IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

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

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

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SERVICE COURTS OF CRIMINAL APPEALS CASES

UNIFORM CODE OF MILITARY JUSTICE, 10 U.S.C. §§ 801–946 (2019):

MANUAL FOR COURTS-MARTIAL (2019)

Issue Assigned

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

Statement of Statutory Jurisdiction

The Entry of Judgment includes a sentence of a dishonorable discharge and confinement for more than two years. The lower court had jurisdiction under Article 66(b)(3), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(b)(3). This Court has jurisdiction under Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3).

Statement of the Case

A military judge sitting as a general court-martial convicted Appellant, pursuant to his pleas, of damaging military property, drunk driving, assaulting his spouse, and drunk and disorderly conduct in violation of Articles 108, 113, 128b, and 134, UCMJ, 10 U.S.C. §§ 908, 913, 928b, 934. The Military Judge sentenced Appellant to seventy months of confinement, reduction to paygrade E-1, and a dishonorable discharge. In accordance with the Plea Agreement, the Convening Authority deferred automatic forfeitures for fourteen days and waived automatic forfeitures for six months. The Military Judge entered the Judgment into the Record, and the Sentence, except for the punitive discharge, was executed.

Statement of Facts

A. The United States charged Appellant with attempted murder, attempting to leave the scene of an accident, disrespecting a sentinel, damaging military property, drunk and reckless driving, communicating a threat, assaulting his spouse, and drunk and disorderly conduct.

In Specification 1 of Charge I, the United States charged Appellant with attempting to murder the Victim by strangulation. (J.A. 295.) In Specification 2, the United States charged Appellant with attempting to wrongfully leave the scene of a vehicular accident. (J.A. 295.)

In Charge II, the United States charged Appellant with using disrespectful language against a sentinel. (J.A. 295.)

In Charge III, the United States charged Appellant with damaging military property. (J.A. 297.)

In Specifications 1 and 2 of Charge IV, the United States charged Appellant with drunk driving and reckless driving, respectively. (J.A. 297.)

In Charge V, the United States charged Appellant with threatening to kill a lance corporal. (J.A. 297.)

In Specifications 1 and 2 of Charge VI, the United States charged Appellant with assaulting his spouse, the Victim, by strangulation and biting, respectively. (J.A. 297.)

In Charge VII, the United States charged Appellant with drunk and disorderly conduct. (J.A. 297.)

Appellant's conduct underlying these Charges occurred on March 8, 2022. (J.A. 295, 297.)

In the Additional Charge, the United States charged Appellant with committing violent offenses against his spouse, the Victim, by pulling her hair, striking her head, kicking her leg, and biting her lip and chest on various occasions from November 1, 2019, to June 7, 2020. (J.A. 296.)

B. Appellant entered a Plea Agreement.

Appellant entered a Plea Agreement. (J.A. 508.) He agreed to plead guilty to Charges III, VI, VII, Specification 1 of Charge IV, and the Additional Charge, with exception [1]. (J.A. 509–12.)

Appellant agreed to no fines, reduction to paygrade E-1, a dishonorable discharge, and confinement to be served concurrently, with a range between sixty months and seventy-two months. (J.A. 513–15.)

C. Appellant pled guilty.

Pursuant to the Plea Agreement, Appellant pled guilty to damaging military property, drunken operation of a vehicle, assaulting his spouse by strangulation and

[1] Appellant agreed to plead guilty to the Additional Charge, except for the words "and bite [the Victim] on the lip and chest with the accused's teeth." (J.A. 510.)

biting, drunken and disorderly conduct, and commission of violent offenses against his spouse. (J.A. 527, 530–31.)

Appellant entered into a Stipulation of Fact. (J.A. 635–38.) Appellant discussed and affirmed his guilt to the Military Judge during the Providence Inquiry. (J.A. 532–602.)

For both Specifications of Charge VI, Appellant admitted to using his arms and fingers to strangle the Victim's throat and to biting the back of the Victim's neck with his teeth on March 8, 2022. (J.A. 439, 562, 578–600.) For the Additional Charge, Appellant admitted to pulling the Victim's hair and pushing her against a wall on January 11, 2020, and striking the Victim's face with his hand, kicking her shins, and pulling her hair on June 7, 2020. (J.A. 304, 348–49.)

