IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, Appellee v. Juan I. CAMPOS Sergeant (E-5) U.S. Marine Corps, Appellant	**BRIEF ON BEHALF OF APPELLANT** Crim.App. Dkt. No. 202200246 USCA Dkt. No. 24-0138/MC

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

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Issue Presented

DID THE MILITARY JUDGE ABUSE HIS DISCRETION BY ADMITTING AND CONSIDERING, OVER DEFENSE OBJECTION, ALLEGATIONS OF ADDITIONAL, UNCHARGED MISCONDUCT IN THE UNSWORN VICTIM IMPACT STATEMENT?

Introduction

This Court has repeatedly held that unsworn victim impact statements are not evidence, such that the only limitations on their contents are the definitional parameters of Rule for Courts-Martial (R.C.M) 1001(c).[1] That rule defines "victim impact" as "any financial, social, psychological, or medical impact on the crime victim *directly* relating to or arising from *the offense of which the accused has been found guilty*."[2] This plain language neither encompasses nor contemplates allegations of *additional* misconduct against the accused. But that is exactly what the military judge allowed the unsworn victim impact statement to include in this case, relying on a legal principle applicable to *evidence* of aggravating circumstances offered by the government under R.C.M. 1001(b)(4). Appellant asks that this Court correct the military judge's erroneous view of the law, reverse the lower court's ratification of it, and enforce the plain language of the rule.

[1] *United States v. Tyler*, 81 M.J. 108, 112 (C.A.A.F. 2021) (construing the rule then codified as R.C.M. 1001A).
[2] R.C.M. 1001(c)(3) (emphasis added).

Statement of Statutory Jurisdiction

The sentence entered into judgment includes a dishonorable discharge, giving the lower court jurisdiction under Article 66(b)(3), Uniform Code of Military Justice (UCMJ).[3] This Court has jurisdiction under Article 67(a)(3), UCMJ.[4]

Statement of the Case

A general court-martial consisting of a military judge sitting alone convicted Appellant, pursuant to his pleas, of negligent destruction of military property, drunk driving, domestic violence, and drunk and disorderly conduct in violation of Articles 108, 113, 128b, and 134, UCMJ.[5] The military judge sentenced him to confinement for seventy months, reduction to E-1, and a dishonorable discharge.[6] The convening authority deferred and waived automatic forfeitures for six months and took no other action on the findings and sentence, which the military judge entered into judgment.[7]

The lower court affirmed the findings and sentence.[8] Appellant timely petitioned this Court for review, which it granted as to the issue presented herein.

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[3] 10 U.S.C. § 866(b)(3).
[4] 10 U.S.C. § 867(a)(3).
[5] 10 U.S.C. §§ 908, 913, 928b, 934; Joint Appendix (J.A.) at 322-23
[6] J.A. at 437.
[7] J.A. at 520-26.
[8] *United States v. Campos*, No. 202200246, slip op. (N-M. Ct. Crim. App. 2024).

Statement of Facts

Appellant pleaded guilty to committing domestic violence against the victim on three occasions: (1) he admitted to pulling her hair and pushing her against a wall on January 11, 2020;[9] (2) he admitted to pulling her hair and striking her in the face and shins in early June 2020;[10] and (3) he admitted to pulling her to the floor by her hair, biting the back of her neck, and exerting sufficient pressure on her neck that he strangled her on March 8, 2022.[11] After Appellant's pleas were accepted, the victim submitted an unsworn victim impact statement for the military judge's consideration.[12] In addition to discussing the impact of the offenses to which Appellant had pleaded and been found guilty, the victim alleged other uncharged misconduct in her unsworn statement—including "yelling at [her] occasionally," "grab[bing] and pull[ing] on [her] arms," "hav[ing] [her] immobilized against the wall," "tak[ing] [her] phone away," and "cut[ting] the Internet off which restricted her communication with anyone outside of [their] home"—in order to describe "what type of person [Appellant] is."[13]

[9] J.A. at 438.
[10] J.A. at 439.
[11] *Id*.
[12] J.A. at 518-19.
[13] *Id*.

