

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

UNITED STATES

Appellee

v.

Specialist (E-4)

PHILLIP E. THOMPSON, JR.,

United States Army

Appellant

BRIEF ON BEHALF OF APPELLANT

Crim. App. Dkt. No. ARMY 20190525

USCA Dkt. No. 25-0254/AR

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

Certified Issue

**WHETHER THE SPECIAL FINDINGS WARRANT REVERSAL
OF APPELLANT’S CONVICTION FOR INVOLUNTARY
MANSLAUGHTER.**

Statement of Statutory Jurisdiction

The Army Court of Criminal Appeals [Army Court] had jurisdiction over this matter under 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).

Statement of the Case

On July 30-31, 2019, Specialist [SPC] Phillip E. Thompson, Jr. [Appellant], was tried at Fort Stewart, Georgia, before a military judge sitting as a general court-martial. Consistent with his pleas, the military judge convicted Appellant of

two specifications of premeditated murder, in violation of Article 118, UCMJ, 10 U.S.C. § 918 (2012). (JA 127). The military judge sentenced Appellant to a dishonorable discharge and the mandatory minimum sentence of confinement for life with eligibility for parole. (JA 128). Pursuant to a pretrial agreement, the convening authority agreed to disapprove any adjudged confinement in excess of forty years. (JA 129).

On April 24, 2020, the convening authority approved only so much of the sentence as provided for a dishonorable discharge and confinement for thirty-five years. (JA 130). The convening authority credited Appellant with 126 days of confinement against the sentence. (JA 130).

On December 6, 2021, the Army Court set aside the findings and the sentence and authorized a rehearing. (JA 372).

On August 7-14, 2023, Appellant was retried at Fort Stewart, Georgia, before a military judge sitting as a general court-martial. Contrary to his pleas, Appellant was convicted of two specifications of involuntary manslaughter, in violation of Article 119, UCMJ, 10 U.S.C. § 919. (JA 307-08). The military judge sentenced Appellant to a dishonorable discharge and eight years confinement. (JA 030; JA 315). On November 21, 2023, the convening authority approved the sentence and credited Appellant with 1,004 days of confinement against the

sentence. (JA 028). On December 14, 2023, the military judge entered Judgment. (JA 029).

On June 30, 2025, the Army Court affirmed the findings and sentence. (JA 002).

Summary of Argument

The military judge’s special findings control this case, and they foreclose the Army Court’s effort to affirm on a perpetrator theory. The Government tried Appellant for involuntary manslaughter only as an Article 77 aiding and abetting lesser included offense [LIO]. It told the Army Court the special findings “made clear” that was the theory. The military judge found Appellant “aided and abetted” Sergeant Shaquille Craig [SGT Craig] and identified Appellant’s “knowing and willful” assistance as the basis for Appellant’s guilt. Under *Ober* and *Chiarella*, a reviewing court may not save a conviction by presenting an alternative theory of liability than the one presented to and adopted by the factfinder, yet that is exactly what the Army Court did when it recharacterized the conviction as perpetrator manslaughter.¹

Confined to the only permissible theory of review, the special findings are legally insufficient because the findings never identify the predicate offense

¹ *United States v. Ober*, 66 M.J. 393 (C.A.A.F. 2008); *Chiarella v. United States*, 445 U.S. 222 (1980).

Appellant specifically intended to facilitate, dilute guilty knowledge into mere likelihood by finding only that Appellant knew SGT Craig would “probably kill,” and improperly blend accomplice liability with perpetrator style culpable negligence and proximate causation. Because the conviction must stand or fall on the theory actually found, and those findings do not satisfy the elements of aiding and abetting involuntary manslaughter, the special findings warrant reversal.

Statement of Facts

On March 5, 2017, Private Second Class [PV2] MJ and SPC MB were shot dead. There was no dispute they were killed by SGT Craig, Appellant’s friend, who later pled guilty to the murders. The question in this case was whether Appellant’s involvement made him criminally liable for the deaths as an aider and abettor.

A. The offense.

On the morning of March 5, 2017, SGT Craig called Appellant while Appellant was at church and asked Appellant to meet him in a parking lot across from a college. (JA 150). Appellant did not know what SGT Craig wanted. (JA 150). When Appellant arrived at the parking lot in his church clothes and with his infant son, (JA 304), SGT Craig got into Appellant’s truck and told Appellant he caught PV2 MJ “hugging up” with his wife. (JA 150). At some point, SGT Craig said “they got to go,” and placed a pistol in his lap. (JA 150; JA 316). Sergeant

Craig assured Appellant “he was just going to go talk to the men.” (JA 161). The gun was only for self-defense. (JA 141).