D. The Military Judge accepted Appellant's Plea Agreement and Pleas, and convicted him accordingly.

The Military Judge accepted Appellant's Plea Agreement. (J.A. 621.) The Military Judge then found Appellant guilty of Charges III, VI, VII, Specification 1 of Charge IV, and the Additional Charge. (J.A. 322–23.)

E. At sentencing, the United States presented photos of the Victim and the crime scene, videos, an incident report, and testimony from law enforcement and the Victim.

1. The United States presented Victim and crime scene photos, videos, an accident report, and literature on strangulation.

The United States presented the Stipulation of Fact, photos of the Victim on the date of the charged assault by strangulation as well as five days after the offense, crime scene photos, the incident report, a base map, the arrest video, and a publication pertaining to strangulation, of which the Military Judge considered only the first two pages. (J.A. 438–65[2], 622–23, 635–56.)

2. Law enforcement testified to the investigation, the Victim's interview and injuries, and Appellant's belligerence.

Law enforcement testified the Victim's neighbor called 911 after the Victim came to her house. (J.A. 336–37.) The 911 operator "could hear heavy, snotty, sobbing, incoherent speaking" and described it as "the most distressed call that he has heard." (J.A. 336, 348.) The neighbor said the Victim told her, "[Appellant] tried to kill me." (J.A. 337.) Law enforcement reviewed crime scene photos, highlighting evidence of strangulation. (J.A. 339–40; 639–42.)

Law enforcement met the Victim at the medical clinic. (J.A. 326.) Her "face was red and appeared swollen and she was laying on the bed. There was [a]

[2] The Stipulation of Fact in J.A. 438–39 is missing facts regarding the strangulation and biting on March 8, 2022, but is complete on J.A. 635–38.

blanket covering her whole body and she had a C collar on her neck." (J.A. 326.) The doctor said the Victim had "bruising on her body," specifically an "injury around her eye as well as … petechiae on her face." (J.A. 327.)

Meanwhile, Appellant was in a different room at the same clinic, "screaming that his rights are being violated, that he wanted a lawyer, and then he—at one point, he threatened to piss on the floor." (J.A. 326–27.)

The next day, law enforcement interviewed the Victim. "Her face was still very red and swollen. She was no longer wearing a C collar, so I could see her neck was also swollen at the time." (J.A. 327.) She also had "a bite mark" on the back of her neck and bruising on her arms and legs. (J.A. 328–29.)

The Victim said she and Appellant had been arguing about chores. (J.A. 329.) Appellant was intoxicated. (*See* J.A. 329.) While the Victim was in bed, Appellant undressed, got in the bed and tried to get on top of her. (J.A. 329.) She said, "No," but "he was not respecting her wishes." (J.A. 329.) He got angry and pushed her off the bed, then pulled her down by the hair "so hard that her neck cracked." (J.A. 330.) He then pushed her against a wall. (J.A. 330.) She managed to leave the bedroom, but Appellant forced her to the ground with his full bodyweight on her and began strangling her; while she was face down on the ground, he pulled up on her neck first with his forearms then with his fingertips. (J.A. 330–32.) Appellant bit the back of her neck. (J.A. 334.) "[S]he

could not breathe, she could not talk, she could not yell. . . , she was thinking about how she was going to die" as Appellant said, "Ya vete, maldita," or "Go away, motherfucker." (J.A. 331.) She understood "go away" to mean "die." (J.A. 331.) She began praying. (J.A. 331.)

After Appellant started calming down, "he eventually asked her if she would forgive him if he let her go. She said, 'Yes,' and this went on several times." (J.A. 332.) Appellant began "grinding his penis on her buttocks," but "let up pressure enough that she was able to get up and run downstairs and . . . to her neighbor's house." (J.A. 333–34.)

3. Appellant objected to part of the Victim Impact Statement as pertaining to uncharged misconduct.

Appellant objected to part of the Victim Impact Statement as pertaining to uncharged misconduct: "It started with him yelling at me occasionally. Then he began to grab and pull on my arms. . . . It progressively got worse, to the point where he would have me immobilized against the wall. He would also take my phone away from me. He kept [my phone] from me, cut the internet off which restricted my communication with anyone outside of our home." (J.A. 358.)