The Defense objected to these allegations of additional, uncharged misconduct as beyond the scope of "victim impact" under R.C.M. 1001(c).[14]

The military judge, however, overruled the defense objection, finding the unsworn victim impact statement fell within the scope of R.C.M. 1001(c).[15] He found the victim's allegations of other domestic violence provided context for him to understand the impact of the offenses for which Appellant was to be sentenced.[16] He also found the allegations involved "a continuous course of conduct regarding similar crimes. Domestic violence, including physical and emotional intimidation and isolation against the same victim, the accused's spouse . . . and primarily in the same general location in and around their residence and relatively close timeframe."[17] He concluded that "to the extent the challenged statements are not actually related to the actual offenses that the accused pleaded guilty to under the additional charge, his [sic] statements contain matters considered as a continuing course of domestic abuse aimed at [the victim] by the accused resulting in negative social and psychological harm which is proper for me to consider under R.C.M. 1001(c)."[18]

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[14] J.A. at 357-59.
[15] J.A. at 369.
[16] J.A. at 370.
[17] *Id*.
[18] *Id*.

After considering the unsworn victim impact statement in its entirety, the military judge deliberated thirty-three minutes before sentencing Appellant to a dishonorable discharge, reduction to E-1, and seventy months' confinement for the strangulation offense alone—just two months shy of the maximum allowed under the plea agreement.[19]

Summary of Argument

The military judge abused his discretion in accepting and considering the victim impact statement's additional abuse allegations, which are beyond the scope of "impact on the crime victim that is *directly* relating to or arising from *the offense[s] of which the accused has been found guilty*."[20] This plain language does not support allowing *unsworn* victim impact statements to include allegations of additional uncharged misconduct that are not subject to the rules of evidence or any other limitation. Thus, the Court should not apply the broad construction its predecessor developed for similar language in R.C.M. 1001(b)(4), a different and altogether separate rule that allows the government to introduce additional, uncharged misconduct to prove a "continuing course of conduct" as *evidence* of

[19] J.A. at 437, J.A. at 513-15.
[20] R.C.M. 1001(c)(2)(B) (emphasis added).

aggravating circumstances [21]—which nevertheless remains subject to the evidentiary rules and other procedural limitations.

Here, the military judge and the lower court erred in holding unsworn victim impact statements under R.C.M. 1001(c) are not limited to discussing the impact of the offenses of which the accused has been found guilty, but can freely allege other uncharged misconduct as a "continuing course of conduct" that is not subject to the rules of evidence or any other limitation. In accepting and considering "victim impact" beyond the scope of R.C.M. 1001(c)(2)(B), the military judge erred to the material prejudice of Appellant's substantial rights—sentencing him to nearly the maximum of the plea agreement's confinement range. This Court should remedy the error by setting aside the sentence and remanding for a new sentencing hearing.

[21] *United States v. Mullens*, 29 M.J. 398, 400 (C.M.A. 1990)

Argument

THE MILITARY JUDGE ABUSED HIS DISCRETION BY ADMITTING AND CONSIDERING, OVER DEFENSE OBJECTION, ALLEGATIONS OF ADDITIONAL, UNCHARGED ABUSE IN THE UNSWORN VICTIM IMPACT STATEMENT.

Standard of Review

A military judge's interpretation of R.C.M. 1001 is reviewed de novo.[22] Whether a military judge accepted a victim impact statement that does not comply with R.C.M. 1001(c) is reviewed for abuse of discretion.[23] A military judge abuses his discretion when his legal findings are erroneous or his ruling is based on an erroneous view of the law.[24]

Discussion

Crime victims have the right to be reasonably heard during presentencing proceedings relating to "an offense of which the accused has been found guilty."[25] For this purpose, a "victim of an offense under [the UCMJ]" is "an individual who has suffered *direct* physical, emotional, or pecuniary harm *as a result of the*

[22] *United States v. Harrington*, 83 M.J. 408, 418 (C.A.A.F. 2023).
[23] *United States v. Hamilton*, 78 M.J. 335, 340 (C.A.A.F. 2019).
[24] *Harrington*, 83 M.J. at 418; *United States v. Griggs*, 61 M.J. 402, 406 (C.A.A.F. 2005) (citing *United States v. McCollum*, 58 M.J. 323, 335 (C.A.A.F. 2003)).
[25] R.C.M. 1001(c)(1).

commission of an offense under [the UCMJ]."[26] These victims' rights include the right to present an unsworn victim impact statement for consideration by the sentencing authority on which they "may not be cross-examined by the trial counsel or the defense counsel or examined upon it by the court-martial."[27] The contents of such statements are specifically limited to matters in mitigation and "victim impact," which is defined as "any financial, social, psychological, or medical impact on the crime victim *directly* relating to or arising from the offense *of which the accused has been found guilty*."[28]

