IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES Appellee v. Specialist (E-4) **SHERWOOD E. REED** United States Army Appellant	SUPPLEMENT TO PETITION FOR GRANT OF REVIEW Crim. App. Dkt. No. 20240321 USCA Dkt. No. /AR

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

Issue Presented[1]

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.

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).

[1] Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), Appellant respectfully requests this Court consider the information provided in Appendix B.

Statement of the Case

On June 26, 2024, a military judge sitting as a general court-martial convicted Appellant, Specialist Sherwood E. Reed, pursuant to his pleas, of three specifications of domestic violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b. Appellant was sentenced by the military judge to 180 days of confinement,[2] a bad conduct discharge, and a reprimand. (R. 145). The military judge entered judgment on August 6, 2024. (Judgment of the Court). The convening authority took no action on the findings, but did approve Appellant's request to defer automatic forfeitures until entry of judgment. (Action).

On December 3, 2025, the Army Court affirmed Appellant's conviction. (Appendix A). On January 30, 2026, Appellant filed a petition for a grant of review to this Court contemporaneously with this supplement.

Reasons to Grant the Petition

This case presents this Court the opportunity to answer the issue it recently found waived in *United States v. Malone*, __ M.J. __ (C.A.A.F. 2025). Unlike in *Malone*, Appellant raised a timely multiplicity and unreasonable multiplication of

[2] The military judge apportioned Appellant's sentence to confinement as follows: sixty days of confinement for Specification 4 of The Charge, thirty days of confinement for Specification 5 of The Charge, and one hundred and eighty days for Specification 6 of The Charge, with all terms of confinement to be served concurrently. (R. 145).

charges motion, which the military judge denied. This Court is presented the opportunity to clarify the test for multiplicity involving Article 128b, UCMJ specifications. As illustrated by Judge Morris's dissent, the Army Court is split on how to decide multiplicity[3] for Article 128b, UCMJ specifications. *See* Court of Appeals for the Armed Forces [CAAF] Rule 21(b)(5)(A) & (B).

Statement of Facts

Appellant pled guilty to three specifications of domestic violence. (R. 32). Specification 4 and Specification 6 of The Charge involved the exact same date, location, and victim; Specification 5 of The Charge concerned a battery of Ms. LT.[4] (Charge Sheet; R. 12). After accounting for the excepted language in the plea and plea agreement (App. Ex. VIII; R. 32),[5] the two specifications at issue here contain the following language:

> SPECIFICATION 4: In that [Appellant], U.S. Army, did, at or near Joint Base Lewis-McChord, Washington, on or about 17 December 2023, commit a violent offense upon

[3] *See*, *United States v. Reed*, 2025 CCA LEXIS 556, (A. Ct. Crim. App. 2025); *United States v. Askins*, 2025 CCA LEXIS 420, (A. Ct. Crim. App. 2025), and *United States v. Ford,* 2025 CCA LEXIS 123, (A. Ct. Crim. App. 2025).
[4] Ms. LT is Appellant's niece by marriage who at the time of the charged offense, was living with the Appellant and his wife. (R. 50–51).
[5] The charged language for Specification 6 included the words "and did thereby inflict substantial bodily harm upon her, to wit: a black eye and a concussion" (Charge Sheet; R. 12). Consistent with the plea agreement, Appellant pled "not guilty" to this excepted language. (App Ex. VIII; R. 32).

> Mrs. LR, the spouse of [Appellant], to wit: unlawfully strike Mrs. LR on her head with an open hand.
>
> SPECIFICATION 6: In that [Appellant], U.S. Army, did at or near Joint Base Lewis-McCord, Washington, on or about 17 December 2023, commit a violent offense upon Mrs. LR, the spouse of [Appellant], to wit: by striking her on the head with his fist.

(Charge Sheet; App Ex. VIII; R. 32).

