and specification of sexual abuse of his nephew *on divers occasions* between on or about January 28, 2011 and June 27, 2012, and in Charge II, he was charged with two specifications of sexually abusing his niece (one time) and his nephew (again, on divers occasions) between June 28, 2012 and August 27, 2013. (JA 058-61) (emphasis added).

The military judge acquitted MSgt Guihama of all specifications in Charge II, which encompassed any sexual abuse of his niece and nephew occurring on or

after June 28, 2012. (JA 063). She convicted him of Charge I, Specification 2 and the Additional Charge. (JA 063-64). These findings demonstrate the military judge's own doubt in the alleged confession. MSgt Guihama's alleged confession claimed that the second instance of touching his nephew occurred sometime before school resumed in the summer of 2012—a date that not only could, but most likely would—fall after the June 27, 2012 date. (JA 113-14). The military judge's acquittal of MSgt Guihama for acts charged on or after June 27, 2012, demonstrates that she fully dismissed portions of his confession altogether; such as the state and physical location in which the abuse supposedly occurred and most notably the years in which he claimed it had happened. In addition, her conviction of MSgt Guihama for abusing his nephew on “divers occasions” between on or about January 28, 2011 and June 27, 2012 is wholly unsupported by the evidence—including his confession. Again, even accepting MSgt Guihama's confession as accurate, he told the agent that the first incident of touchings occurred in the winter of 2011 and the second instance involving his nephew occurred sometime in the summer of 2012 before school resumed. There is no additional evidence to support beyond a reasonable doubt whether the date of the second alleged touching occurred before or after June 27, 2012, which would be required in order to support the finding that he committed sexual abuse of his nephew “on divers occasions” between on or about January 28, 2011 and June 27, 2012.

Taking the totality of MSgt Guihama's words in his confession, there was no evidence presented that such conduct occurred on multiple occasions in the convicted timeframe—if it occurred at all. The military judge simply disregarded MSgt Guihama's claims that the second instance of abuse occurred “before school began” in the summer of 2012 because she acquitted MSgt Guihama of Charge II and its specifications. (JA 063).

Perhaps most significantly, the military judge's ruling regarding the corroboration of MSgt Guihama's confession notably excluded any specific discussion of the circumstances under which it arose, and whether those circumstances, “tend to establish the trustworthiness of the admission or confession.” *Compare* Mil. R. Evid. 304(c)(1), *with* JA 618-19. While the military judge included a broad summary of the fact that MSgt Guihama was interrogated by FBI agents, the only discussion regarding the circumstances of the confession centered around the concept of whether it was actually involuntary, in accordance with (IAW) Mil. R. Evid. 304(g). (JA 618). To that end, the military judge found the statements at issue were made voluntarily, holding, “[t]he accused, a 37 year old Master Sergeant at the time of his confessions, was advised of his *Miranda* rights multiple times, provided written copies of his rights, and knowingly and voluntarily waived his rights without any coercion or undue influence.” *Id.* Aside from this analysis of his rights waiver, the military judge gave no credence to the hours of

manipulative, incessant, suggestive interrogation that preceded the ultimate confessions provided by MSgt Guihama. Of note, MSgt Guihama was an individual in a highly precarious, emotional, and despondent state who had been removed from his home at dawn, held by federal agents, and provided minimal food before—nine hours later—uttering the alleged confessions at the literal demands of an intimidating FBI agent. The military judge effectively concluded that this peripheral corroborating evidence showed that MSgt Guihama was potentially in the presence of the victims at the times he claimed to have abused them, though any further specifics of the details of the alleged crimes remained unresolved. (JA 611-19).

There is no evidence of a crime absent MSgt Guihama's confession. As such, the military judge's admission of such evidence was an abuse of discretion that materially prejudiced MSgt Guihama's substantial rights. *See* Article 59(a), UCMJ, 10 U.S.C. §859(a); *see also United States v. Bowen*, 76 M.J. 83 (C.A.A.F. 2017). There are no victims claiming they were touched inappropriately or sexually by MSgt Guihama—nor have there ever been. There is no evidence that MSgt Guihama was actually in the location he claimed the crimes occurred at the times he claimed they happened. The only evidence to corroborate his confession was that certain people and relationships existed and that they had on some rare occasions watched movies together in a living room (not even a specific one) before falling asleep, though notably in different locations, states, and years than MSgt Guihama had

confessed to. (JA 103-04; 611-19). The lack of meaningful consideration of the horrific circumstances MSgt Guihama faced leading up to his confession leaves a gaping hole in the analysis of whether the confession contains truthful statements.