It is well settled that unsworn victim impact statements "should not exceed what is permitted under R.C.M. 1001(c)(3)."[29] "Upon objection by either party or *sua sponte*, a military judge may stop or interrupt a victim's statement that includes matters outside the scope of R.C.M. 1001(c)(3)."[30] In fact, this Court has found "the military judge has an obligation to ensure the content of a victim's unsworn statement comports with the parameters of victim impact or mitigation as defined by R.C.M. 1001[(c)]."[31] The Court has therefore cautioned military judges to be

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[26] Art. 6b(b), UCMJ; 10 U.S.C. § 806b(b) (emphasis added); R.C.M. 1001(c)(2)(A) (same).
[27] R.C.M. 1001(c)(5).
[28] R.C.M. 1001(c)(3) (emphasis added).
[29] R.C.M. 1001(c)(5)(B), Discussion.
[30] *Id.*
[31] *Tyler*, 81 M.J. at 112.

mindful of allowing information to be included in such statements "that is not attributable to the offenses for which an accused is being sentenced."[32]

By contrast, "to present *evidence* admissible under a rule other than R.C.M. 1001(c)(3)"—such as "evidence as to any aggravating circumstances" under R.C.M. 1001(b)(4)—a victim has to "*testify as a witness* during presentencing proceedings."[33]

A. The plain language of "victim impact" under R.C.M. 1001(c)(2)(B) does not include allegations of additional, uncharged misconduct.

"It is a well-established rule that principles of statutory construction are used in construing the Manual for Courts-Martial in general and the Military Rules of Evidence in particular."[34] "When the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms."[35] As the Supreme Court has stated time and again, "courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, the first canon is also the last: judicial inquiry is complete."[36] To that end, this Court interprets words and phrases used in the UCMJ by examining the ordinary meaning

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[32] *Hamilton*, 78 M.J. at 340 n.6.
[33] R.C.M. 1001(c)(5)(B), Discussion (emphasis added).
[34] *United States v. Custis*, 65 M.J. 366, 370 (C.A.A.F 2007).
[35] *Id*.
[36] *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (internal quotation marks and citations omitted).

of the language, the context in which the language is used, and the broader statutory context.[37]

Here, the military judge's construction of "victim impact" does not comport with the plain language of that term under R.C.M. 1001(c)(2)(B). Indeed, he even acknowledged that the challenged statements were not within the plain language of the rule and provided his reasoning for why he believed he could consider them anyway. He first stated he was considering the allegations of other domestic violence as "context" to understand the impact of the offenses for which Appellant was to be sentenced.[38] He then stated that to the extent the other allegations were "not actually the actual offenses that the accused pleaded guilty to," he was considering them as "a continuing course of domestic abuse aimed at [the victim] by the accused resulting in negative social and psychological harm which is proper for me to consider under R.C.M. 1001(c)."[39]

But neither of these interpretations is supported by the plain language of the rule. First, allegations of additional misconduct are not statements about "financial, social, psychological, or medical *impact*" at all.[40] Rather, they are new claims alleging the commission of *other* misconduct. And second, such additional

[37] *United States v. Pease*, 75 M.J. 180, 184 (C.A.A.F. 2016).
[38] J.A. at 370.
[39] *Id*.
[40] R.C.M. 1001(c)(2)(B) (emphasis added).

allegations do not "*directly* relate to or arise from *the offense[s] of which the accused has been found guilty*."[41] At best, they only *indirectly* relate to or arise from those offenses, since the allegations themselves are discussing wholly *separate* crimes.

B. The language of R.C.M. 1001(c)(2)(B) does not have the same effect as similar language under R.C.M. 1001(b)(4).

The military judge and the lower court erred in conflating two similar, but distinct, rules in their interpretation of R.C.M. 1001(c)(2)(B). Both R.C.M. 1001(b)(4) and R.C.M. 1001(c)(2)(b) contain the phrase "directly relating to . . . the offense[s] of which the accused has been found guilty." Based on this language, the military judge's ruling and the lower court's opinion effectuate these two separate and distinct rules as one and the same.[42] But words and phrases used in the UCMJ are interpreted by examining not only the ordinary meaning of the language, but also the context in which the language is used and the broader statutory context.[43]

Here, the military judge's reasoning, adopted by the lower court, woefully ignores that context. Included below is the context in which the similar language appears in each rule:

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[41] *Id.* (emphasis added).
[42] *See Campos*, slip op. at 16-17.
[43] *Pease*, 75 M.J. at 184.

