IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES Appellee v. Private First Class (E-3) **JAHEEMEE J. WILLIAMS** United States Army Appellant	BRIEF ON BEHALF OF APPELLANT Crim. App. Dkt. No. 20230048 USCA Dkt. No. 24-0015/AR

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

Granted Issues

I. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES HAS JURISDICTION TO REVIEW THE MODIFICATION TO THE JUDGMENT OF THE COURT MADE BY THE ARMY COURT IN CHANGING BLOCK 32 (HAS THE ACCUSED BEEN CONVICTED OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE (18 U.S.C. § 922(g)(9)?) FROM "NO" AS ENTERED BY THE MILITARY JUDGE IN THE JUDGMENT OF THE COURT BACK TO THE ORIGINAL "YES" IN THE STATEMENT OF TRIAL RESULTS.

II. WHETHER THE ARMY COURT ERRED BY ASSERTING THAT APPELLANT HAS A QUALIFYING CONVICTION UNDER 18 U.S.C. § 922(g)(9).

Statement of Statutory Jurisdiction

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

Statement of the Case

On January 30, 2023, a military judge sitting as a special court-martial convicted appellant, Private First Class (PFC) Jaheemee J. Williams, consistent with his pleas, of one specification of domestic violence—violation of protection order with intent to intimidate—in violation of Article 128b, UCMJ (10 U.S.C. § 928b), and sentenced appellant to a bad conduct discharge. (JA 36–37). On February 23, 2023, the convening authority took no action on the findings or the sentence. (JA 12). Also, on February 23, 2023, the military judge entered judgment with the following modification, "[t]he Statement of Trial Results [(STR)] is modified or supplemented as follows: Block 32 is updated to state 'No.'" (JA 13). Block 32 asks whether the accused has been convicted of a misdemeanor crime of domestic violence as defined by 18 U.S.C. § 922(g)(9), commonly referred to as the Lautenberg Amendment to the Gun Control Act of 1968. (JA 08).

At the Army Court, appellant noted "the Judgement of the Court directed the Statement of Trial Results be updated such that Block 32 reads 'No'" because Appellant does not have a qualifying conviction under 18 U.S.C. § 922(g)(9). (JA 55). On August 30, 2023, the Army Court affirmed the findings and sentence. *United States v. Williams*, ARMY 20230048, 2023 CCA LEXIS 337 (A. Ct. Crim. App. Aug 20, 2023). The court also found "Block 32 of the Statement of Trail [sic] Results correctly states 'Yes'" and struck the military judge's modification from the Judgment of the Court. *Id*. This Court granted Appellant's petition for grant of review on January 24, 2024, and ordered briefing under Rule 25. (JA 01).

Summary of Argument

This Court has jurisdiction because Article 67(c)(1)(B), UCMJ, allows review of a decision or judgment by a military judge as affirmed or set aside as incorrect in law by a Court of Criminal Appeals. Appellant's conviction for sending a text message in violation of a protection order does not qualify as a "misdemeanor crime of domestic violence" under the Lautenberg Amendment, because such a conviction did not concern the use or attempted use of physical force, or the threatened use of a deadly weapon. 18 U.S.C. § 921(a)(33)(A).

Statement of Facts

Appellant pleaded guilty to intimidating his spouse by wrongfully contacting her by telephone in violation of a protection order in violation of Article 128b,

UCMJ. (JA at 6–11, 51–2). During the providence inquiry, appellant described the offense to which he was pleading guilty as sending a text message to his spouse telling her to "'[p]ick up my call or else I'm going to end up coming to the house,' with the intent to scare her into picking up the call." (JA 17). Appellant knew the protection order contained a no contact order, which included communication via text. (JA at 20).

Before accepting appellant's plea of guilty, the military judge discussed whether appellant's conviction would trigger the prohibition on firearm possession under the Lautenberg Amendment as set out in 18 U.S.C. §§ 922(g)(9) (Lautenberg Amendment) and 921(a)(33)(A) (definition of "misdemeanor crime of domestic violence"). (JA at 31–34). The military judge stated, "[I]t appears to the court on its face the Lautenberg Amendment would not apply by its own terms." (JA at 34–35).