A. Providence Inquiry.

During the providence inquiry for Specification 4, Appellant said he used the back of his hand to slap Mrs. LR across the face. (R. 44). Regarding Specification 5, Appellant stated that right after he struck his wife [Mrs. LR], Ms. LT "got between us." (R. 50). The military judge asked Appellant, "why didn't you want [Ms. LT] between you and your wife? (R. 57). Appellant answered that he "was still in a rage," and that he "didn't want anybody getting between me and my wife." (R. 57).

During the providence inquiry for Specification 6, Appellant said "right after he moved [Ms. LT]," he punched his wife again in the "same spot in [his] house." He told the military judge it was on the "same span," "same day," and within a couple of seconds or minutes. (R. 63–64). The stipulation of fact also establishes that the conduct of Specification 4 and Specification 6 occurred on the same day, in the same location, and with the same victim. (Pros. Ex. 1).

The defense moved to dismiss for multiplicity and unreasonable multiplication of charges on April 8, 2024. (App. Ex. V). After announcing findings, the military judge heard the defense's motion. (R. 83). During that hearing, the military judge asked the Government if both blows were "connected in impulse?" (R. 89). The Government conceded "the intent was the same." (R. 89). The military judge found the Government agreed with the defense that

> the predicate violent offense is still one offense. And if this were 128, the unit of prosecution would be one continuous fight, the "beating" is the word that *Clarke* uses. So, if the underlying predicate offense applies, the unit of prosecution for the predicate offense is just the one transaction.

(R. 89–90).

But the Government asked the military judge to rely on the Army Court's unpublished opinion, *United States v. Malone*, Army 20230151, 2024 CCA LEXIS 217 (A. Ct. Crim App. 23 May 2024) (mem. op.), that a domestic violence offense under Article 128b "is different than a simple assault consummated by battery."

The military judge denied Appellant's motion for multiplicity and unreasonable multiplication of charges. (R. 96–100). "Though not binding on this court, I find the analysis in *Malone* persuasive and agree in principle with the logic of the Army Court of Criminal Appeals." (R. 97–98). The military judge also

noted the assault was momentarily interrupted by the intervention of a third party and the interruption provided an opportunity to withdraw. (R. 99).

Standard of Review

Issues of multiplicity are reviewed de novo. *United States v. Forrester*, 76 M.J. 479, 484 (C.A.A.F. 2017) (citing *United States v. Anderson*, 68 M.J. 378, 385 (C.A.A.F. 2010)).

Law and Argument

Charges are multiplicious if the "the specifications are facially duplicative." *United States v. St. John,* 72 M.J. 685, 687 n.1 (A. Ct. Crim. App. 2013). Offenses are facially duplicative when the factual components of the charged offense are the same. *Id.* To determine whether offenses are facially duplicative, this Court goes beyond the four corners of the charge sheet, looking to "the factual conduct alleged in each specification and the providence inquiry conducted by the military judge." *United States v. Pauling,* 60 M.J. 91, 94 (C.A.A.F. 2004). "This analysis turns on both 'the factual conduct alleged in each specification'" and facts brought forth at trial. *Id*. (quoting *United States v. Harwood*, 46 M.J. 26, 28 (C.A.A.F. 1997)).

A. Multiple Convictions for a Physical Assault United in Time, Circumstances, and Impulse are Multiplicious.

Military courts have long held that physical assaults "united in time, circumstance, and impulse in regard to a single person" constitute a single crime.

See, e.g., *United States v. Rushing*, 11 M.J. 95, 98 (C.M.A. 1981); *United States v. Clarke*, 74 M.J. 627, 629 (A. Ct. Crim. App. 2015). "The Double Jeopardy Clause prohibits 'multiplicious prosecutions .... [i.e.,] when the government charges a defendant twice for what is essentially a single crime.'" *Forrester*, 76 M.J. at 395.