R.C.M. 1001(b)(4) Evidence in aggravation	R.C.M. 1001(c)(2)(B) Victim impact
"The trial counsel may present ***evidence as to any aggravating circumstances*** *directly related to or resulting from the offenses of which the accused has been found guilty*. Evidence in aggravation includes, but is not limited to, evidence of financial, social, psychological, and medical impact on or cost to any person or entity who was the victim of an offense committed by the accused . . . ."	"For purposes of this subsection, victim impact includes any financial, social, psychological or medical ***impact on the crime victim*** *directly relating to or arising from the offense of which the accused has been found guilty*."

(Emphasis added.) As the comparison above shows, R.C.M. 1001(b)(4) is a rule that permits the admission of *evidence*. R.C.M. 1001(c), by contrast, permits the admission of unsworn victim impact, which this Court has expressly held is *not* evidence.[44] And this distinction matters. Evidence in aggravation under R.C.M. 1001(b)(4) is subject to the limitations—and protections—of the Military Rules of Evidence.[45] Unsworn victim impact statements are not. Thus, a victim providing an unsworn victim impact statement is not as procedurally constrained as the trial counsel when presenting matters before the sentencing authority.

As the above comparison also reveals, R.C.M. 1001(b)(4) controls evidence of "aggravating *circumstances* directly related to or resulting from the offenses of which the accused has been found guilty." "Circumstances" is a broad term encompassing "condition[s] or fact[s] attending an event and having some bearing

[44] *Tyler*, 81 M.J. at 112 (emphasis added).
[45] *See United States v. Stephens*, 67 M.J. 233, 236 (C.A.A.F. 2009) (stating sentencing evidence is subject to exclusion under M.R.E. 403).

on it."[46] And to "attend" in this sense means "[t]o accompany as a circumstance or follow as a result."[47] Thus, the "circumstances" of a particular action need not be caused by it; they just need to accompany it and have some bearing on it. As such, the language in R.C.M. 1001(b)(4)—"aggravating *circumstances* directly relating to . . . the offenses of which the accused has been found guilty"—is far more encompassing than "*impact* on the crime victim directly relating to or arising from" such an offense, as stated in R.C.M. 1001(c)(2)(B).[48]

The military judge here ignored this contextual distinction and reasoned that the information provided in the victim's unsworn impact statement established a "continuing course of conduct," a legal principle this Court's predecessor developed for evidence in aggravation admitted under R.C.M. 1001(b)(4).[49] But as this Court has held, evidence in aggravation and victim impact statements cannot be conflated in this way; rather, "as R.C.M. 1001(a)(1)(A) (2016) and 1001A (2016) [now 1001(c)] make clear, these categories are distinct."[50]

This distinction is important and cannot be discounted. Evidence in aggravation under R.C.M. 1001(b)(4) is just that—*evidence*—and is therefore

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[46] *Circumstance*, *The American Heritage Dictionary of the English Language* (5th ed. 2018).
[47] *Attend*, *The American Heritage Dictionary of the English Language* (5th ed. 2018).
[48] R.C.M. 1001(c)(2)(B) (emphasis added).
[49] *Mullens*, 29 M.J. at 400.
[50] *Hamilton*, 78 M.J. at 340.

subject to various evidentiary rules and limitations, such as M.R.E. 403, before it may be admitted and considered.[51] On the other hand, unsworn victim impact statements submitted under by R.C.M. 1001(c) are *not* evidence and, therefore, are not subject to the protective limitations of the evidentiary rules.[52] Consequently, they are policed solely by the definitional parameters of R.C.M. 1001(c), which military judges have a strict obligation to enforce.[53]

In this case, the military judge abused his discretion by allowing the victim to do exactly what the case law prohibits: exceed the scope of R.C.M. 1001(c)(2)(B) with additional allegations "not actually related to the actual offenses that the accused pleaded guilty to" in order to provide the "context" of "a continuing course of domestic abuse."[54] But unlike evidence in aggravation, there is no contextual exception to R.C.M. 1001(c)(2)(B) that broadens the definition of "victim impact" to encompass a "continuing course" of *other* offenses that are not themselves "impact . . . *directly* relating to or arising from the offense[s] of which the accused has been found guilty."[55]

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[51] *See United States v. Hardison*, 64 M.J. 279, 281 (C.A.A.F. 2007).
[52] *Tyler*, 81 M.J. at 112.
[53] *Id.*
[54] J.A. at 370.
[55] R.C.M. 1001(c)(2)(B) (emphasis added).