4. The Military Judge enunciated the law and overruled the objection.

The Military Judge cited R.C.M. 1001(b)(4) for evidence in aggravation, which can include "evidence of financial, social, psychological, and medical

impact" and its discussion that "evidence in aggravation may be introduced whether the accused pleaded guilty or not guilty and whether or not it would be admissible on the merits." (J.A. 362–63.) He discussed limits imposed by *United States v. Stapp*, 60 M.J. 795 (A. Ct. Crim. App. 2004), and Mil R. Evid. 403. (J.A. 363–64.)

Under this framework, the Military Judge overruled Appellant's objection and found the Statement to be "evidence from a continuous course of conduct" showing "the full impact of [A]ppellant's crimes upon the [V]ictim."[3] (J.A. 364–65.) He found analogous *United States v. Sittingbear*, 54 M.J. 737 (N-M. Ct. Crim. App. 2001), where the victim properly testified to a sodomy charge that had been withdrawn and dismissed, and *United States v. Terlep*, 57 M.J. 344, 350 (C.A.A.F. 2002), where the victim properly testified "to her complete version of the truth as she saw it, limited only by the terms of the pretrial agreement and the stipulation of fact." (J.A. 365–66.)

Addressing Appellant's arguments directly, the Military Judge found this evidence represented "a continuous course of conduct regarding similar

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[3] The Military Judge relied on *United States v. Rust*, 41 M.J. 472 (C.A.A.F. 1995), *United States v. Thomas*, No. 201600438, 2017 CCA LEXIS 671 (N-M. Ct. Crim. App. Oct. 31, 2017), *United States v. Padilla*, No. 201600241, 2017 CCA LEXIS 629 (N-M. Crim. Ct. App. Sept. 29, 2017), and *United States v. Weingard*, 27 M.J. 128, 135 (C.M.A. 1988). (J.A. 364–65.)

crimes. Domestic violence, including physical and emotional intimidation and isolation against the same victim." (J.A. 369.) Evidence of "negative social and psychological harm … is proper for me to consider under R.C.M. 1001(c)." (J.A. 369.)

5. The Victim described Appellant's ongoing abuse, the charged offenses, and the assault's effect on her mental health.

In an unsworn statement, the Victim said Appellant's violence escalated from occasional yelling, then arm grabbing, then hair pulling; other times he would kick and slap her. (J.A. 375.) He restricted her communication by taking her phone and cutting off the internet. (J.A. 375.) She was "too scared to say anything due to the fact that [she] had moved from Mexico to Japan with no family nearby." (J.A. 375.)

That night, she thought she was going to die and felt hopeless while fading out. (J.A. 376.) She suffered body aches, headaches, and red eyes in the following weeks. (J.A. 376.) She "had to worry about making sure [her] makeup covered every bruise and every scratch" because she had to go to work. (J.A. 376.)

She has anxiety attacks prompted by seeing Appellant's friends in public and people who "even remotely look like" him. (J.A. 377.) This is unavoidable since she needs to work to make money. (J.A. 377.) She has issues with crowded places and has trouble sleeping due to nightmares reliving Appellant's abuse against her. (J.A. 378.)

She has not told her family as she "cannot see [her] family shattered [by] her experience." (J.A. 378.)

She said, "I am standing here telling all of you what type of person [Appellant] is and how he impacted me. I want to ensure he never does this to anyone else when he is released." (J.A. 379.)

F. In extenuation and mitigation, Appellant presented service records, the testimony of his sister and his supervisor, and his unsworn statement.

Appellant presented his service records, personal photos with the Victim, confinement records, and bank statements. (J.A. 466–507, 657–81.) The bank statements were admitted to rebut the Victim's claims of her need to work and financial issues. (J.A. 380; 667–81.)

Appellant's sister testified Appellant never complained about his marriage or discussed his drinking. (J.A. 394.) She did not know of his misconduct until he called from pretrial confinement. (J.A. 396.) She said, "[h]e is always welcome[] home" after his release and was sure that he could find a job nearby. (J.A. 397–98.)