In *Forrester*, this Court outlined "the analytic conflation of unreasonable multiplication of charges and multiplicity in cases where several offenses are charged as separate specifications under the same statute." *Id*. at 394–95. To this extent, "[o]ne instance of multiplicity . . .occurs when charges for multiple violations *of the same statute* are predicated on arguably the same criminal conduct." *Id*. For this type of multiplicity, courts assess the statute's "allowable unit of prosecution" to determine if it prohibits each individual act or a continuous course of conduct, even when comprised of multiple acts. *Id*.

In *Clarke*, the Army Court concluded that the "unit of prosecution" for "an uninterrupted attack comprising touching's 'united in time, circumstance, and impulse'—charged under Article 128, UCMJ . . . is the number of overall beatings the victim endured rather than the number of individual blows suffered." 74 M.J. at 628 (quoting *Rushing*, 11 M.J. at 98). "Our superior court 'has held that Congress intended assault, as prescribed in [Article 128, UCMJ], to be a continuous course-of-conduct-type offense and that each blow in a single altercation should not be the basis of a separate finding of guilty.'" *Id*.

B. The Rule Regarding Time, Circumstance, and Impulse Applies to Domestic Assaults.

The Army Court acknowledged "the conduct was within moments and shared the same victim and location." *Id.* at *8. The strikes by Appellant were one after another. The reason Appellant assaulted Ms. LT was to continue hitting his wife. Appellant "was in a rage" and "didn't want anybody getting between [Appellant] and [Ms. LR]." (R. 57). Appellant's impulse never changed. Specification 4 and 6 were united and cannot stand independently, thus multiplicious.

The military judge clarified that Specification 4 and Specification 6 occurred in the same spot in the house, on the same day, involved the same victim, and happened "within a couple of seconds, a couple minutes of each other." (R. 63–64). Specification 5 also occurred at the same time and was the result of the same impulse, although involving a separate victim. The unit of prosecution remained the same for Specifications 4, 5, and 6 —all united in time, circumstance, and impulse. *Clarke,* 74 M.J. at 628; (R. at 63-64).

The military judge based his ruling on the analysis in *Malone I* regarding the unit of prosecution for Article 128b offenses being different than Article 128 offenses. *Malone*, 2024 CCA LEXIS at *11–14. This Court has since issued its opinion, concluding Malone waived the multiplicity issue, and deemed the

multiplicity issue moot because of the waiver. *Malone*, ___ M.J. __, (C.A.A.F. 2026). This case is distinguishable from *Malone* as the defense raised a timely motion. Here, the military judge erred when he failed to find the charges multiplicious.

Therefore, they should be consolidated into a single specification of Article 128b, UCMJ and the remaining multiplicious specification should be dismissed.

Conclusion

WHEREFORE, Appellant respectfully requests this Court grant his petition.

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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. _____/AR was electronically with the Court and Government Appellate Division on January 30, 2026.

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APPENDIX A

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
MORRIS, POND and JUETTEN
Appellate Military Judges

UNITED STATES, Appellee
v.
Specialist SHERWOOD E. REED
United States Army, Appellant

ARMY 20240321

Headquarters, 7th Infantry Division
Robert E. Murdough, Military Judge
Lieutenant Colonel Sean P. Fitzgibbon, Special Trial Counsel

For Appellant: Lieutenant Colonel Autumn R. Porter, JA; Jonathan F. Potter, Esquire; Major Robert W. Rodriguez, JA; Captain Jessica A. Adler, JA (on brief).

For Appellee: Colonel Richard E. Gorini, JA; Major Vy T. Nguyen, JA; Major Austin L. Fenwick, JA (on brief).

3 December 2025

MEMORANDUM OPINION

This opinion is issued as an unpublished opinion and, as such, does not serve as precedent.