3. The facts of this case also fail the United States v. Whiteeyes test regardless of the AFCCA's analysis.

AFCCA seemed to recognize the thin basis upon which the military judge had found MSgt Guihama's confession corroborated, so they sought additional evidence to find their own corroboration of it.

During the pendency of MSgt Guihama's appeal to the AFCCA, this Court issued its opinion in *United States v. Whiteeyes*, 82 M.J. 168 (C.A.A.F. 2022). In *Whiteeyes*, this Court addressed the procedures and standards under Mil. R. Evid. 304(c) that a military judge must use when determining whether an accused's confession has been adequately corroborated. 82 M.J. at 173-76. Under *Whiteeyes*, the military judge must determine that: (1) the proffered corroboration evidence is "independent evidence"—not other uncorroborated confessions/admissions that would themselves require corroboration; (2) the independent evidence "raises an inference of the truth of the admission/confession," whether considered alone or alongside other independent evidence; and (3) the pieces of independent evidence, considered together, would tend to establish the trustworthiness of the admission or confession. 82 M.J at 174 (citations omitted).

The AFCCA interpreted *Whiteeyes* as requiring a three-part test to determine whether a confession has been adequately corroborated:

- Is the proffered evidence, either direct or circumstantial, in fact, independent evidence as provided in Mil. R. Evid. 304(c)(1)?;
- Does “each piece of independent evidence raise[] an inference of the truth of the admission or confession” as provided in Mil. R. Evid. 304(c)(2)? “If an individual piece of independent evidence meets this threshold, the military judge may then use that evidence in the process of determining whether the accused’s statement is corroborated,” which is the next and last question; and
- Do the “pieces of independent evidence, considered together , . . . tend to establish the trustworthiness of the admission or confession” under Mil. R. Evid. 304(c)(1)?

(JA 030). When determining the trustworthiness of a confession made to law enforcement, a court must consider the circumstances leading to the confession.

In conducting its analysis of whether the military judge abused her discretion, the AFCCA curiously utilized the framework in *Whiteeyes* despite the fact that *Whiteeyes* did not exist at the time of the court-martial, and the military judge had not used the framework in her decision to deny the defense’s motion to suppress. It is, thus unclear, how an analysis of *Whiteeyes* was helpful to the court in determining

whether the military judge had abused her discretion under a wholly different standard. Nevertheless, even under the *Whiteeyes* standard, the confession is not adequately corroborated.

In finding MSgt Guihama's confession corroborated, the AFCCA adopted the independent evidence the military judge had relied upon, which they summarized as follows:

"First, evidence independent of [MSgt Guihama's] admissions to the FBI showed that [MSgt Guihama's] nephew and niece were children of his wife's sister. That same evidence, the military judge found, confirmed 'their ages were similar to those provided by [MSgt Guihama]'" to the FBI. (JA 032).

"Second, the military judge found that independent evidence showed [MSgt Guihama] visited with his wife's family, including his nephew and niece, during the timeframe that he said he committed the offenses. As found by the military judge, this showed [MSgt Guihama] 'had opportunities to commit the crimes he confessed to committing in approximately 2011 and 2012.'" *Id.*

"Third, the military judge found that [MSgt Guihama's] military leave and other records tended to show 'many times' [MSgt Guihama] was authorized leave when he and his wife lived within driving distance for overnight visits with his wife's family. The military judge further noted that 'some [leave records] corroborate the

dates of [MSgt Guihama]’s confessions’ and ‘tend to show additional opportunities’ for visits with his nephew and niece.” *Id.*

“Fourth, the military judge found that [MSgt Guihama’s] nephew and niece ‘distinctly’ remembered incidents of watching movies with [MSgt Guihama] and then falling asleep, and that their ages during these incidents generally lined up with [MSgt Guihama’s] description of their ages during his admissions to the FBI. Although his nephew and niece did not necessarily recall these incidents happening when they lived in Missouri, the military judge found that their ‘younger sister distinctly remembered sleeping in the living room with her older siblings and [MSgt Guihama] in Missouri.’” (JA 032-33).

“Fifth, the military judge noted that [MSgt Guihama’s] nephew and niece did not recall [MSgt Guihama] ‘ever touching them,’ which was consistent with the way that [MSgt Guihama] ‘claim[ed] to have committed the charged offenses,’ namely that the children ‘were asleep and did not wake up while he inappropriately touched them.’” (JA 033).