Nor should there be, since R.C.M. 1001(c) material can come in through an *unsworn* statement, which is vastly different than the government's evidence in aggravation admitted under R.C.M.1001(b)(4). Put plainly, the military judge's ruling would effectively permit a victim to allege any number of similar, but uncharged, offenses. This would leave the accused without any mechanism to limit or test the veracity of such allegations through cross-examination or any rule of evidence. Practically speaking, the military judge's ruling would allow evidence of aggravating circumstances to be smuggled in via unsworn impact statements.

The ruling also fails to account for the existence of R.C.M. 1001(b)(4), which already provides the vehicle for such evidence to be introduced. Despite the similarities found in both rules at issue, "[i]t is a fundamental principle that in the construction of statutes and regulations the whole and every part thereof must be considered in the determination of the meaning of any of its integral parts. It is presumed the enacting authority contemplated the whole of the statute or regulation and every part of it should be significant and effective."[56] Thus, [s]ections of statutes should be construed in connection with one another as a 'harmonious whole' manifesting 'one general purpose and intent.'[57] As such, it follows that these two

[56] *United States v. Curtin*, 26 C.M.R. 207, 210 (C.M.A. 1958) (citation omitted).
[57] *United States v. Quick*, 74 M.J. 517, 520 (N-M. Ct. Crim. App. 2014), *aff'd*, 74 M.J. 332 (2015) (quoting Norman J. Sing, *Statutes and Statutory Construction* § 46:05 at 154 (6th ed. 2000)).

rules, construed in connection with one another, must have two separate meanings and applications.

Conflating these two rules as one and the same would effectively "render superfluous another part of the same statutory scheme."[58] Put differently, having two separate rules that have the same meaning and impact would be redundant and would ignore the canon against surplusage, under which every word and every provision is to be given effect and no word should be ignored or needlessly be given an interpretation that causes it to duplicate another provision or have no consequence.[59] Despite the limitations placed on victim impact statements due to their non-evidentiary nature, the military judge here expanded the interpretation of victim impact to include aggravating evidence of a "continuing course of conduct," effectively rendering R.C.M. 1001(b)(4) duplicative.

To the extent the trial counsel seeks to introduce such information through sworn testimony, such testimony would not only be constrained by the Military Rules of Evidence, but the accused would have the ability to test the veracity of such allegations through the crucible of cross-examination. Had the information provided in the victim's unsworn victim impact statement been admitted under R.C.M. 1001(b)(4), Appellant could have inquired into why the victim was just now alleging

[58] *Marx v. General Revenue Corp.*, 568 U.S. 371, 386 (2013).
[59] *United States v. Sager*, 76 M.J. 159, 161 (C.A.A.F. 2017).

these incidents for the first time, when they occurred, what precisely happened, whether any witnesses were present, whether the victim sought medical treatment, etc. But Appellant had no ability to do so because the victim was inappropriately permitted to make uncharged "continuing course of conduct" allegations in an unsworn R.C.M. 1001(c) submission. Thus, the victim introduced *evidence*—unchecked by the Military Rules of Evidence—that was erroneously considered by the military judge.

To be sure, this is not the aim of a victim impact statement. Victim impact statements are designed to afford crime victims the "right to be reasonably heard" about the "*direct* physical, emotional, or pecuniary harm" they have suffered "as a result of the commission of an offense of which the accused was found guilty."[60] They are not designed to provide victims a forum to air every alleged grievance against an accused. And for this reason, this Court has specifically cautioned military judges to be mindful of allowing information to be included in victim impact statements "that is not attributable to the offenses for which an accused is being sentenced."[61]

[60] R.C.M. 1001(c)(2)(A) (emphasis added).
[61] *Hamilton*, 78 M.J. at 340 n.6.