JUETTEN, Judge:

Appellant assaulted his wife, Ms. LR, by striking her with the back of his hand during an argument in their apartment. The niece of appellant's wife, Ms. LT, who also lived in the apartment intervened to separate appellant and his wife, but appellant pushed and pulled Ms. LT out of his way. Appellant then assaulted his wife again by punching her while she was on the phone with emergency dispatchers. Based on these acts, appellant was charged with three specifications of domestic

violence,[1] in violation of Article 128b, Uniform Code of Military Justice, 10 U.S.C. § 928b [UCMJ].[2]

A military judge, sitting as a general court-martial, subsequently accepted appellant's plea of guilty to those three specifications. In accordance with a plea agreement, the military judge sentenced appellant to a bad-conduct discharge, 180 days of confinement,[3] and a punitive reprimand.

Appellant now raises one assignment of error: that his separate convictions for assaulting his wife are multiplicious and in violation of the protections against Double Jeopardy afforded by the Fifth Amendment. We disagree.[4]

BACKGROUND

Appellant assaulted his wife twice, and Ms. LT, once, one afternoon in December 2023. Appellant, his wife, and Ms. LT, who resided with appellant and his wife, were gathered in the primary bedroom of appellant's home where he was playing a multi-player video game with others online. At some point, appellant's wife began trying to speak with appellant, who ignored her and referred to her as a "b****" over his headset to other online game players. This prompted appellant's wife to approach appellant, remove his headset, and ask appellant to repeat what he had said. Appellant responded by slapping his wife across the face with the back of his hand. Immediately after appellant slapped his wife, Ms. LT, "got in between

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[1] Appellant was also charged with three more specifications of domestic violence alleged on different dates, for a total of six specifications, in violation of Article 128b, UCMJ. However, those three specifications were dismissed pursuant to a plea agreement.

[2] Ms. LT was "related by marriage" to appellant, and resided with him and his wife. As such, she was an "immediate family" member of appellant. *Manual for Courts-Martial, United States* (2024 ed.) [*MCM*], pt. IV, ¶ 78a.c.(4); Executive Order 14,026, 87 Fed. Reg. 4,764 (January 26, 2022). We also note that she was appellant's legal dependent at the time of the charged misconduct.

[3] Appellant was sentenced to 60 days of confinement for striking his wife's head with his hand (Specification 4 of The Charge), 30 days of confinement for pushing and then pulling Ms. LT, his immediate family member (Specification 5), and 180 days of confinement for striking his wife on the head with his fist (Specification 6), to be served concurrently.

[4] We have given full and fair consideration to the matter personally raised by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and determine it warrants neither discussion nor relief.

[them] as a way to separate [the pair,]" to prevent the situation from escalating. Appellant "decided to move [Ms. LT] out of the way by pushing and pulling her . . . ." so that he could "be closer to [his wife]" as "[a]t the time, [he] was still in a rage, and [he] didn't want anybody getting between [himself] and [his wife] . . . ." "[R]ight after . . ." appellant succeeded in moving Ms. LT, he punched his wife's head. Appellant acknowledged that the described assaults occurred in the same spot in his home and within "a couple of seconds, a couple of minutes" of the others.

Prior to appellant's guilty plea, where the above information was elicited, appellant moved to dismiss either of the specifications pertaining to his wife on the grounds that they were multiplicious. The military judge deferred ruling until after findings were entered.

After finding appellant guilty of the three specifications of domestic violence, the military judge turned to the tabled multiplicity motion. Citing to this court's prior decision in *United States v. Clarke*, 74 M.J. 627 (Army Ct. Crim. App. 2015), pet. denied 74 M.J. 459 (C.A.A.F. 2015), defense counsel argued appellant had been convicted of a "continuous course of conduct" offense for which only one conviction could stand. The military judge asked the trial counsel if the two assaults were "connected in impulse," to which the trial counsel provided a partial answer, "the intent was the same. I'll grant you that." Trial counsel countered that the offense of domestic violence constituted a specialized assault, for which the appropriate unit of prosecution was each individual blow and, additionally, that the modality of harm for the pertinent specifications was different.[5] The trial counsel's argument included that "[t]his was not an uninterrupted act."

