

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,

Appellee

v.

TROY K. WILLIAMS
Staff Sergeant (E-6)
U.S. Marine Corps,

Appellant

SUPPLEMENT TO PETITION FOR
GRANT OF REVIEW

Crim. App. Dkt. No. 202400331

USCA Dkt. No. 26-0230/MC

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

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Issues Presented

I.

Whether the Military Judge abused his discretion in admitting excerpts of the complaining witness's interview with NCIS under M.R.E. 801(d)(1)(B)(i).

II.

Whether the Military Judge's erroneous admission of a videotaped NCIS interview of a percipient child witness prejudiced Appellant.

III.

Whether the verdict was ambiguous where the Members returned both a conviction and an acquittal for the same lesser-included offense alleging the same conduct against the same victim in the same location on the same day.

Statement of Statutory Jurisdiction

Upon Appellant's timely notice of appeal, the Navy-Marine Corps Court of Criminal Appeals (NMCCA) reviewed the case under Article 66(b)(1)(A), Uniform Code of Military Justice (UCMJ).¹ This Court has jurisdiction under Article 67(a)(3), UCMJ.²

Statement of the Case

A general court-martial consisting of officer and enlisted Members convicted Appellant, contrary to his pleas, of one specification of communicating a threat and one specification of domestic violence by assault consummated by a battery in violation of Articles 115 and 128(b), UCMJ.³ He was acquitted of nine other specifications.⁴ The Members sentenced him to three months' confinement, three months' hard labor, two months' restriction, and a reprimand.⁵

The lower court affirmed the findings and sentence on April 28, 2026.⁶ Appellant timely filed a Petition for Grant of Review with this Court on June 26, 2026.

¹ 10 U.S.C. § 866(b)(1)(A) (2024).

² 10 U.S.C. § 867(a)(3) (2024).

³ R. at 2053-54.

⁴ *Id.*

⁵ R. at 2253.

⁶ *United States v. Williams*, No. 202400331, slip op. (N-M. Ct. Crim. App. Apr. 28, 2026).

Statement of Facts

In January 2023, during their household goods pack-out in preparation for a Permanent Change of Station move, Appellant and the complaining witness (his wife) had an argument in which he threatened to divorce her.⁷ Several weeks later, in February 2023, the complaining witness made allegations of domestic violence and other offenses against Appellant to the Naval Criminal Investigative Service (NCIS), discussing their argument and his threat of divorce during her videotaped interview.⁸

- A. Over defense objection, the Military Judge admitted excerpts of the complaining witness's videotaped interview by NCIS as prior consistent statements under M.R.E. 801(d)(1)(B)(i), despite finding she made the statements *after* her motive to fabricate arose.**

The Defense theory throughout the case was that beginning in January 2023, the consideration of divorce proceedings motivated the complaining witness to make false allegations against Appellant.⁹ At trial, the complaining witness testified among other things that on January 31, 2023, Appellant strangled her in their kitchen and in a closet, where he also threatened her and punched a hole in the wall.¹⁰

On cross-examination, the Defense asked about the prior divorce discussion

⁷ Appellate Ex. XCVI.

⁸ Appellate Ex. XCVI.

⁹ R. at 550, 562-64.

¹⁰ R. at 679-81; 683-84; 688-89.

in January 2023, stating “[i]n fact, there was no mention of any allegations until you realized that divorce was a topic of conversation, is that correct?”¹¹ After the complaining witness initially denied this and later became unresponsive, the Defense refreshed her recollection with the divorce petition and asked if she had retained a divorce lawyer, if she was seeking spousal support, and about the child custody filings.¹² The Defense then asked if she remembered telling NCIS about the divorce discussion, to which she responded, “I recall telling them . . . that [Appellant] was making it seem to me that he was unsure if me and the kids were going to go with him, and I didn’t know what he meant by that.”¹³ The Defense also asked about a conversation she had with a friend of hers on January 9, 2023, prior to reporting her allegations or being interviewed by NCIS, in which she requested legal advice on “how past incidents of abuse affect restraining orders and . . . custody agreements” and discussed the legal term, “best interest of the child.”¹⁴

After this cross-examination, the Government moved to introduce portions of the complaining witness’s videotaped NCIS interview in February 2023 as prior consistent statements under Military Rule of Evidence (M.R.E.) 801(d)(1)(B)(i).¹⁵

¹¹ R. at 728.