For the first time on appeal, the Government urged the AFCCA to consider MSgt Guihama’s visibly emotional response to being asked if he had ever touched a child “was evidence of his consciousness of guilt and supports the reliability of later admissions to touching his nephew and niece” as independent evidence for corroboration of his confession. (JA 031). The AFCCA, likely recognizing the

otherwise weak corroboration evidence that did not establish the date, time, circumstances, or location of the alleged offenses, decided to consider this additional evidence under their Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) authority and *United States v. Perkins*, 78 M.J. 381, 386 n.8 (C.A.A.F. 2019). *Id.*

Just as the military judge had in her corroboration analysis, the AFCCA also conveniently disregarded facts that came directly from MSgt Guihama's confession, which did not otherwise coalesce with the corroboration narrative they had cobbled together. The AFCCA acknowledged that, "We have misgivings that [MSgt Guihama's] description of committing the first offenses during a visit with his wife's family in Missouri, and early 2011 timeframe, are mutually correct." (JA 033). Nevertheless, they quickly dismissed any concern, writing: "We agree it is understandable that after six to seven years, [MSgt Guihama] might have misremembered some of the details surrounding his crimes, including location and timeframe." (JA 049). Again, it was not just MSgt Guihama who "misremembered" the details of these alleged crimes—the alleged victims themselves also have no memory of such either. Despite these concerning holes in the narrative, the AFCCA nevertheless found the confession to be corroborated, concluding: "Independent evidence shows [MSgt Guihama] had the opportunity to commit the offenses in the manner he described to the FBI." (JA 035).

4. The “emotional response” evidence used by the AFCCA to corroborate MSgt Guihama’s confession was not proper evidence of consciousness of guilt.

The AFCCA seemed to find MSgt Guihama’s emotional reaction particularly corroborative of his ultimate confession. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (JA 127-28; 637-38).

The court further justified its use of this reaction as corroboration evidence by declaring it evidence of consciousness of guilt, reasoning that, “[MSgt Guihama's] emotional response to FBI questioning about sexually touching children was a nontestimonial act tending to show consciousness of guilt.” (JA 033). The court ultimately concluded that:

[i]n regard to [MSgt Guihama's] visibly emotional response to questioning about sexually touching children, we conclude that this reaction raises an inference of the truth of [MSgt Guihama's] admissions. According to the FBI agent's testimony, [MSgt Guihama] shuddered, and his eyes became red and watery when he was asked if he had ‘ever put [his] hands on a child in an inappropriate . . . and sexual way.’ [MSgt Guihama's] emotional reaction to that question permitted the inference that he had touched a child in such a manner. Put differently, [MSgt Guihama's] emotional reaction to the agent's question allowed an inference that [MSgt Guihama] had fondled his nephew and niece.

(JA 034).

The evidence that MSgt Guihama displayed an emotional reaction when confronted with an allegation of sexual abuse of a minor was improper evidence for the AFCCA to consider under Mil. R. Evid. 304(c) as it is not proper consciousness of guilt evidence in this case. It, therefore, should not have been utilized by the AFCCA to reach its finding that MSgt Guihama's confession to sexually touching minors was properly corroborated.

The evidence of MSgt Guihama's emotional reaction coupled with his repeated denials of the conduct is ambiguous and open to many interpretations. The AFCCA's opinion fails to acknowledge this and essentially declares that MSgt Guihama's "emotional reaction" to an FBI agent badgering him with questions about molesting children for hours on end after his house had been raided and he had been informed that law enforcement had linked him to distribution of child pornography could only mean one thing: he committed the offense of sexual abuse of a minor. This unequivocal conclusion is a step too far. At the time of his so-called emotional reaction, MSgt Guihama did not concede to committing the conduct about which the agent questioned him. To the contrary, he vehemently denied it, stating he was upset, "*because I wouldn't do that.*" (JA 241) (emphasis added). He continued his denials for hours to come. (JA 192-258; 631). In addition, prior to

the interrogation, MSgt Guihama was unexpectedly awakened at dawn by FBI agents raiding his home and was thereby thrust into one of the most stressful and traumatizing experiences a human being can endure. (JA 084-86). Certainly, an emotional reaction could occur simply because of sleep deprivation in conjunction with being arrested by the FBI, accused of egregious sexual assault offenses, and the overarching realization of the gravity of the situation, regardless of one's underlying culpability.