Block 32 of the STR asks "[h]as the accused been convicted of a misdemeanor crime of domestic violence (18 U.S.C. § 922(g)(9))?" (JA 08). The military judge signed the STR with Block 32 marked "Yes[.]" (JA 08). But the military judge later corrected this error in the Judgment of the Court, directing that "[t]he Statement of Trial Results is modified or supplemented as follows: Block 32 updated to state 'No.'" (JA 13).

In its brief before the Army Court, Appellant noted that Block 32 of the STR needed to be updated to read "no" to accurately reflect the Judgment of the Court. (JA 55). In its decision, the Army Court found "Block 32 of the [STR] correctly states 'Yes.'" *Williams*, 2023 CCA LEXIS 337. The Army Court also amended the Judgment of the Court, removing the military judge's language regarding Block 32. *Id.*

I. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES HAS JURISDICTION TO REVIEW THE MODIFICATION TO THE JUDGMENT OF THE COURT MADE BY THE ARMY COURT IN CHANGING BLOCK 32 (HAS THE ACCUSED BEEN CONVICTED OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE (18 U.S.C. § 922(g)(9)?) FROM "NO" AS ENTERED BY THE MILITARY JUDGE IN THE JUDGMENT OF THE COURT BACK TO THE ORIGINAL "YES" IN THE STATEMENT OF TRIAL RESULTS.

Standard of Review

Questions of jurisdiction are reviewed de novo. *Fink v. Y.B.*, 83 M.J. 222, 224 (C.A.A.F. 2023).

Law and Argument

Pursuant to Article 60c, UCMJ, the STR is a part of the judgment of the court, as are any modifications to the STR. 10 U.S.C. § 860c(a)(1)(A)–(B). The military judge enters the judgment of the court pursuant to rules prescribed by the President. 10 U.S.C. § 860c(a)(1). The President has delegated to the Service

Secretaries the duty to promulgate regulations addressing additional requirements for the judgement of the court. Rule for Courts-Martial (R.C.M.) 1111(b)(3)(F). Pursuant to Army Regulation 27-10, the Secretary of the Army requires the STR contain an "indication whether any offense for which the accused was convicted is a misdemeanor crime of domestic violence" under the Lautenberg Amendment. Army Reg. 27-10, Legal Services: Military Justice, para. 5–42(b)(5) (20 Nov. 2020) [AR-27-10].

Under Article 67, UCMJ, this Court's jurisdiction[1] includes, in relevant part, acting with respect to a judgment by a military judge as affirmed or set aside as incorrect in law by the Army Court. 10 U.S.C. § 867(c)(1)(B) (allowing this court to act with respect to "a decision, judgment, or order by a military judge, as affirmed or set aside as incorrect in law by the Court of Criminal Appeals"); *see Fink*, 83 M.J. at 225 ("this Court is no longer limited to acting on the findings or sentence of a court-martial.").

This Court has jurisdiction because the Army Court: 1) affirmed the military judge's decision in the original STR, which the military judge later determined was incorrect; and 2) in so doing, set aside as incorrect in law the

[1] In *Clinton v. Goldsmith*, 526 U.S. 529 (1999), the Supreme Court, in the context of the All Writs Act, found this court's jurisdiction limited to acting on a "finding" or "sentence." The National Defense Authorization Act for Fiscal Year 2017, however, expanded this court's jurisdiction to encompass the language contained in 10 U.S.C. § 867(c)(1)(A)–(B). Pub. L. No. 114–328, § 5331, 130 Stat. 2000, 2934 (2016).

military judge's modifications to the STR in the judgment of the court. The Army Court set aside the military judge's modifications to the STR because it determined the military judge was incorrect as a matter of law regarding the application of the Lautenberg Amendment. This Court has the power to undo the Army Court's error[2] and correct the STR, as "the Court of Appeals for the Armed Forces may modify a judgment in the performance of their duties and responsibilities." R.C.M. 1111(c)(2).

II. WHETHER THE ARMY COURT ERRED BY ASSERTING THAT APPELLANT HAS A QUALIFYING CONVICTION UNDER 18 U.S.C. § 922(g)(9).

Standard of Review

Matters of statutory interpretation are reviewed de novo. *United States v. Pierce*, 70 M.J. 391, 394 (C.A.A.F. 2011) (considering whether ACCA properly found an activity failed to constitute a facility or means of interstate commerce under 18 U.S.C. § 2422).