Appellant drove SGT Craig to SPC MB’s apartment and parked his truck in the rear lot. (JA 316). Sergeant Craig asked Appellant to knock on the apartment door with a story that he had left his laptop there at the party the night before. (JA 159; JA 316). Appellant did so. Private MJ, who was visiting SPC MB, answered the door. Appellant asked about his “laptop” and was invited inside. (JA 159; JA 316). Moments later, SGT Craig came in the apartment and confronted PV2 MJ. (JA 316). An exchange occurred, (JA 316), ending in SGT Craig fatally shooting PV2 MJ because, according to SGT Craig, PV2 MJ “got hostile and reached for something.” (JA 299). Specialist MB, who was in the back of the apartment, attempted to flee but was shot by SGT Craig, (JA 317), who, by then, had committed to leaving “no loose ends.” (JA 299). Sergeant Craig then turned to a stunned Appellant, gun in hand, and ordered Appellant to leave and not say a word “cause this could be [your] boy,” a reference to Appellant’s infant son. (JA 317).

Appellant hurried out and tried to process what had just happened. He wasn’t alright with what Craig had done and was “thinking how do I tell somebody, do I tell, and if I tell what happens to my son.” (JA 317).

B. The Government's aiding and abetting theory of liability.

The Government charged Appellant with the premeditated murder of PV2 MJ and SPC MB. (JA 021). Specification 1 of Charge I alleged that Appellant “did . . . on or about 5 March 2017, with premeditation, murder PV2 [MJ] by means of shooting him with a handgun.” (JA 021) (emphasis added).

Specification 2 alleged the very same for SPC MB. (JA 021). The Government's theory of liability for the charge rested solely on aiding and abetting. (JA 237-38).

Prior to trial, the Government noticed involuntary manslaughter as a LIO that, like the offense of murder, was predicated solely on aiding and abetting. In a memorandum of law, the Government identified involuntary manslaughter under Article 119(b)(2) as the LIO, under its theory that even if Appellant did not intend to kill PV2 MJ and SPC MB, he intended to commit an offense directly against the victims that resulted in their deaths. (JA 338). The offense of involuntary manslaughter “require[d]” this intent. (JA 337). This remained the Government's theory until the day of trial more than a year later.

On the eve of trial, the Government submitted a “Bench Brief” that significantly altered its notice of the LIO. Specifically, the brief swapped subsection (b)(2) of Article 119 for culpable negligence under subsection (b)(1). (JA 343).

Despite the abrupt change, aiding and abetting remained the Government's theory of liability. (JA 251; JA 339). The Government's brief not only discussed the LIO in the context of aiding and abetting, but the Government proposed that it was required to prove, as an element of the LIO, the deaths were caused *by the acts of SGT Craig*. (JA 343, emphasis added). When Appellant sought clarification whether the Government was pursuing perpetrator liability for the LIO, for which the defense noted was never noticed, (JA 250-51), the Government doubled down on an aiding and abetting theory. (JA 253-54). The Government stood by its brief, (JA 251), and confirmed to the military judge that culpable negligence was its theory with Appellant "as an aider and abettor." (JA 253).

C. The special findings.

Although Appellant did not object to the consideration of involuntary manslaughter as a LIO under an aiding and abetting theory of liability, defense "diverg[ed] in significant respects" from the Government on the elements. (JA 240). According to the Government, Appellant could be guilty of involuntary manslaughter as an aider and abettor of premeditated murder if his assistance amounted to culpable negligence. (JA 243). To the Government, this result was consistent with *United States v. Jackson*, which held an aider and abettor need not have the same *mens rea* as the perpetrator. 19 C.M.R. 319 (C.M.A. 1955) (JA 342). For the defense, the LIO of Article 119(b)(2) was appropriate *only* if SGT

Craig's acts amounted to culpable negligence that proximately caused the deaths *and* if Appellant had intentionally aided and abetted SGT Craig's culpably negligent acts. (JA 346).