The military judge denied appellant's motion. In doing so, he found persuasive dicta in an unpublished opinion, *United States v. Malone*, ARMY 20230151, 2024 CCA LEXIS 217 (Army Ct. Crim. App. 23 May 2024) (mem. op.), suggesting Article 128b, UCMJ, offenses were akin to specialized assaults in which each touching or strike within a continuous course of conduct could be charged as a separate offense. Relying on the unpublished opinion in *Malone*, the military judge concluded:

> The two strikes inflicted on [LR] and that form the basis for Specifications 4 and 6 of the charge as found guilty in this case, are factually dissimilar from the type of assault described in *Clark*[*e*], which was an uninterrupted attack united in time, circumstance, and impulse. Specifically, in this case, the attack was interrupted by the intervention of

[5] However, the government acknowledged that appellant's "intent [behind the slap and punch] was the same."

> a third party who ended up becoming a second victim. This interruption provided the accused an opportunity to withdraw, yet instead, he began the attack anew. Finding that the applicable unit of prosecution in this case is the separate strikes, the defense's multiplicity motion fails.

After appellant's trial, this court sitting en banc reversed the panel decision the military judge found persuasive. *United States v. Malone*, 85 M.J. 573 (Army Ct. Crim. App. 2025).

LAW AND DISCUSSION

This court reviews preserved challenges for multiplicity de novo.[6] *United States v. Paxton*, 64 M.J 484, 490 (C.A.A.F. 2007). In determining whether charges are multiplicious, this court will look to both "the factual conduct alleged in each specification and the providence inquiry conducted by the military judge at trial." *United States v. Pauling*, 60 M.J. 91, 94 (C.A.A.F. 2004) (internal quotation marks omitted) (citation omitted).

The issue of multiplicity before us concerns whether "the government [has] charge[d] a defendant twice for what is essentially a single crime." *United States v. Forrester*, 76 M.J. 479, 484-85 (C.A.A.F. 2017) (internal quotation marks omitted) (citation omitted). For the species of multiplicity raised in appellant's case – "multiple violations of the same statute . . . predicated on arguably the same criminal conduct" – this court must identify the allowable unit of prosecution for the offense. *Id.* at 485 (internal quotation marks omitted) (citation omitted). The allowable unit of prosecution for domestic violence, like assault, is "the number of overall beatings the victim endured rather than the number of individual blows suffered." *Clarke*, 74 M.J. at 628; *accord Malone*, 85 M.J. at 584 ("Because Article 128b, UCMJ, subsumes the elements of Article 128, UCMJ, in defining a 'violent offense,' this unit of prosecution also applies to the . . . domestic violence specifications of which appellant was convicted."). As such, we must determine whether appellant's two strikes against his wife constituted "an uninterrupted attack . . . 'united in time, circumstance, and impulse' . . . ." *Clarke*, 74 M.J. at 628 (quoting *United States v. Rushing*, 11 M.J. 95, 98 (C.M.A. 1981)). We conclude they are not and thus may be charged separately.

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[6] Unlike in *Malone*, and contrary to appellee's assertion, due to the unique circumstances of a deferred ruling in a guilty plea, we find appellant preserved his multiplicity objection at trial. *Contra* 85 M.J. at 581. Therefore, we need not first determine whether the charges were facially duplicative in order to conduct a plain error review.

While the military judge committed error in finding "that the applicable unit of prosecution in this case is the separate strikes[,]"[7] the error was not because the military judge did anything wrong, but instead because he was persuaded by this court's since reversed panel opinion in *Malone*. However, the "tipsy coachman" doctrine[8] is an applicable principle of appellate law to this case, allowing an appellate court "to affirm a trial court 'that reaches the right result but for the wrong reasons' so long as 'there is any basis which would support the judgment in the record.'" *United States v. Carista*, 76 M.J. 511, 515 (Army Ct. Crim. App. 2017) (quoting *Robertson v. State*, 829 So.2d 901, 906 (Fla. 2002)), pet. denied, 76 M.J. 401.