[2] Alternatively, if this Court finds the Army Court lacked jurisdiction to consider whether Appellant's conviction triggered 18 U.S.C. § 922(g)(9), Appellant requests this court vacate the Army Court's decision striking the military judge's modification to the Judgment of the Court. *See United States v. Arness*, 74 M.J. 441, 443 (C.A.A.F. 2015) (vacating judgment upon finding Court of Criminal Appeals lacked jurisdiction).

Law and Argument

"Courts must give effect to the clear meaning of statutes as written and questions of statutory interpretation should begin and end with statutory text, giving each word its ordinary, contemporary, and common meaning." *United States v. Andrews*, 77 M.J. 393, 400 (C.A.A.F. 2018) (cleaned up). Based on the plain meaning of 18 U.S.C. § 922(g)(9), Appellant has not been convicted of a "misdemeanor crime of domestic violence." The Judgment of the Court and STR should accurately reflect that.

The Lautenberg Amendment, 18 U.S.C. § 922(g)(9), prohibits an individual "who has been convicted in any court of a misdemeanor crime of domestic violence" from possessing a firearm. Title 18 U.S.C. § 921(a)(33)(A) defines a "misdemeanor crime of domestic violence," in relevant part, as a misdemeanor under Federal law that "has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon . . . committed by a current or former spouse[.]"

Appellant's conviction in no way concerns a deadly weapon, therefore, there is no qualifying threat. Further, there is no qualifying use of force, as Supreme Court precedent holds such use of force must, at the very least, constitute an offensive touching. *United States v. Castleman*, 752 U.S. 157, 162–63, 168 (2014); *Voisine v. United States*, 579 U.S. 686, 689 (2016) ("Congress added §

922(g)(9) to prohibit any person convicted of a misdemeanor crime of domestic violence from possessing any gun . . . . And it defined that phrase in § 921(a)(33)(A), to include a misdemeanor under federal . . . law, committed by a person with a specified domestic relationship with the victim that has, as an element, the use or attempted use of physical force."). Post *Castleman*, Circuit Courts have stood by a strict requirement—the Lautenberg Amendment is triggered by convictions resulting from knowingly and intentionally causing "an injury that can result only from the use of physical force." *United States v. Scott*, 990 F.3d 94, 111 (2d Cir. 2021); *see United States v. Morris,* 885 F.3d 405, 410 (6th Cir. 2018) (finding Michigan definition of battery did not meet force requirement for Lautenberg Amendment).

Appellant was convicted of sending his wife a text message in violation of a protection order. (JA 6, 36). Appellant's text message, while a violation of the protective order, does not constitute a threat or the use force as contemplated by 18 U.S.C. § 922(g)(9). This Court should correct the Army Court's error and update Block 32 of the STR to state "No," thereby affording Appellant what is owed to every service member—an STR accurately reflecting what happened in the proceedings. *See United States v. Madden*, 81 M.J. 430 (C.A.A.F. 2021) (correcting STR to accurately reflect record); *United States v. Macias*, 2022 CCA

LEXIS 580, at *2–3 (N.M. Ct. Crim. App. Oct. 13, 2022) (correcting STR to accurately reflect appellant's conviction did *not* trigger 18 U.S.C. § 922(g)(9)).

Conclusion

Based on the foregoing, Appellant requests this Honorable Court reverse the decision of the Army Court, restore the Judgment of the Court as written by the military judge, and direct Block 32 of the STR read "No."

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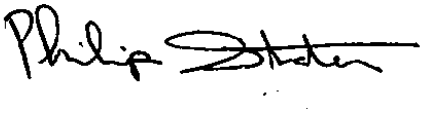

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Certificate of Compliance with Rules 24(c) and 37

1. This Brief on Behalf of Appellant complies with the type-volume limitation of Rule 24(c) because it contains 2,626 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.

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of United States v. Williams, Crim. App. Dkt. No. 20230048, USCA Dkt. No. 24-0015/AR was electronically filed with the Court and Government Appellate Division on February 23, 2024

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