Just prior to closing arguments, the parties submitted their positions to the military judge in an Article 39(a), UCMJ, hearing. Observing aiding and abetting liability was "a very tricky subject to get your head around," (JA 246), the military judge admitted he was "hav[ing] to wrestle with [the] concept expressed in *Jackson* in 1955... [where] abettors may be guilty in a different degree from the principal, each to be held to account according to the turpitude of his own motive." (JA 243). But instead of ruling on the elements of the LIO then and there, he decided to resolve any issues with special findings. (JA 249).

The special findings, however, left more questions. With respect to the LIO—the only offense for which Appellant was found guilty, the military judge found Appellant aided and abetted SGT Craig's premeditated murders with culpable negligence. (JA 312). Notably, the special finding as to Appellant's knowledge of the murders was only that Appellant knew SGT Craig would "probably" commit the murders, and the acts supporting the manslaughter charge all concerned the acts of Appellant. (JA 312). To this point, the military judge found that it was "[Appellant's] culpably negligent acts [that] were the proximate

cause of the deaths of both [PV2 MJ and SPC MB]”— an element of the offense neither party argued nor identified. (JA 313).

D. The Army Court decision.

Recognizing aider and abettor liability “may not be a perfect fit,” (JA 014), the Army Court determined the military judge found Appellant guilty as the perpetrator. *United States v. Thompson*, ARMY 20190525, 2025 CCA LEXIS 303, *20 (Army Ct. Crim. App. Jun. 30, 2025). Yet, it concluded that there was no error in affirming on that theory because it found the Government noticed perpetrator liability by informing defense of its intent to argue Appellant’s culpable negligence “through its various bench briefs.” (JA 014); *Id.* at *20.

Affirming on the basis of perpetrator liability, the Army Court further determined there was no longer any need to address whether the findings satisfied the heightened *mens rea* of aiding and abetting because the Government “was not required to prove a more culpable *mens rea* [than culpable negligence] to prove the offense [of involuntary manslaughter].” (JA 017); *Id.* at *26. Thus, the special findings that the military judge found and relied on in convicting Appellant explicitly as an aider and abettor were immaterial to the Army Court. (JA 014); *Id.* at *22.

WHETHER THE SPECIAL FINDINGS WARRANT REVERSAL OF APPELLANT'S CONVICTION FOR INVOLUNTARY MANSLAUGHTER.

Standard of Review

Military courts have analogized special findings in a bench trial to instructions before members. *United States v. Falin*, 43 C.M.R. 702, 704 (A.C.M.R. 1971). This Court reviews questions of law, such as the substance of instructions, *de novo*. *United States v. Smith*, 50 M.J. 451, 455 (C.A.A.F. 1999). To the extent the certified issue implicates legal sufficiency, this Court likewise reviews that question *de novo*, asking whether, viewing the evidence in the light most favorable to the Government, a rational factfinder could have found each element beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *United States v. Turner*, 25 M.J. 324 (C.M.A. 1987).

Law and Discussion

A. The Army Court could not affirm on a perpetrator theory because the military judge convicted on an aiding and abetting theory.

The findings in this case begin and end with what the military judge found. As the Government correctly stated to the Army Court, “The special findings made clear that this was under an aiding or abetting theory.” (JA 064). A reviewing court may not affirm a conviction on a theory of liability different from the one presented to the factfinder. *United States v. Ober*, 66 M.J. 393, 405 (C.A.A.F. 2008) (citing *Chiarella v. United States*, 445 U.S. 222, 236-37 (1980)). This long-

recognized constraint controls here because the Government prosecuted Appellant for involuntary manslaughter as an Article 77 aider and abettor, and the military judge's special findings convicted Appellant on that same flawed theory. (JA 237; JA 254; JA 310). The Army Court nevertheless affirmed on a different theory, a *perpetrator* theory, concluding Appellant was "convicted of involuntary manslaughter as a perpetrator rather than as an aider and abettor to that offense." *Thompson*, 2025 CCA LEXIS 303, at *20, *24.

The Government's theory at trial is clear from the record. Before trial, the Government noticed involuntary manslaughter as an LIO in the context of accomplice liability, not as a perpetrator. (JA 338). On the eve of trial, the Government shifted to culpable negligence under Article 119(b)(1) but maintained Appellant as an aider and abettor and proposed elements that treated "the act of SGT Craig" as the cause of death. (JA 343; JA 006-007). When the defense complained about notice, the Government responded that culpable negligence was pursued with Appellant "as an aider and abettor." (JA 250-54). That is the only theory the Government presented at trial for the LIO as contemplated by *Chiarella* and *Ober*.