¹² R. at 878-85.

¹³ R. at 894-95.

¹⁴ R. at 900-03.

¹⁵ R. at 1082-83.

This rule allows prior consistent statements to be offered “to rebut an express or implied charge that the declarant *recently* fabricated [the testimony] or acted from a *recent* improper influence or motive in so testifying.”¹⁶ The Defense objected on grounds that the complaining witness’s motive to fabricate (the consideration of divorce proceedings) arose in January 2023—*before* she made her allegations during her NCIS interview in February 2023.¹⁷

The Military Judge overruled the defense objection. He found that “[the complaining witness’s] credibility was attacked during the cross-examination” and that the Defense “presented a *central motive arising in early January [2023]* where divorce began to be considered and [*the complaining witness*] *began to consider how allegations might affect divorce proceedings.*”¹⁸ However, he concluded that her videotaped interview by NCIS the following month in February 2023

serves to rebut the implied charge that improper influences specifically be increased stakes, the risk and danger to her custody of her children, to her other outcomes in the divorce proceedings such as alimony and child support, that it demonstrates that the *escalation in the divorce proceedings* has not changed the central testimony she’s provided this Court and therefore it does [serve] to rebut those implied charges under 801(d)(1)(B)(i).¹⁹

¹⁶ MIL. R. EVID. 801(d)(1)(B)(i) (emphasis added).

¹⁷ R. at 1094-95.

¹⁸ R. at 1185 (emphasis added).

¹⁹ R. at 1188 (emphasis added).

On this basis the Military Judge admitted various portions of the complaining witness's NCIS interview video, one of which is sixteen minutes long, in which she makes detailed, emotional statements about the alleged offenses of which Appellant was subsequently convicted.²⁰

B. Over defense objection, the Military Judge admitted a videotaped child witness interview by NCIS under the residual hearsay exception, M.R.E. 807, which the Government then relied on throughout its closing argument.

To support the allegations, the Government called Appellant's and the complaining witness's children, "Sierra" and "Alice," to testify at trial. Sierra testified that she did not remember when Appellant put a hole in the wall, did not remember seeing the complaining witness and Appellant argue, and did not remember seeing Appellant touch the complaining witness in any way.²¹ Alice testified that she did not remember seeing the complaining witness and Appellant argue and did not remember when Appellant put a hole in the wall, but remembered seeing Appellant put his hands around the complaining witness' neck, which she demonstrated for the Members.²² The Government did not seek to refresh Alice's recollection or ask further clarifying questions to describe when she observed these acts.

²⁰ App. Ex. XCV.

²¹ R. at 1288.

²² R. at 1290.

After Sierra and Alice testified, the Government moved to introduce their videotaped interviews by NCIS under the residual hearsay exception, M.R.E. 807. The Government argued the hearsay was “offered to prove the material facts surrounding the charged conduct that occurred on 31 January, specifically that [Appellant] did put his hand around [the complaining witness’s] throat and over [her] mouth and that he stated he wanted to kill them and [the complaining witness].”²³ The Government argued Alice’s videotaped interview “provides in more detail the particularity for which [Alice] . . . remembered the incident three days post-event.”²⁴

The Defense objected under both prongs of M.R.E. 807. It argued the interviews (1) lacked sufficient guarantees of trustworthiness and (2) were less probative on the points for which they were offered than the complaining witness’s own trial testimony, which the children’s interview videos would be used only to corroborate or bolster.²⁵

The Military Judge sustained the defense objection to Sierra’s interview, but overruled it as to Alice’s.²⁶ He concluded Sierra’s interview did not have sufficient guarantees of trustworthiness to be admissible under M.R.E. 807 due to “discernibility and comprehensibility questions and issues in the interview,” which

²³ App. Ex. X at 20.