We agree with the military judge's underlying findings and application of *Clarke* in that "the attack [in appellant's case] was interrupted by the intervention of a third party . . . . [which] provided the [appellant] an opportunity to withdraw, yet instead, he began the attack anew." The two specifications against appellant's wife constituted an interrupted attack with separate impulses, even while close in time, and united in location, victim, and intent. *Clarke*, 74 M.J. at 628; *see also Blockburger v. United States*, 284 U.S. 299, 302 (1932) (determining two drug sales, made to the same purchaser and following each other with no substantial interval of time, were nevertheless distinct crimes because the second sale was not the result of the impulse of the first sale).

"When an assault [charged under Article 128b, UCMJ] is 'an uninterrupted attack comprising touchings "united in time, circumstance, and impulse"' the allowable unit of prosecution 'is the number of overall beatings the victim endured rather than the number of individual blows suffered.'" *Malone*, 85 M.J. at 584 (quoting *Clarke*, 74 M.J. at 628)). Unlike *Malone*, the interruption here disunited the time, circumstance or impulse of the "beating." 85 M.J. at 584. Appellant

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[7] We further note the military judge employed a now-defunct legal rule in determining the findings were not multiplicious. Though no fault of the judge, his decision still amounted to an abuse of discretion. *See United States v. Harcrow*, 66 M.J. 154, 160 (C.A.A.F. 2008) (Ryan, J., concurring) (the military judge committed plain error due to a change in the law, not because they "did anything wrong.").

[8] Military courts have in the past given this principle the less colorful appellation of "right result, wrong reason." *See, e.g.*, *United States v. Robinson*, 58 M.J. 429, 433 (C.A.A.F. 2003) ("the military judge's error was harmless, because the military judge reached the correct result, albeit for the wrong reason."); *United States v. Leiffer*, 13 M.J. 337, 345 n.10 (C.A.A.F. 1982) ("however, '[I]n the review of judicial proceedings the rule is settled that, if the decision below is correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason.'" (alteration in original) (quoting *Helvering v. Gowran*, 302 U.S. 238, 245 (1937))).

struck his wife first with the back of his hand in response to her removing his headset. Ms. LT then intervened, to whom appellant diverted his attention and impulse to assault her by pushing and pulling her out of the way. Appellant's anger increased as did his violence – he next assaulted his wife again, more severely with a closed fist. The appellant's assaults were interrupted by Ms. LT, and were separate impulses, even if the conduct was within moments and shared the same victim and location. Therefore, the assaults are not united, can stand independently, and are not multiplicious.

CONCLUSION

Upon consideration of the entire record, the findings of guilty and the sentence are AFFIRMED.

Senior Judge POND concurs.

MORRIS, Senior Judge, dissenting;

The majority holds the violent attack comprising the specifications in question was not "uninterrupted" and, therefore, the specifications are not multiplicious. Based on the facts of this case, I disagree, both with their ultimate conclusion and with their application of our prior decision in *United States v. Malone*, 85 M.J. 573 (Army Ct. Crim. App. 2025), and respectfully dissent.

As the majority acknowledges, the unit of prosecution for domestic violence offenses is "'the number of overall beatings the victim endured rather than the number of individual blows suffered.'" *Id.* at 584 (quoting *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)). As such, this court is asked to determine whether appellant's strikes constituted "an uninterrupted attack . . . 'united in time, circumstance, and impulse' . . . ." *Id.* (quoting *Clarke*, 74 M.J. at 628). "If there is one impulse, there can only be one indictment 'no matter how long the action may continue.'" *Id.* at 583 (quoting *United States v. Blockburger*, 284 U.S. 299, 302 (1932)).