The military judge's special findings cemented the theory of conviction. He relied on aiding and abetting principles, found Appellant "aided and abetted Sergeant Craig," and listed Appellant's "knowing and willful" acts as the

assistance. (JA 310-11). Even though the special findings later drift into proximate causation language, the military judge never entered a separate perpetrator conviction, he relied on Article 77 and then purported to apply it. (JA 310-13). The Army Court’s decision to treat those findings “in essence” as perpetrator liability, while simultaneously acknowledging that aider and abettor law “may not be a perfect fit,” is exactly what *Chiarella* and *Ober* forbid.² *Ober*, 66 M.J. at 405.

Once the military judge set forth his theory in his special findings, i.e., why he found Appellant guilty, the Army Court could not disregard that selection and substitute a different theory. Such a conclusion is consistent with federal precedent. In *United States v. Gonzales*, for example, the Fifth Circuit reversed a conviction where the lower court ignored the theory of liability the jury selected. 841 F.3d 339, 350-51 (5th Cir. 2016). There, the Government prosecuted several defendants, including Gonzales, for murder. With respect to Gonzales, the Government never strayed from its theory that Gonzales was liable as a co-conspirator. *Id.* at 342-45. However, when special interrogatories were submitted to the jury asking it to identify the specific theories of liability for each of the defendants, the jury selected “personal liability” for Gonzales. *Id.* at 344. While

² See *Thompson*, 2025 CCA LEXIS 303, at *24-26.

the district court determined this finding was “inconsequential,” *id.* at 345, the Fifth Circuit reversed. *Id.* at 350.

Like in *Gonzales*, it would be an affront to Appellant’s Sixth Amendment trial rights to act as if the military judge selected perpetrator liability, especially considering that, as in *Gonzales*, Appellant could not have been both the perpetrator and an aider and abettor simultaneously. Here, the special findings made aiding and abetting the theory of conviction, so the Army Court was not free to affirm as if the military judge convicted Appellant as the perpetrator. (JA 310). Where special findings exist precisely to establish the basis for guilt, the Army Court’s recharacterization warrants reversal because the conviction must stand or fall on the theory actually found. (JA 310-13). *Thompson*, 2025 CCA LEXIS 303, at *26.

B. Once review is confined to the theory the military judge actually used, the special findings do not establish the elements of aiding and abetting involuntary manslaughter.

If a conviction rests on aiding and abetting, the Government had to prove aiding and abetting beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970). Aiding and abetting requires more than assistance plus a crime. It requires (1) specific intent to facilitate a particular offense, and (2) guilty knowledge of the circumstances that constitute that offense. *Rosemond v. United States*, 572 U.S.

65, 76-77 (2014); *United States v. Vela*, 71 M.J. 283, 286-87 (C.A.A.F. 2012); *United States v. Pritchett*, 31 M.J. 213, 217 (C.M.A. 1990).

The military judge’s special findings never identify the crime Appellant intended to facilitate. Indeed, they include the pivotal “knowledge” finding that Appellant knew SGT Craig intended to “confront and probably kill” the victims. (JA 312). That finding is legally inadequate under *Rosemond* because it is not “full knowledge of the circumstances constituting the charged offense,” and it fails to pin down any specific offense that Appellant intended to bring about. *Rosemond*, 572 U.S. at 76-77 (citations omitted); (JA 311-12).

The “probably kill” formulation collapses the requirement of guilty knowledge into mere risk awareness. As Judge Hand observed in *United States v. Peoni*, “definitions [of accomplice liability] have nothing whatever to do with the probability that the forbidden result would follow upon the accessory’s conduct[.]” 100 F.2d 401, 402 (2d Cir. 1938); *see also* *Rosemond*, 572 U.S. at 76 (endorsing the purposive standard). Indeed, the Army Court previously described *Peoni* as “the canonical formulation” for the needed state of mind and recognized the Benchbook’s aiding and abetting instruction is rooted in it. *United States v. Thompson*, 81 M.J. 824, 831-33 (Army Ct. Crim. App. 6 Dec. 2021).

Importantly, *Peoni* rejects “willful blindness” as sufficient knowledge, *see* Wayne R. Lafave, *Criminal Law*, §13.2(d), at 716 (5th ed. 2010), and Appellant’s

alleged act of “turning a blind eye” was precisely the Government’s argument at trial for liability as an aider and abettor. (JA 291). “[K]nowledge cannot be mere knowledge of a likelihood [of the perpetrator’s crime].” *United States v. Medina-Roman*, 376 F.3d 1, 6 (1st Cir. 2004) (emphasis added). Yet the military judge’s special findings adopted precisely what *Peoni* rejects—liability keyed to likelihood (“probably”) rather than intent to facilitate a defined offense. (JA 311-12).