²⁴ R. at 1297-98.

²⁵ App. Ex. XII; R. at 114-25.

²⁶ R. at 1469-78.

made the repeated interpretation of Sierra's inaudible answers by the interviewing NCIS agent "controlling for the members."²⁷

The Military Judge noted similar concerns about the trustworthiness of Alice's interview: (1) that the "absence of an admonishment to tell the truth" or "confirmation that [she] will tell the truth" during the interview reduced its reliability;²⁸ (2) that the complaining witness (the child's mother) was present during the interview, such that the possibility of coaching "may linger in the background";²⁹ and (3) that Alice was "challenging to understand" and "multiple occasions [where] the Court cannot understand what she is saying."³⁰ Despite these concerns, however, the Military Judge admitted Alice's interview, concluding her statements were sufficiently trustworthy and also that they were "mo[re] probative than other evidence that could be procured."³¹ But with respect to this latter requirement of M.R.E. 807, he did not weigh the probative value of the hearsay evidence against the complaining witness's own in-court testimony.³²

After securing its admission, the Government made Alice's videotaped interview by NCIS the focus of its closing argument. The Trial Counsel played

²⁷ R. at 1301.

²⁸ R. at 1303.

²⁹ R. at 1299-1300.

³⁰ R. at 1477.

³¹ R. at 1472.

³² R. at 1469-78.

portions of the interview video five times in open court and argued that although Alice was “hard to understand,” the Members should “listen carefully” to the interview during their deliberations.³³ While much of what Alice says during the interview is inaudible, the clearest portions that the Government played during its closing are the NCIS agent’s interpretations of her statements (to which the Defense also objected).³⁴ For example, when the Government argued, “[Alice] saw him suffocate her . . . ‘He did [it] to my mom’s mouth,’” it played a portion of the interview in which Alice’s words are generally inaudible and the NCIS agent can be heard interpreting Alice’s statement to be: “He did it to your mom’s mouth?”³⁵ The Government later argued, “Listen carefully to what [Alice] told [NCIS],” playing another portion of the video in open court where once again the clearest audio is of the NCIS agent stating, “My dad said he’s going to kill us. And my mom and my sister and my brother.”³⁶ From this, the Government later argued, “You know

³³ R. at 1963, 1970, 1972, 1974, 1976.

³⁴ R. at 1963, 1970, 1972, 1974, 1976. There are errors in the record of trial. Occasionally, the transcribed record reflects that Prosecution Exhibit 13 was played for the Members, whereas the trial audio reveals that Prosecution Exhibit 17 was what was actually played for the Members. In a pre-trial motion, the defense counsel compared the child forensic interview to the show, “Lassie,” where a pre-teen protagonist named Timmy would interpret a dog’s barking, much like the NCIS special agent would interpret Alice’s statements during the interview. Appellate Exhibit XII at 9-12.

³⁵ R. at 1970; Audio Record of Trial, 13 March 2023, 0910-1035, at 1:01:25 – 1:01:57.

³⁶ R. at 1971-72; Audio Record of Trial, 13 March 2023, 0910-1035, at 1:05:10 –

[Appellant] said, ‘I’m going to kill you,’ because [the complaining witness] testified to that, and [Alice] heard it. And she told [the NCIS agent] what she heard.”³⁷

C. The Members found Appellant guilty and not guilty of the same alleged conduct, for which the Military Judge did not obtain clarification before or after announcement.