Appellant's supervisor said he was a hard worker and required little oversight. (J.A. 401–03.) He had no issues with Appellant's technical performance and considered him a "[t]ypical [Marine]. What I expected." (J.A. 405.) He agreed Appellant "d[id] not have drive" or "initiative." (J.A. 414.) He

was surprised by news of his drunk driving; however, he knew Appellant was ordered not to drink, and was attending "some meetings" for that. (J.A. 410, 415–16.)

In an unsworn statement, Appellant apologized to the Victim and discussed how his drinking problem started after his judicial removal from the birth certificate of a girl he considered his daughter. (J.A. 425–27.)

Appellant discussed his pre-trial confinement: his "basically . . . solitary" confinement conditions for two-and-a-half months, "[n]ot [being] allowed to talk to the guards," and the chaplain coming maybe once a week. (J.A. 429.)

G. The Military Judge sentenced Appellant to seventy months of confinement, reduction to paygrade E-1, and a dishonorable discharge.

The Military Judge sentenced Appellant to seventy months of confinement, reduction to paygrade E-1, and a dishonorable discharge. (J.A. 437.) He announced the segmented sentence, with confinement running concurrently, as: two months of confinement for Charge III, six months for Specification 1 of Charge IV, seventy months for Specification 1 of Charge VI, twelve months for Specification 2 of Charge VI, four months for Charge VII, and twelve months for the Additional Charge. (J.A. 437.)

H. Appellant appealed to the Navy-Marine Corps Court of Criminal Appeals and the court affirmed the Findings and the Sentence.

Appellant appealed to the Navy-Marine Corps Court of Criminal Appeals, asserting three assignments of error: (1) Appellant was subjected to illegal pretrial punishment; (2) Appellant's Trial Defense Counsel were ineffective for failing to investigate and seek credit for the illegal pretrial punishment, failing to discuss material exculpatory evidence with Appellant or provide it to him to review before entering his pleas, and failing to use the exculpatory evidence during his Sentencing; and (3) the Military Judge abused his discretion by allowing the Victim Impact Statement to discuss other alleged, but uncharged, in order to describe "what type of person he is." *United States v. Campos*, No. 202200246, 2024 CCA LEXIS 87, at *2 (N-M. Ct. Crim. App. Feb. 29, 2024).

The court affirmed the Findings and the Sentence. *Id*. at *28. In response to Appellant's third Assignment of Error, the court held that the Military Judge did not abuse his discretion in considering the uncharged domestic abuse as "a continuing course of conduct involving similar crimes" and that the Victim's description of that abuse "provides context to the court . . . to understand the impact of the offenses for which the accused is to be sentenced." *Id*. at *26. The court also found no prejudice because the United States' sentencing evidence was strong due to Appellant's statements during his guilty plea, the Stipulation of Fact, and the extent of the physical harm inflicted on the Victim as evidenced by

photographs and witness testimony. *Id*. at *27. In contrast, Appellant's mitigating evidence was relatively weak. *Id*. at *28.

Argument

THE MILITARY JUDGE DID NOT ABUSE HIS DISCRETION ACCEPTING AND CONSIDERING THE VICTIM IMPACT STATEMENT ON APPELLANT'S PATTERN OF ABUSE. THIS COURT SHOULD ENDORSE EXTENDING THE *MULLENS* ANALYSIS TO VICTIM IMPACT STATEMENTS.

A. The standard of review is abuse of discretion.

Whether a military judge erroneously admitted an unsworn victim statement under R.C.M. 1001(c) is reviewed for abuse of discretion. *United States v. Harrington*, 83 M.J. 408, 418 (C.A.A.F. 2023). A military judge's interpretation of R.C.M. 1001(c) is a question of law this Court reviews de novo. *Id*.

B. A victim impact statement must be confined to "financial, social, psychological, or medical impact[s] on the crime victim directly relating to or arising from the offense."

R.C.M. 1001(c)(1) provides a victim the right to be reasonably heard by making an impact statement in sentencing. "Victim impact" is "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." *Id.*

When determining whether to allow objected-to portions of a statement, the military judge must ensure the accepted portions are confined to "financial, social,

psychological, or medical impact[s] on the crime victim directly relating to or arising from the offense of which the accused has been found guilty." *Id.*

"As the sentencing authority, a military judge is presumed to know the law and apply it correctly absent clear evidence to the contrary." *United States v. Bridges*, 66 M.J. 246, 248 (C.A.A.F. 2008). The military judge is presumed capable of "distinguish[ing] between proper and improper sentencing arguments." *United States v. Erickson*, 65 M.J. 221, 225 (C.A.A.F. 2007).