When the inference of guilt is clear, demeanor evidence may be relevant to consciousness of guilt. *See United States v. Moran*, 65 M.J. 178, 188 (C.A.A.F. 2007) (describing how an accused's act of shaving off all of his hair when he learned investigators wanted to get a hair sample was permissible consciousness of guilt evidence). "Examples of nontestimonial acts held admissible by other courts include when there have been threats or intimidation of witnesses; making a hand gesture in the shape of a gun; and mouthing the words 'you're dead.' Such acts may be admissible to show the defendant's consciousness of guilt." *United States v. Cook*, 48 M.J. 64, 65 (C.A.A.F. 1998). However, "subtle physical demeanor is not admissible as relevant to an accused's consciousness of guilt, because it is equally susceptible to other inferences." *United States v. Clark*, 69 M.J. 438, 440 (C.A.A.F. 2011) (referencing *Cook*, 48 M.J. at 67 (finding that the accused yawning during testimony on the effects of child abuse was not relevant since the accused had

previously been informed of such by his first sergeant and was, therefore, familiar with the evidence)). There is no clear inference of guilt when MSgt Guihama shows emotion while saying, “no” when being asked if he had touched a minor inappropriately or sexually. Had MSgt Guihama said nothing at all, that may be closer to a small inference or had MSgt Guihama not literally explained the reason for his emotions—“because I wouldn’t do that”—maybe then it could be somewhat closer. However, the subtle physical demeanor of showing emotion was susceptible to other inferences—or the literal reason provided by MSgt Guihama.

None of the “consciousness of guilt” case law cited by the AFCCA holds that an emotional reaction coupled with vehement and repeated verbal denials of the allegation constitutes proper consciousness of guilt evidence. (JA 033). Instead, in terms of non-verbal consciousness of guilt evidence, this Court has previously recognized behavior such as: threats or intimidation of witnesses; making a hand gesture in the shape of a gun; and mouthing the words “you’re dead,” as qualifying under the “consciousness of guilt” standard, while laughing during testimony about other violent threats the accused had allegedly made and yawning in the courtroom were deemed irrelevant to the question of guilt or innocence. *Cook*, 48 M.J. at 66.

The AFCCA’s heavy reliance upon MSgt Guihama’s emotional reaction to FBI questioning as corroboration of his confession makes clear that this evidence seems to have tipped the balance in the AFCCA’s finding that the confession was

adequately corroborated. This evidence should not have been considered as corroboration because it does not meet the threshold for consciousness of guilt, and the AFCCA erred in utilizing this ambiguous and non-specific reaction as its prime corroboration evidence to affirm the convictions of MSgt Guihama when it was paired with his adamant denials and explanation for the emotional response being, “because [he] would never do that.” (JA 241; 631).

5. The circumstances of MSgt Guihama’s confession required additional corroboration.

Both the military judge and the AFCCA seemed to have endless forgiveness for the discrepancies and implausibility in the evidence they used to corroborate the confession of MSgt Guihama. The military judge and the AFCCA’s corroboration analyses under both the standard used at trial and the standard articulated by *Whiteeyes* yield the same erroneous result. This is because neither of these standards require explicit consideration of the circumstances of the alleged confession in determining whether the confession is trustworthy under the standards of Mil. R. Evid. 304(c). While the military judge and the AFCCA awarded immense credit for highly peripheral facts that they claimed corroborated the confession such as familial relationships and occasional time spent with the alleged victims, they largely overlooked the extraordinarily stressful and tortured manner in which the confession

materialized along with other key details provided by Msgt Guihama in his statements, to include dates and locations.

The AFCCA determined that the circumstances of MSgt Guihama's interrogation were not "coercive" as a matter of law, yet they conceded that, "[the FBI agent] did [conduct the interrogation] by using means that could produce unreliable admissions." (JA 051). The circumstances of the highly suggestive and insistent FBI interrogation tactics coupled with the lack of otherwise meaningful corroboration evidence of the ultimate "confession" leave open the real possibility that MSgt Guihama's confession was false. As MSgt Guihama's confession was the only evidence inculcating him in a criminal act, this Court should carefully assess the mechanisms that allowed for the military judge and the AFCCA to find it was sufficiently corroborated where there remains significant question about its trustworthiness.

This Court should find this case highly distinguishable amongst the Mil. R. Evid. 304(c) precedent and delineate the appropriate standard to determine whether a confession garnered under such strenuous circumstances has been adequately corroborated.