C. The military judge's error materially prejudiced Appellant's substantial rights and infected the sentence.

This error by the military judge materially prejudiced Appellant's substantial rights to a fair sentencing hearing that comported with the limitations contained in R.C.M. 1001(c)(2)(B). "When there is error in the admission of sentencing evidence, the test for prejudice is whether the error substantially influenced the adjudged sentence."[62] This determination generally examines (1) the strength of the Government's case; (2) the strength of the defense case; (3) the materiality of the evidence in question; and (4) the quality of the evidence in question.[63] However, Appellant shares the "significant doubts" voiced by some of this Court's judges about how apt these factors are for determining whether an error prejudiced the *sentence* (as opposed to the findings), when causing even one extra day of confinement would be prejudicial.[64] Such doubts are particularly significant, and an error more likely to be prejudicial, if the information erroneously admitted and considered was not already obvious from the other evidence presented at trial and would have provided new ammunition against an appellant.[65]

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[62] *United States v. Barker*, 77 M.J. 377, 384 (C.A.A.F. 2018) (internal quotation marks and citation omitted).
[63] *United States v. Bowen*, 76 M.J. 83, 89 (C.A.A.F. 2017) (internal quotation marks omitted).
[64] *United States v. Cunningham*, 83 M.J. 367, 377 (C.A.A.F. 2023) (Maggs, J., concurring in part and dissenting in part).
[65] *United States v. Harrow*, 65 M.J. 190, 200 (C.A.A.F. 2007).

Here, the military judge's erroneous interpretation of R.C.M. 1001(c)(2)(B) prejudiced the sentence he adjudged. While military judges are ordinarily presumed to know and apply the law correctly to filter out inadmissible evidence from their consideration, in this case the military judge specifically announced his erroneous belief that he could properly consider the victim's extra-legal statements as contextual evidence of "a continuing course of domestic abuse aimed at [her] by [Appellant]."[66] This ruling leaves little doubt that the military judge considered her additional allegations both reliable and material and used them in his sentencing determination. As much of the Government's case was premised on the victim's statements, particularly for the most serious offenses, her allegations provided new ammunition against Appellant from the Government's key witness.

Nor is this issue resolved by the military judge's announcement that he considered the victim impact statement in sentencing the accused only for the offenses of which he was found guilty, or the fact that he imposed segmented confinement terms for each convicted offense.[67] To the contrary, his announcement that the victim's additional abuse allegations were proper for him to consider supports that he not only used them to support that Appellant engaged in a "continuing course of conduct" against the victim, but then applied that course of

[66] *United States v. Robbins*, 52 M.J. 455, 457 (C.A.A.F. 2000); J.A. at 370.
[67] J.A. at 371, J.A. at 437.

conduct in adjudging a confinement term for every domestic violence specification (if not every single offense) of which Appellant had been found guilty.

That is the very definition of prejudice. When the parties entered into a plea agreement providing for a confinement range of 60 to 72 months, they did so with the understanding that Appellant would be sentenced for the offenses to which he pleaded guilty based on a victim impact statement properly considered under R.C.M. 1001(c)—not based on a "continuing course of conduct" established through and improperly interwoven with additional allegations. The uncharged and unproven abuse alleged in the unsworn victim impact statement undoubtedly contributed to the military judge's award of a confinement term just two months shy of the maximum allowed by the plea agreement. Otherwise, he would not have overruled the defense objection and ruled that even if "the challenged statements are not actually related the actual offenses that the accused pleaded guilty to under the additional charge," they "contain[ed] matters considered as a continuing course of domestic abuse aimed at [the victim] by the accused resulting in negative social and psychological harm which is *proper for me to consider* under R.C.M. 1001(c)."[68]

Conclusion

This Court has held time and again that unsworn victim impact statements under R.C.M. 1001(c) are not evidence, that they are distinct from evidence of

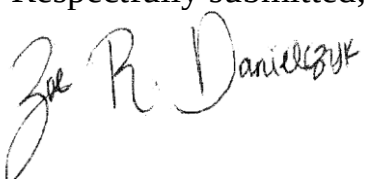
[68] J.A. 370 (emphasis added).

aggravating circumstances under R.C.M. 1001(b)(4), and that they are in a category of their own.[69] The Court should continue to enforce this view, based on the plain language of R.C.M. 1001(c), and hold that military judges may not accept or consider information in unsworn victim impact statements "that is not attributable to the offense[s] for which the accused is being sentenced."[70]

Relief Requested

WHEREFORE, Appellant respectfully requests that the Court set aside the sentence and remand the case for a new sentencing hearing.

Respectfully submitted,



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[69] *See Harrington*, 83 M.J. at 419; *Tyler*, 81 M.J. at 112; *Hamilton*, 78 M.J. at 340.
[70] *Hamilton*, 78 M.J. at 340 n.6.

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Certificate of Filing and Service

I certify that the foregoing was filed electronically with this Court, and that copies were electronically delivered to Deputy Director, Appellate Government Division, and to Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity, on September 13, 2024.

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