Admitting a statement based on "an erroneous view of the law" is an abuse of discretion. *United States v. Barker*, 77 M.J. 377, 383 (C.A.A.F. 2018).

C. Applying the *Mullens* analysis to victim impact statements as several lower courts have, the Military Judge did not err in accepting the Victim Impact Statement and references to Appellant's other abuse.

Appellate courts may affirm a lower court's ruling on different grounds than that of lower courts, so long as the affirmation is correct as a matter of law. *See United States v. Tinklenberg,* 563 U.S. 647, 661 (2011).[5]

1. Uncharged conduct may be admissible as aggravation evidence. The Court of Military Appeals in *Mullens* held that "aggravating circumstances directly related to or resulting from" included a continuing source of conduct involving findings of guilt.

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[5] The Military Judge did not cite *Mullens* directly, but cited *United States v. Hardison*, 64 M.J. 279 (C.A.A.F. 2007), where the Court acknowledged that aggravation evidence may be admitted based on a "continuous nature of the charged conduct." (J.A. 364); *see* 64 M.J. at 282 (quoting 29 M.J. at 400).

In *United States v. Mullens*, 29 M.J. 398 (C.M.A. 1990), the court held that uncharged misconduct which is a part of a continuous course of conduct involving "the same or similar crimes, the same victims, and similar situs" may be admitted as evidence in aggravation, because it is directly related to the conduct which resulted in conviction. *Id.* at 400. There, the appellant was convicted of sodomy and indecent acts with his minor children over three years. *Id.* The court upheld admitting evidence of sexual abuse of those children in the four years before his offenses, because "[those] incidents demonstrate not only the depth of appellant's sexual problems, but also the true impact of the charged offenses on the members of his family." *Id.*

In *United States v. Nourse*, 55 M.J. 229 (C.A.A.F. 2001), the court upheld admitting evidence that the appellant stole property worth $30,000 from a sheriff's office and sold it to military surplus stores where he was convicted of larceny of ponchos worth $2,256 from the same sheriff's office. *Id.* at 231–232. "This evidence of a continuous course of conduct was admissible to show the full impact of appellant's crimes upon the [s]heriff's [o]ffice." *Id.* at 232.

2. The Service Courts have applied the *Mullens* analysis to victim impact statements that "directly relates to or arises from" a continuing source of conduct involving findings of guilt.

In *United States v. Goldsmith*, No. 40148, 2023 CCA LEXIS 8 (A.F. Ct. Crim. App. Jan. 11, 2023), the Air Force service court extended *Mullens* and

Nourse to victim impact statements, holding "the broad victim rights contained in R.C.M. 1001(c) include permitting a victim to discuss a continuous course of conduct of an accused when such course of conduct is directly related to or arises from an offense against that victim of which an accused has been found guilty." *Id*. at *19–22. The *Goldsmith* victim testified, "[The appellant] spent all these years trying to convince me that each incident wasn't that bad, and that I wasn't remembering correctly. On one occasion he would admit what he did and apologize, but then on another occasion he would try to tell me that it happened differently." *Id.* at *17. The court affirmed admitting this testimony. *Id.* at *17, 22.

In *United States v. Valdez*, No. 202300141, 2024 CCA LEXIS 393 (N-M. Ct. Crim. App. Sept. 26, 2024), the Navy and Marine Corps Court of Criminal Appeals followed *Goldsmith*. There, the appellant pled guilty to three incidents of domestic violence. *Id*. at *3. The spouse victim, in her unsworn statement, described the appellant's uncharged acts of sexual assault and additional domestic violence. *Id*. at *5. The court found that the uncharged acts described a continuing course of conduct. *Id*. at *11. While domestic assault and sexual assault fall under different articles of the Code and involve different elements, they were "similar crimes" under the circumstances presented and involved violent physical abuse of

an intimate partner. *Id.* "Taken together, they convey the true impact of the acts of domestic violence to which Appellant pleaded guilty." *Id.*

Like *Mullens*, *Nourse*, *Goldsmith*, and *Valdez*, Appellant's domestic abuse of the Victim leading up to Appellant's convictions provided context that would help the Military Judge "better understand the impact of the offenses for which the accused [is] to be sentenced." (J.A. 371); *see Mullens*, 29 M.J. at 400; *Nourse*, 55 M.J. at 232; *Goldsmith*, 2023 CCA LEXIS 8, at *22; *Valdez*, 2024 CCA LEXIS 393, at *11.

