

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

UNITED STATES,
Appellant,

v.

ISAAC J. SERJAK,
Airman First Class (E-3),
United States Air Force,
Appellee.

USCA Dkt. No. 25-0120/AF

Crim. App. Dkt. No. 40392

BRIEF ON BEHALF OF APPELLEE

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Certified Issue

Whether the Air Force Court of Criminal Appeals erred in applying *United States v. Mendoza*, __ M.J. __ (C.A.A.F. 2024) to find Appellee’s sexual assault conviction factually insufficient.

Statement of Statutory Jurisdiction

The Air Force Court of Criminal Appeals (AFCCA) reviewed Airman First Class (A1C) Serjak’s case pursuant to Article 66(d), Uniform Code of Military Justice (UCMJ). The AFCCA issued its opinion in this case on December 11, 2024.¹

Statement of the Case

On July 29, 2022, contrary to his pleas, officer and enlisted members in a General Court-Martial convened at Royal Air Force Mildenhall, United Kingdom, convicted A1C Serjak of one charge and one specification of assault against B.H., in violation of Article 128 Uniform Code of Military Justice;² one specification of sexual assault against H.C. in violation of Article 120, UCMJ;³ one specification of sexual assault against J.M., in violation of Article 120, UCMJ; and one specification of making a false official statement, in violation of Article 107, UCMJ.⁴ The Military Judge sentenced A1C Serjak to forfeit all pay and allowances, to be reduced to the

¹ JA at 001.

² Enlisted members acquitted A1C Serjak of one specification of unlawfully touching B.H. and one specification of sexual assault against B.H. in violation of Articles 128 and 120, UCMJ, respectively.

³ Enlisted members acquitted A1C Serjak of one specification of unlawfully touching H.C. in violation of Article 128, UCMJ.

⁴ JA at 82-84.

grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service.⁵ The Convening Authority took no action on the findings, no action on the sentence, denied A1C Serjak's request for deferment of the reduction in grade and automatic forfeitures, but approved his request for waiver of all automatic forfeitures for six months.⁶

On December 11, 2024, the Air Force Court of Criminal Appeals (AFCCA) set aside the conviction of sexual assault on J.M.⁷

On March 5, 2025, the Deputy Judge Advocate General of the Air Force signed a Certificate for Review of the AFCCA's decision in Amn Moore's case. On March 24, 2025, the Government filed the Certificate of Review with this Court.

Summary of the Argument

This Court affords a Court of Criminal Appeals (CCA) significant deference when assessing the CCA's Article 66, UCMJ, factual sufficiency determination. This Court may review the lower court's factual sufficiency decision for the application of correct legal principles,⁸ but this Court does not conduct its own

⁵ JA at 84.

⁶ *Id.*

⁷ JA at 2-3.

⁸ *United States v. Thompson*, 83 M.J. 1, 4 (C.A.A.F. 2022)(quotations and citations omitted); see *United States v. Leak*, 61 M.J. 234, 241 (C.A.A.F. 2005) (“[I]t is within this Court's authority to review a lower court's determination of factual insufficiency for application of correct legal principles. At the same time, this authority is limited to matters of law; we may not reassess a lower court's fact-finding.”)

factual sufficiency review.⁹ Only when a CCA “acted without regard to a legal standard or otherwise abused its discretion” will this Court disrupt a CCA’s action to disapprove findings.¹⁰ Here, the AFCCA correctly applied the law in finding the evidence factually insufficient without relying on *Mendoza*.

The AFCCA did not err in conducting its factual sufficiency review of A1C Serjak’s conviction. The lower court simply referenced *Mendoza* regarding the issue of legal insufficiency of the evidence, but did not go further and address legal sufficiency because of the decision to overturn the conviction based upon factual insufficiency. The lower court made no mention of *Mendoza* when deciding factual insufficiency. This Court should find that the AFCCA did not err in its factual sufficiency analysis, answer the certified question in the negative, and affirm the decision of the AFCCA.

⁹ See 10 U.S.C. § 867 (2024) (“The Court of Appeals for the Armed Forces shall take action only with respect to matters of law.”); see also *Mendoza*, 2024 CAAF LEXIS 590, at *21 (citations and quotations omitted) (“[W]e retain the authority to review factual sufficiency determinations of the CCAs for the application of correct legal principles, but only as to matters of law.”); see also *United States v. Csiti*, No. 24-0175, 2025 CAAF LEXIS 349, at *8 (C.A.A.F. May 8, 2025) (holding that this Court does not have the statutory authority to decide whether a conviction is factually sufficient).