Ultimately, it is clear that the evidence presented as corroboration in this case does not come close to even the low threshold for corroboration that existed both at the time of trial and now under the framework in *Whiteeyes*. The confession that

materialized came about only as a result of a literally Herculean effort on the part of the FBI agents to elicit it, and both of the alleged victims entirely deny they were victimized at all. (JA 151; 159).

In *Arno*, a case cited by the AFCCA in its opinion, the Army Court of Criminal Appeals found that the accused's confession had been properly corroborated, reasoning, "When an accused confesses to committing a certain crime in a certain place in a certain manner, evidence that the accused was actually at that place, and had the specific motive to commit that crime, can be considered when determining whether the confession is trustworthy. Motive and opportunity are not irrelevant considerations." *United States v. Arno*, ARMY MISC 20180699, 2019 CCA LEXIS 86, *5 (A. Ct. Crim. App. Feb. 26, 2019) (emphasis added). In the present case, the corroboration proffered by the government fell far short of that presented in *Arno*.

Here, the corroborating evidence did not establish that MSgt Guihama committed, "a certain crime in a certain place in a certain manner." *Id.* Far from it, in fact. The alleged timeframe for the touching offenses was between January 2011 and June 2012, as the Government could not prove a narrower range, and in fact disregarded statements from MSgt Guihama claiming a later timeframe altogether. Moreover, even in closing argument, the Government could not say if the abuse occurred in Texas or in Missouri as the alleged victims provided contradictory testimony regarding when and where they had spent time with MSgt Guihama, what

they did together, and when. (JA 144; 156-57). Further, even at the conclusion of their case, the Government came no closer to pinning down the timing, as there was no evidence of the day, month, or even year that MSgt Guihama allegedly committed these acts that he confessed to over seven years prior. (JA 189-90). MSgt Guihama's confession here does not meet even the low standard for corroboration given the indefinite date (by years), the lack of knowledge of the state in which the crimes allegedly took place, the strange analogy MSgt Guihama gave, saying that committing the alleged offenses was "just like as if [he] was watching a movie" (JA 285), along with the lack of physical evidence, lack of any prior known sexual interest that MSgt Guihama had in the alleged victims, and the lack of victims or other witnesses testifying against him.

Given the lack of convincing corroborating evidence in conjunction with the highly suggestive and lengthy interrogation, this Court should find that MSgt Guihama's confession was insufficiently corroborated and that the military judge and the AFCCA erred with respect to their analysis under Mil. R. Evid. 304(c).

MSgt Guihama's confession to abusing his niece and nephew—which occurred nine hours into a highly manipulative and stressful FBI interrogation replete with hours of direct denials from MSgt Guihama—was untrustworthy under both the standard used by the military judge at trial and under the framework in *Whiteeyes* as it was not sufficiently corroborated. In determining the confession met

the standards of Mil. R. Evid. 304(c), the military judge and the AFCCA blatantly and conveniently ignored significant elements of MSgt Guihama's so-called confession that did not align with other "independent corroborating evidence," and instead cherry-picked portions of his statements to the FBI while excusing those pieces of his confession that did not fit the corroboration narrative.

The Government cannot have it both ways - either MSgt Guihama's confession was "trustworthy," or it was not. The evidence and the findings of the military judge and the AFCCA confirm it is the latter.

WHEREFORE, MSgt Guihama respectfully requests that this Honorable Court set aside the findings of guilty as to Charge I and the Additional Charge and the sentence.

Respectfully Submitted,

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A handwritten signature in black ink that reads "Heather Caine". The signature is written in a cursive style, with the first name "Heather" and the last name "Caine" clearly legible.

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court
and served on the Air Force Appellate Government on September 27, 2023.

Respectfully Submitted,

A handwritten signature in black ink, reading "Heather Caine". The signature is written in a cursive style with a large initial 'H' and a stylized 'C'.

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CERTIFICATE OF COMPLIANCE WITH RULES 24(b) AND 37

1. This brief on behalf of appellant complies with the type-volume limitation of Rule 24(b) because it contains 9,567 words.
2. This brief on behalf of appellant complies with the typeface and type style requirements of Rule 37 because it has been prepared in Times New Roman font, using 14-point type with one-inch margins.

Respectfully Submitted,

A handwritten signature in black ink, reading "Heather Caine". The signature is written in a cursive, flowing style.

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