Like *Mullens* and *Nourse*, Appellant's previous abuse showed "the depth of appellant's [domestic abuse] problems, but also the true impact of the charged offenses on the members of his family," as well as the "full impact of [A]ppellant's crimes on the [Victim]." *See Mullens*, 29 M.J. at 400; *Nourse*, 55 M.J. at 232.

Like the Service Courts of Criminal Appeals in *Goldsmith* and *Valdez*, the Victim described a pattern of abuse. (J.A. 375.) Beginning with occasional yelling, then grabbing and pulling on her arms, then holding her against the wall, Appellant's actions culminated in the domestic violence of which he was convicted. (J.A. 375); *see Valdez*, 2024 CCA LEXIS 393, at *11; *Goldsmith*, 2023 CCA LEXIS 8, at *22. Appellant took away the Victim's phone to limit her communication with her family in Mexico, isolating her with him. (J.A. 375); *see Valdez*, 2024 CCA LEXIS 393, at *11; *Goldsmith*, 2023 CCA LEXIS 8, at *22.

3. Appellant erroneously asserts that victims must testify as a witness.

Appellant asserts that, "'to present *evidence* admissible under a rule other than R.C.M. 1000(c)(3)'—such as 'evidence as to any aggravating circumstances' under R.C.M. 1000(b)(4)—a victim has to '*testify as a witness* during presentencing proceedings.'" (Appellant Br. at 9, Sept. 13, 2024 (citing R.C.M. 1001(c)(5), Discussion).)

Appellant misstates the rule. The correct rule is:

> A Victim's statement should not exceed what is permitted under R.C.M. 1001(c)(3). A crime victim *may also* testify as a witness during presentencing proceedings in order to present evidence admissible under a rule other than R.C.M. 1001(c)(3).

R.C.M. 1001(c)(5), Discussion (emphasis added).

There is no rule mandating that crime victims testify if their statements are admissible as evidence in aggravation, nor is there a rule stating that evidence admissible under R.C.M. 1001(b)(4) can never be permissible under R.C.M. 1001(c)(3).

4. Appellant mischaracterizes the rule for distinguishing victim impact statements from evidence in aggravation. This case is not like *Hamilton*.

Appellant relies on *United States v. Hamilton*, 78 M.J. 335 (C.A.A.F. 2019), to argue that the Military Judge conflated evidence in aggravation with victim impact statements. (Appellant Br. at 13.) But in *Hamilton*, the prosecution

submitted statements by the victims describing the ongoing harm suffered because of the appellant's distribution of child pornography. *Hamilton*, 78 M.J. at 340. The court found the statements were improperly considered because they were admitted as evidence in aggravation, not under the rule equivalent to R.C.M. 1001(c) for crime victims' right to be heard. *Id*. at 341−42.

Here, unlike *Hamilton*, the Military Judge made clear that the Victim's unsworn statement was being heard under R.C.M. 1001(c), not as evidence in aggravation. (J.A. 374–375.)

5. The Rules for Courts-Martial provide a mechanism to limit or test allegations of non-charged offenses.

Appellant incorrectly states that by affirming the Military Judge's Ruling, Appellant would be "without any mechanism to limit or test the veracity of such allegations." (Appellant Br. at 15.)

If crime victims provide unsworn statements, "[t]he prosecution or defense may, however, rebut any statements of fact therein." R.C.M. 1001(c)(5)(A). This is the same mechanism applied to any unsworn statements by Appellant. *See* R.C.M. 1001(d)(2)(C).

Here, Appellant offered rebuttal evidence to the Victim Impact Statement but he only addressed the Victim's statements relating to the need to work and finances, not the uncharged abusive acts. (J.A. 380; 667–81.) In Appellant's unsworn statement, he also apologized to the Victim and discussed his drinking

problem. (J.A. 425–27.) Appellant had the opportunity to rebut the entirety of the Victim Impact Statement, but chose not to do so.