And the Government cannot salvage the verdict on appeal by invoking “natural and probable consequences.” (JA 077-78). Even where that doctrine exists, it attaches foreseeable secondary crimes of “the crimes the person intended to aid and abet.” *Alfred v. Garland*, 64 F.4th 1025, 1039 (9th Cir. 2023). It does not eliminate the threshold requirement that the accused specifically intended to facilitate the initial offense and knew its essential circumstances. *Id.* (even under the natural and foreseeable consequences doctrine, “[a] specific mens rea is still necessary for the initial offense, [just] not for the offenses that foreseeably follow.”). The military judge’s special findings never make that predicate finding.

The Government’s effort to supply the missing predicate offense on appeal, for example by suggesting assault or housebreaking as the “intended” crime, fares no better. Appellate courts cannot affirm on an unrepresented theory. *Ober*, 66 M.J. at 405. And due process requires the factfinder, not an appellate court, find every element beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970);

Sullivan v. Louisiana, 508 U.S. 275, 277-78 (1993). Because the special findings do not identify an offense Appellant intended to facilitate, neither the Army Court nor this Court can supply one without making a finding of guilt that the military judge never found at trial. (JA 310-13).

C. The special findings improperly conflate accomplice attribution with “own act” culpable negligence, making the findings legally insufficient.

Aiding and abetting does not create a new hybrid offense where the accomplice’s acts become the conduct element and the principal’s acts supply the harm. Under traditional accomplice theory, the aider and abettor is guilty of the principal offense, and the principal’s criminal act is treated as the actus reus for both. *See In re Watt*, 829 F.3d 1287, 1289-90 (11th Cir. 2016) (principal’s acts “become those of the aider and abettor as a matter of law”); *United States v. Delpit*, 94 F.3d 1134, 1152 (8th Cir. 1996) (accomplice “steps into [the principal’s] shoes”); *United States v. Ali*, 991 F.3d 561, 574 (4th Cir. 2021) (aiding and abetting has the same elements as the principal offense); *see also* Dep’t Army Pam. 27-9, Legal Services: Military Judges’ Benchbook, Ch. 3, para. 3-1-1(f) (29 Feb. 2020). That is why the Government’s bench brief at trial treated the victims’ deaths as resulting from “the act of SGT Craig.” (JA 343).

The special findings, however, invert that structure. The military judge repeatedly labeled Appellant’s “assistance” as the culpable negligence, and stated Appellant’s culpably negligent acts were a proximate cause of the deaths. (JA

311-13). This is wholly distinct from aiding and abetting. *See United States v. Brown*, 22 M.J. 448, 450 (C.M.A. 1986); Lafave, §13.2(f), at 716 (criminal negligence is a separate basis from aiding and abetting).

It is this conflict in the special findings the Army Court attempted to cure by finding Appellant was convicted as the perpetrator, despite the military judge's explicit finding of aiding and abetting.³ *Thompson*, 2025 CCA LEXIS 303, at *24-26; (JA 310-13). Once the Army Court tried to correct the special findings, it avoided the actual question put to it under its Article 66 review, whether the aiding and abetting findings are sufficient. They are not.

This is a due process problem. It determines the elements the Government had to prove, the defenses available, and the notice Appellant received. Appellant litigated and defended an aiding and abetting LIO theory. (JA 240, 250-54). If the case had been actually prosecuted as perpetrator manslaughter because of Appellant's own negligent conduct, the elements and causation theory should have been charged, noticed, and litigated as such, not changed on appeal. *Ober*, 66 M.J. at 405.

³ In its brief to the Army Court, the Government criticized Appellant for underscoring the fatal flaw the Army Court recognized and endeavored to correct in its decision. *See* (JA 075-76) (“Appellant suggests that he cannot be guilty of involuntary manslaughter as an aider and abettor and therefore can only be guilty of involuntary manslaughter as a ‘perpetrator.’ The military judge considered this argument and properly rejected it. The perpetrator, for purposes of this fact pattern, is the one who wielded and used the weapon.”)