The critical question, then, and the basis of my departure from the majority, is whether attacks need be "uninterrupted" in addition to being "united in time, circumstance, and impulse," or whether those terms are meant to provide the framework upon which we are to determine if an assault is interrupted or not.[9] I believe the answer to be the latter and would not find the actions of Ms. LT's

[9] I pause to note that the standard proscribed by our superior court includes only the language "united in time, circumstance, and impulse." *E.g. United States v. Rushing*, 11 M.J.95, 98 (C.M.A. 1981). The additional language of "an uninterrupted attack" was separately added by this court in *Clarke*, 74 M.J. 627.

attempted interruption significant enough to create a break in time, circumstance or impulse, such that the assault was in fact interrupted.

In *Malone*, this court appeared to endorse the latter position by "reject[ing] the government's contention that there was a meaningful break, either in location, time, or impulse that would make the specifications separate and distinct beatings." *Id.* at 584 (internal quotations omitted). While we acknowledged that actions taken by that appellant were "uninterrupted," the reasons *why* the actions were "uninterrupted" turned on their proximity in time, circumstance, and impulse. Put another way, I believe it was the lack of a break in location, time, or impulse that was legally significant, not that the misconduct occurred without interruption. Recent decisions by this court, citing to *Malone*, have similarly relied on the importance of location, time, and impulse, on occasion, even omitting the "uninterrupted attack" language from *Clarke*.[10]

Despite its recent use, the focus on location, time, and impulse is not new. In *Rushing*, one of the foundational cases supporting *Malone*, our superior court held that the appellant's acts in striking the victim with his fist and then throwing a billiard cue at the victim as he fled "were so united in time, circumstance, and impulse in regard to a single person as to constitute a single offense." 11 M.J. at 98 (citations omitted). What is more, the court found the acts united, despite the fact

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[10] *United States v. Askins*, ARMY 20230303, 2025 CCA LEXIS 420, at *13 (Army Ct. Crim. App. 28 Aug. 2025) (mem. op.) ("Even if we were to find *a break in time and impulse* between the . . . assaults sufficient to create 'two successive impulses . . . separately given,' the specifications remain muliplicious . . . ." (internal quotations omitted) (citation omitted)); *United States v. Murphy*, ARMY 20230517, 2025 CCA LEXIS 339, at *21, 22 (Army Ct. Crim. App. 22 July 2025) (mem. op.) (finding specifications not multiplicious wherein each was "separated by time and place," and therefore did "not demonstrate a continuous course of conduct by appellant."); *United States v. Calvillomagana*, ARMY 20230161, 2025 CCA LEXIS 115 (Army Ct. Crim. App. 19 Mar. 2025) (sum. disp.), pet. denied, __ M.J. __, 2025 CAAF LEXIS 706 (C.A.A.F. 25 Aug. 2025) (certification pursuant to Article 67(a)(2), UCMJ, pending); *United States v. Ford*, ARMY 20230263, 2025 CCA LEXIS 123, at *6 (Army Ct. Crim. App. 21 Mar. 2025) (sum. disp.) (finding specifications multiplicious where they "were instigated by the same argument, and were not interrupted by a break in time."), pet. denied, __ M.J. __, 2025 CAAF LEXIS 717 (C.A.A.F. 26 Aug. 2025) (certification pursuant to Article 67(a)(2), UCMJ, pending); *United States v. Jones*, ARMY 20230382, 2025 CCA LEXIS 111, at *2 n.3 (Army Ct. Crim. App. 13 Mar. 2025) (sum. disp.) (finding assaults occurring one after the other multiplicious where they were part of the "same disagreement" that originated the assault).

that the charged acts were broken by other, uncharged misconduct (the appellant swinging the cue at the victim). *Id.*