D. Even if the Military Judge erred, Appellant was not prejudiced under the *Hamilton* factors.

Where error occurs at sentencing, the test for prejudice "is whether the error substantially influenced the adjudged sentence." *United States v. Sanders*, 67 M.J. 344, 346 (C.A.A.F. 2009) (citation omitted).

To determine if this occurred, appellate courts consider four factors: (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. *Hamilton*, 78 M.J. at 343.

Materiality and quality are assessed by evaluating the extent to which the evidence contributed to the United States' case and the extent to which the United States referred to the evidence in argument. *Edwards*, 82 M.J. at 248.

1. The United States' case was strong, justifying the Military Judge's sentence.

For Specification 1 of Charge IV, drunk driving, Charge VII, drunk and disorderly conduct, and Charge III, damaging military property, the United States presented evidence that more than justified six months and four months of confinement, respectively. (*See* J.A. 437.) The Military Judge viewed the accident report that showed Appellant drove through base housing and across the

installation, hitting two fixed objects: a curb, and the installation perimeter fence. (J.A. 445–57, 463)

The Report included diagrams and photos showing extensive damage to the perimeter fence by Appellant's car, which was also severely damaged. (J.A. 442–62.) Appellant's blood alcohol concentration was 0.045, nine hours after the crash. (J.A. 445.) Law enforcement testified that after arrest, Appellant "scream[ed] that his rights are being violated, that he wanted a lawyer, and then he—at one point, he threatened to piss on the floor." (J.A. 426–27.)

For the two Specifications of Charge VI (assaulting spouse) and the Additional Charge (assaulting spouse), the United States presented evidence that more than justified the seventy, twelve, and twelve months of confinement, respectively. (*See* J.A. 437.) First, the Military Judge viewed photos of, and heard testimony about, the Victim's injuries showing bruising on her body, the injury around her eye, and the petechiae on her face. (J.A. 327, 440–41.) On the first day, the Victim's "face was red and appeared swollen and she was laying on the bed. There was [a] blanket covering her whole body and she had a C collar on her neck." (J.A. 326.) On the second day, "[h]er face was still very red and swollen. …her neck was also swollen at the time." (J.A. 327.) She also had "a bite mark" on the back of her neck. (J.A. 328.)

Second, the Military Judge received testimony from law enforcement detailing what the Victim and a neighbor told them about Appellant's violent assault and the aftermath. The Victim told her neighbor, "[Appellant] tried to kill me", and the 911 operator "could hear heavy, snotty sobbing." (J.A. 336–37.) Appellant was intoxicated and pushed her off the bed, pulled her down by the hair, and pushed her against a wall. (J.A. 329–30.) Appellant forced her onto the ground with his full bodyweight and strangled her. (J.A. 330–31.) "[S]he could not breathe, she could not talk, she could not yell. . . . She said that she was thinking about how she was going to die" as Appellant told her, "Ya vete, maldita," or, "Go away, motherfucker." (J.A. 331.) During this assault, Appellant also rubbed his penis against her buttocks and bit the back of her neck. (J.A. 333.)

Third, the Military Judge received the Victim Impact Statement. When Appellant was strangling her that night, the Victim thought she was going to die and felt hopeless, as she was "black[ing] out." (J.A. 376.) She suffered body aches, headaches, and red eyes in the following weeks. (J.A. 376.) She has anxiety attacks, trouble sleeping, and issues being in crowded places. (J.A. 376–78.) The Victim has nightmares, constantly recalls the assaults, and feels her life will never be the same as a result. (J.A. 378.)

Thus, the United States' case was strong, justifying the Military Judge's sentence.

2. Appellant's case was weak.

Appellant's evidence in extenuation and mitigation was weak, consisting of two character witnesses, his unsworn statement, and his service record, awards, and brig records. (J.A. 381–436, 466–83, 484–505, 506–507.) Even his rebuttal evidence to the Victim Impact Statement in the form of bank statements provide little to mitigate the gravity of his actions. (J.A. 380; 667–81.) Appellant's case gave no context to or explanation for his criminal actions.