¹⁰ *United States v. Nerad*, 69 M.J. 138, 147 (C.A.A.F. 2010).

Argument

The Air Force Court of Criminal Appeals did not err in its factual insufficiency finding because it did not rely on *Mendoza* in any way.

Standard of Review

This Court “does not review the factual sufficiency of convictions when [it] review[s] cases under Article 67, UCMJ.”¹¹ Rather, “[r]eview of the factual sufficiency of the evidence is a special power and duty that Article 66(d)(1), UCMJ, confers only on the [CCAs].”¹² Although this Court “retain[s] the authority to review factual sufficiency determinations of the CCAs for the application of correct legal principles,”¹³ it “shall take action only with respect to matters of law.”¹⁴

When a CCA disapproves findings as factually insufficient, this Court “accept[s] the CCA’s action unless in disapproving the findings the CCA clearly acted without regard to a legal standard or otherwise abused its discretion.”¹⁵ “The

¹¹ *Mendoza*, 2024 CAAF LEXIS 590, at *21; see also *Csiti*, 2025 CAAF LEXIS 349, at *8.

¹² *Thompson*, 83 M.J. at 3 (citation omitted).

¹³ *Id.* at 4 (quotations and citations omitted); see *Leak*, 61 M.J. at 241 (“[I]t is within this Court’s authority to review a lower court’s determination of factual insufficiency for application of correct legal principles. At the same time, this authority is limited to matters of law; we may not reassess a lower court’s fact-finding.”)

¹⁴ 10 U.S.C. § 867(c)(4) (2024).

¹⁵ *Nerad*, 69 M.J. at 147; see *Mendoza*, 2024 CAAF LEXIS 590, at *21 (quotations and citations omitted) (“[W]e retain the authority to review factual sufficiency determinations of the CCAs for the application of correct legal principles, but only as to matters of law.”).

abuse of discretion standard is a strict one, calling for more than a mere difference of opinion. The challenged action must be arbitrary, fanciful, clearly unreasonable, or clearly erroneous.”¹⁶

Law and Analysis

The AFCCA did not abuse its discretion in conducting its factual sufficiency review of A1C Serjak’s case.

To convict A1C Serjak of sexual assault in violation of Article 120(b)(2)(A), UCMJ, the Government was required to prove beyond a reasonable doubt that A1C Serjak: (1) committed a sexual act upon JM, and (2) that he did so “without the consent” of J.M.¹⁷ “[A] charge of sexual assault without consent is equivalent to the government stipulating that the victim was competent to consent under the circumstances alleged.”¹⁸

In applying the law to the facts, the AFCCA found that:

After weighing all the evidence and having given appropriate deference to the fact that the trial court saw and heard the witnesses, this court is clearly convinced that the findings of guilt were against the weight of the evidence as to Specification 3 of Charge II, and to Charge II. Thus, those findings are factually insufficient.¹⁹

Because the lower court’s factual sufficiency review did not constitute an

¹⁶ *United States v. White*, 69 M.J. 236, 239 (C.A.A.F. 2010) (quotations and citations omitted).

¹⁷ 10 U.S.C. § 920(b)(2)(A) (2018); *Mendoza*, 2024 CAAF LEXIS 590, at *17-19.

¹⁸ *Mendoza*, 2024 CAAF LEXIS 590, at *47 (Sparks, J., dissenting in part, concurring in part).

¹⁹ JA at 25.

abuse of discretion and given that the lower court did not address legal sufficiency, this Court does not need to decide whether the conviction is legally sufficient.

Conclusion

Because the lower court's factual sufficiency review did not constitute an abuse of discretion or violate correct legal principles, this Court should affirm the lower court's finding that A1C Serjak's sexual assault conviction was factually insufficient and order his immediate release from confinement.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that an electronic copy of the foregoing was electronically sent to the Court and the Air Force Government Trial and Appellate Operations Division on May 21, 2025.

CERTIFICATE OF COMPLIANCE WITH RULES 24(b) AND 37

This brief complies with the type-volume limitation of Rule 24(b) because it contains 1491 words.

This brief complies with the typeface and type style requirements of Rule 37.

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