The majority also places emphasis on the fact that the "interruption" should have given appellant an opportunity to disengage. But that factor did not significantly change the landscape of the ongoing assault and finding an interruption based on that fact runs counter to the spirit and purpose of *Malone*. Would a victim crying out to their attacker, "Stop, please do not hit me again!" constitute an interruption? Under the majority's overly technical application of *Clarke* and *Malone*, I believe it would. Yet in *Askins*, another panel of this court found that two separately charged assaults that occurred before and after the victim grabbed her belongings and stated that "she was going to appellant's unit to report the assault" were united in both time and location and sprung from the same impulse and would properly be "merged to reflect the single, ongoing nature of the attack." *Askins*, 2025 CCA LEXIS 420, at *12-13. Also in *Ford*, where the court merged two separately charged assaults after appellant followed the victim outside their home and grabbed her, releasing her after she demanded he do so, before shortly thereafter grabbing her and dragging her on the ground. 2025 CCA LEXIS 123, at *4. Both *Askins* and *Ford* seem to stand for the proposition that it is more important to weigh the impact of the interruption than just simply finding an interruption occurred, no matter how slight.

In fact, in most assault-style offenses, the attacker almost always has the option to stop assaulting the victim and walk away. *E.g.*, *Calvillomagana*, 2025 CCA LEXIS 115, at *2 (finding specifications multiplicious where appellant struck his wife in the face, and then shortly thereafter shoved her to the ground, despite having the ability to withdraw). If, as the majority opinion suggests, an assault must be both "uninterrupted" and united in time, circumstance, and impulse, I would invite them to define what makes an interruption legally significant. Short of doing so, this court will have created a new, ambiguous legal standard, with little guidance to practitioners as to how they should scrutinize their cases throughout the court-martial process. I would posit the court must instead ask whether the interruption created a break in time, circumstance, or impulse.

The facts of this case do not establish that appellant took any time to contemplate an option to withdraw when Ms. LT attempted to intervene. Instead, appellant struck his wife twice, one strike coming almost immediately after the other. During providence, appellant further established that the sole reason he assaulted Ms. LT was so he could continue beating his wife. As the impulse behind the two strikes of his wife was the same, and the two acts occurred contemporaneously with one another, I believe them to be "united in time, circumstance, and impulse." *Rushing*, 11 M.J. at 98. The mere fact that Ms. LT was assaulted between these two blows does not, on its own, interrupt them in such a

way that the guilty findings for both specifications should be allowed to stand independently.

FOR THE COURT:

JAMES W. HERRING, JR.
Clerk of Court

APPENDIX B

Appendix B: Matters Submitted Pursuant to *United States v. Grostefon*

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), Appellant, through appellate defense counsel, personally requests that this Court consider the following matter:

I. WHETHER APPELLANT IS ENTITLED TO RELIEF FOR UNREASONABLE POST-TRIAL DELAY.

Appellant submitted a request for deferment of automatic forfeitures until entry of judgment and a request that automatic forfeitures are waived for six months on July 3, 2024. (R. 62; Post-Trial Matters). The staff judge advocate clemency advice was signed on July 17, 2024. (R. 5; Staff Judge Advocate's Recommendation). The convening authority action was also signed on July18, 2024. (R. 4; Action). The transmittal of the convening authority action to the military judge is dated July 22, 2024. (R. 10; Action). It took 128 days from the date of the sentence (June 26, 2024) to the date this Court received the record (October 31, 2024). (Referral Letter).

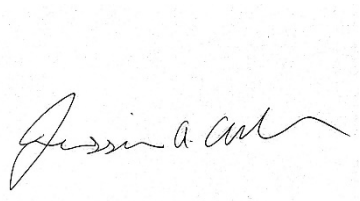
The record does not contain an explanation as to the delay in processing this record. The sentence was adjudged on June 26, 2024. (R. 145). The judgment of the court was entered on August 6, 2024. (R. 3; Judgement of the Court). The record was certified by the military judge, the trial counsel, and the court reporter on September 19, 2024. (R. 402–404). This case was not received

by this court until October 31, 2024. (Referral Letter). There is no explanation as to the gaps in time and therefore Appellant is entitled to some relief.

CERTIFICATE OF COMPLIANCE WITH RULE 24 AND RULE 37

1. This brief complies with the type-volume limitation of Rule 24(b): this brief contains 2416 words.

2. This brief 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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