Appellant's weak case provided no reason for the Military Judge to award a sentence on the lower range of his Plea Agreement.

3. The contested parts of the Statement were not material to sentencing.

In *United States v. Edwards*, 82 M.J. 239 (C.A.A.F. 2022), the military judge appointed the deceased victim's father as the designee to invoke the victim's right to be reasonably heard. *Id*. at 241. The father gave a one-page, printed, unsworn statement, and two videos as attachments. *Id*. The video contested on appeal included an interview of the victim's parents discussing the victim and a slideshow of pictures of the victim set to acoustic background music. *Id.* This Court found the video impermissible and prejudicial, including that the materiality factor weighed in favor of the appellant. *Id*. at 247. The pictures showed victim as a child, throughout his life, and finally, of his gravestone. *Id*. The Court found that these pictures, the background music, and seeing the father cry into the

victim's uniform, "were no doubt intended to evoke a strong emotional response from the panel" and had potential to influence their sentencing decision. *Id*. at 247–48.

Unlike *Edwards*, Appellant was sentenced by the Military Judge alone. Unlike *Edwards*, Appellant also did not contest he was a domestic abuser—he pled guilty and was provident to Charge VI and the Additional Charge—abusing his spouse between January 11, 2020, and March 8, 2022, by strangulating her, biting her neck, lip, and chest, striking her face, kicking her shins, pushing her to a wall, and pulling her hair. (J.A. 303–321.) He negotiated a Plea Agreement and was sentenced within its bounds. (J.A. 515.) The United States' argument invoking a cycle of violence was supported by Appellant himself in the Providence Inquiry and his Stipulation of Fact, in addition to the Statement. (*See* J.A. 303–321, 440–41, 627; 635–38.) Additionally, the statements Appellant contests, "yelling at [the Victim] 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," were immaterial in comparison with Appellant's admissions to strangulating, biting, striking, kicking, pushing, and hair-pulling the Victim. Considering the charged and uncontested physical abuse, these contested

statements are a far-cry from content specifically "intended to evoke a strong emotional response from the panel." *See Edward*, 82 M.J. at 247–48.

Thus, the third *Hamilton* factor fails as the contested parts of the Statement were immaterial to Appellant's sentence. *See* 78 M.J. at 343.

4. The contested parts of the Statement "lacked the quality necessary to affect Appellant's sentence."

In *Hamilton*, "[the judge] specifically reiterat[ing] that he would give [the victim impact statements] only the 'weight [they] deserve" meant the statements "lacked the quality necessary to affect Appellant's sentence" because the sentencing was judge-alone and "judges are presumed to know what portions of argument are impermissible, absent clear evidence to the contrary." 78 M.J. at 343 (citing *Bridges*, 66 M.J. at 248).

Like *Hamilton*, the Military Judge stated he was considering the Statement to sentence Appellant only for the offenses of which Appellant was convicted. (J.A. 371); *see Hamilton*, 78 M.J. at 343. Appellant provides no evidence to overcome the presumption the Military Judge understood and applied the law correctly. *See Hamilton*, 78 M.J. at 343; *Bridges*, 66 M.J. at 248.

Thus, the fourth *Hamilton* factor fails, as the contested parts of the Statement "lacked the quality necessary to affect Appellant's sentence." *See* 78 M.J. at 343.

Therefore, under the *Hamilton* factors, Appellant fails to show prejudice.

The Military Judge did not err in admitting the Victim Impact Statement for Sentencing, and any error did not substantially affect the sentence. *See Hamilton*, 78 M.J. at 343.

Conclusion

The United States respectfully requests this Court affirm the findings and sentence as adjudged and approved below.

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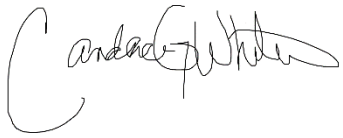

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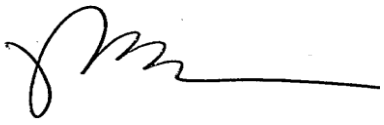

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I certify that I delivered a copy of the foregoing electronically to the Court and opposing Counsel, Lieutenant Zoe R. DANIELCZYK, JAGC, U.S. Navy, on October 15, 2024.

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