D. *Jackson* and *Foushee* do not supply a lawful bridge from “aider and abettor” findings to a “perpetrator” affirmance, and the Army Court’s reliance on them is not a sound basis to affirm this conviction.

The Army Court grounded its decision by invoking *United States v. Jackson*, and *United States v. Foushee*, for the proposition that an aider and abettor may be “guilty in a different degree” than the perpetrator.⁴ *Thompson*, 2025 CCA LEXIS 303, at *21-23; (JA 311). But *Jackson* and *Foushee* do not authorize what happened here—convicting Appellant as an aider and abettor without making the findings that accomplice liability requires, then saving the verdict by reframing the conviction as perpetrator liability on appeal.

Properly understood, *Jackson* and *Foushee* address a narrow traditional principle. Where the principal commits a greater offense with a higher *mens rea*, an accomplice who shares the criminal venture but lacks that heightened *mens rea* may be convicted of a lesser offense that matches his own culpability. (JA 245-46, 311); *See Thompson*, 2025 CCA LEXIS 303, at *21-23. That principle presumes valid accomplice findings, meaning a factfinder still must identify the offense the accused intended to facilitate and find “concert of purpose” and “conscious sharing” of the criminal design for that offense. *Jackson*, 19 C.M.R. at 327-328;

⁴ *United States v. Jackson*, 19 C.M.R. 319 (C.M.A. 1955); *United States v. Foushee*, 13 M.J. 833 (A.C.M.R. 1982).

see also Nye & Nissen v. United States, 336 U.S. 613, 619 (1949). Here, the special findings did not do that. (JA 310-13).

Jackson and *Foushee* do not transform negligence into shared purpose. The military judge purported to apply aiding and abetting while simultaneously declaring Appellant's "culpable negligence" was the "proximate cause" of death. (JA 312). That is the language of perpetration by one's own negligent conduct, not vicarious liability for another's act.

As this Court recognized in *United States v. Brown*, the appropriate analytical route in negligence cases is to treat the accused as liable for his own culpably negligent conduct when that conduct proximately causes death, rather than forcing negligence into the shared intent structure of aiding and abetting. 22 M.J. 448, 450-51 (C.M.A. 1986); *see also Thompson*, 2025 CCA LEXIS 303, at *24-26 (acknowledging aider and abettor doctrine "may not be a perfect fit"). The Army Court's use of *Jackson* and *Foushee* to affirm a theory that the Government did not litigate, and that the military judge did not adopt, was an impermissible basis to affirm.

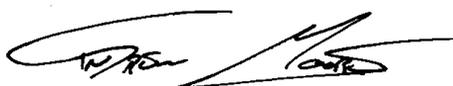
E. Because the Army Court affirmed by altering the theory of guilt and because the special findings do not establish the elements of the theory actually used, the special findings warrant reversal.

Because the Government tried the LIO under aiding and abetting, and because the military judge convicted on aiding and abetting in special findings,

appellate review is confined to that theory. (JA 310; JA 254). On that theory, the special findings are legally insufficient because they do not find a specific offense Appellant intended to facilitate, they substitute likelihood (“probably kill”) for guilty knowledge of a charged offense, and they attribute culpable negligence and proximate causation to Appellant in a way that contradicts accomplice doctrine. (JA 311-12). The Army Court’s pivot to perpetrator liability, and its reliance on *Jackson* and *Foushee* to rationalize that pivot, are not sound bases to affirm. *Ober*, 66 M.J. at 405; *Chiarella*, 445 U.S. at 236-37; *Rosemond*, 572 U.S. at 76-77.

Conclusion

Appellant respectfully requests this Court set aside the Army Court's decision, and remand for further proceedings consistent with this Court's guidance.⁵



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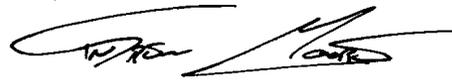


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⁵ Colonel Frank E. Kostik Jr., Chief, Defense Appellate Division is conflicted on this case due to his prior representation of SGT Craig.

CERTIFICATE OF COMPLIANCE WITH RULES 24(B) AND 37

1. This brief complies with the type-volume limitation of Rule 24(b) because it contains approximately 4,532 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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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of *United States v. Thompson*, Crim App. Dkt. No. ARMY 20190525, USCA Dkt. 25-0254/AR was electronically filed with the Court and Government Appellate Division on February 24, 2026.

A handwritten signature in black ink, appearing to read 'A. W. Moore', with a long horizontal flourish extending to the right.

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