

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

UNITED STATES
Appellee

v.

Staff Sergeant (E-6)
SHERWOOD E. REED,
United States Army
Appellant

REPLY BRIEF ON BEHALF
OF APPELLANT

Crim. App. Dkt. No. 20240321

USCA Dkt. No. 26-0109/AR

Jessica A. Adler
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060
(703) 495-3762
USCAAF Bar No. 38047

Jonathan F. Potter
Senior Appellate Attorney
Defense Appellate Division
USCAAF Bar No. 26450

Kyle C. Sprague
Lieutenant Colonel, Judge Advocate
Deputy Chief
Defense Appellate Division
USCAAF Bar No. 36867

Seth J. Bahr
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
USCAAF Bar No. 38253

Kelsey Mowatt-Larssen
Major, Judge Advocate
Branch Chief
Defense Appellate Division
USCAAF Bar No. 38204

Frank E. Kostik, Jr.
Colonel, Judge Advocate
Chief
Defense Appellate Division
USCAAF Bar No. 35108

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

UNITED STATES
Appellee

v.

Staff Sergeant (E-6)
SHERWOOD E. REED,
United States Army
Appellant

REPLY BRIEF ON BEHALF
OF APPELLANT

Crim. App. Dkt. No. 20240321

USCA Dkt. No. 26-0109/AR

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

Granted Issue

WHETHER THE MILITARY JUDGE ERRED WHEN HE DENIED THE DEFENSE'S MOTION TO DISMISS APPELLANT'S DOMESTIC VIOLENCE CONVICTIONS FOR SPECIFICATIONS 4 AND 6 OF THE CHARGE AS MULTIPLICIOUS.

Argument

A. Appellant's Unconditional Guilty Plea Does Not Waive Multiplicity.

The Government argues that Appellant's convictions involve two separate acts and are not facially duplicative and that his unconditional guilty plea waived this issue. (Gov't Br. at 8). The Government's position is inconsistent with this Court's precedent. Appellant preserved his multiplicity objection at trial.

Appellant objected at trial that the specifications were multiplicitous. The military judge acknowledged the defense's motion and immediately after findings addressed the defense's motion. (JA 0061). The parties discussed Appellant's motion for the next fifteen pages of transcript before the military judge denied Appellant's motion. The parties at trial and the military judge did not believe the plea agreement was somehow invalidated by the military judge's ruling. The issue is preserved. (JA 0062-0077). There was no intentional relinquishment of a known right as Appellant filed a motion.

This case is different than *Malone*. In *Malone* defense counsel said "defense has no motions" before entering the plea and then on appeal, appellate defense counsel raised multiplicity. *United States v. Malone*, 86 M.J. 297, 300 (C.A.A.F. 2026). Here, multiplicity was preserved. First, defense counsel filed a motion (JA 0090). Second, when asked by the military judge "how do you plead" the defense counsel responded, "your honor, the defense would reassert its previous motion"

and the military judge said “understood.” (JA 0041). Immediately after findings, the military judge heard the defense’s motion for multiplicity and unreasonable multiplication of charges. (JA 0061).

Further, the issue of multiplicity is not waived when the specifications are facially duplicative. Both Specification 4 and 6 of the Charge allege that Appellant committed a violent offense against his spouse on the same date and at the same location. (JA 0061, JA 0106).

Under the current state of the law, domestic violence is treated like assault, “the number of overall beatings the victim endured rather than the number of individual blows suffered.” *United States v. Clarke*, 74 M.J. 627, 628 (Army Ct. Crim. App. 2015) pet. denied 74 M.J. 459 (C.A.A.F. 2015). However, Appellee argues there was a “break between engagements.” (Gov’t Br. at 18). Appellant engaged in a continuous course of conduct during which he assaulted his wife as well as Ms. LR. Appellant had no meaningful opportunity to pause, reflect, or withdraw. As Appellant explained, he “was still in a rage,” thus his mens rea remained unchanged — he wanted to assault his wife. (JA 0050).

B. Congress Did Not Intend Article 128b, UCMJ To Be a Discrete-Act Offense.

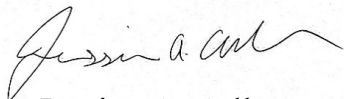
The Government contends domestic violence assaults should be analyzed differently than general assault offenses. (Gov’t Br. at 9). But Congress did not create domestic violence as a standalone punitive article. Instead, it merely formed

a second subset of offenses within the broader framework of Article 128,¹ which has been interpreted, consistent with this Court's interpretation going back decades (*see United States v. Rushing*, 11 M.J. 95 (C.M.A. 1991)) that a continuous course of conduct will result in the charging of one assault. Article 128b, UCMJ does not suggest that Congress authorized discrete act charging any more than Article 128a, UCMJ does. Rather, absent a clear indication from Congress, this court should not infer a unit of prosecution different from that applied to comparable assault offenses.

¹ Congress moved the offense of maiming under the umbrella of Article 128 by enacting Article 128a rather than leaving it as a separate offense. Despite moving this offense into the Article 128 category, nothing about this shift suggests Congress intended to change the unit of prosecution for this offense. Indeed, all indications are to the contrary, as the unit of prosecution remains the injury inflicted, rather than the number of blows or actions taken to cause it.

Conclusion

This Honorable Court should reverse the Army Court's decision and hold Appellant's domestic violence convictions are multiplicitous.



Jessica A. Adler
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060
(703) 495-3762
USCAAF Bar No. 38047



Seth J. Bahr
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
USCAAF Bar No. 38253



Jonathan F. Potter
Senior Appellate Attorney
Defense Appellate Division
USCAAF Bar No. 26450



Kelsey Mowatt-Larssen
Major, Judge Advocate
Branch Chief
Defense Appellate Division
USCAAF Bar No. 38204



Kyle C. Sprague
Lieutenant Colonel, Judge Advocate
Deputy Chief
Defense Appellate Division
USCAAF Bar No. 36867

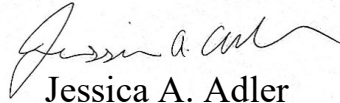


Frank E. Kostik, Jr.
Colonel, Judge Advocate
Chief
Defense Appellate Division
USCAAF Bar No. 35108

Certificate of Compliance with Rules 24(c) and 37

1. This Reply Brief on Behalf of Appellant complies with the type-volume limitation of Rule 24(c) because it contains 1058 words.

2. This Reply 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.



Jessica A. Adler
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060
(703) 495-3762
USCAAF Bar No. 38047

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of United States v. Reed, Crim. App. Dkt. No. 20240321, USCA Dkt. No. 26-0109/AR was electronically filed with the Court and Government Appellate Division on June 29, 2026.



MELINDA J. JOHNSON
Paralegal Specialist
Defense Appellate Division
(703) 693-0736