The Charge Sheet accused Appellant of two specifications of domestic violence by strangulation or suffocation at the same time and place.³⁸ Specification 2 of Charge I alleges that Appellant “did, at or near Iwakuni, Japan, on or about 31 January 2023, commit an assault upon [the complaining witness], the spouse of the accused, by unlawfully (a) strangling, and (b) suffocating her with his hands.”³⁹ Specification 3 of Charge I alleges that he “did, at or near Iwakuni, Japan, on or about 31 January 2023, commit an assault upon [the complaining witness], the spouse of the accused, by unlawfully strangling her with his hand.”⁴⁰

At trial, the complaining witness testified that Appellant put his hands on her neck twice—once in the kitchen and once in the closet. Specifically, she testified he “came into the kitchen,” “grabbed [her] by the neck,” “started to chok[e her] on the wall by the window,” and “continued to choke [her] with his hand around [her] throat

1:05:50.

³⁷ R. at 1973.

³⁸ Charge sheet.

³⁹ *Id.*

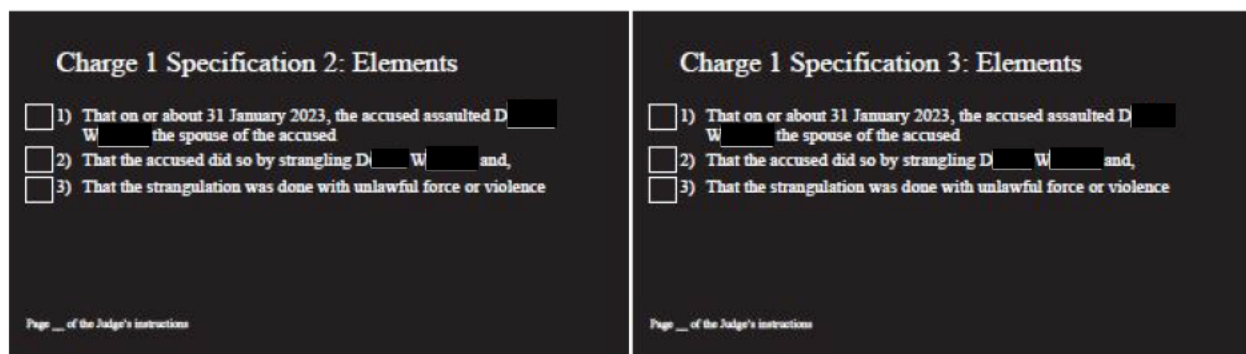
⁴⁰ *Id.*

and then he put his hand over [her] mouth and nose.”⁴¹ She also testified that he “grabbed [her] by [her] neck and took [her] back to . . . the little closet to the wall” under the stairs with both hands on her neck.⁴²

During its closing argument, the Government described two distinct instances of assault underlying Specification 2, one against the wall in the kitchen, and the other in both the kitchen and under the stairs (which the parties also referred to as in the closet):

Moving on to Specification 2, Charge I, another strangulation. . . . [H]e grabbed her by the throat and pushed her into the wall up against that ledge in the kitchen. . . . And he grabbed her by the neck, and he pushed her into the shelf under the stairs [closet]. For this specification, . . . after he pushed her into that ledge under the stairs, he also covered her nose and mouth.⁴³

The slides that the Government used during its closing argument laid out identical elements for both specifications:⁴⁴



⁴¹ R. at 678-79.

⁴² R. at 683, 686-87.

⁴³ R. at 1967.

⁴⁴ App. Ex. CXII at 22, 26. The complaining witness's name is redacted.

And in rebuttal argument, without identifying which specification was being referred to, the Government argued: “Before he put her in the closet, before he started strangling her in that closet under the stairs. . . . He pushed her by the throat”⁴⁵ “He grabbed her by the neck, and he pushed her into the closet.”⁴⁶

The Military Judge gave near identical instructions for the lesser-included offense (LIO) of domestic violence by assault consummated by a battery for both of these specifications under Charge I. The only difference was that his instruction for the LIO of Specification 2 was for “placing his hands on her neck *and placing his hands on her mouth*” whereas his instruction for the LIO of Specification 3 was for “placing his hand on her neck.”⁴⁷

In comparison, the Military Judge’s LIO instructions and the Government’s arguments regarding the assaults alleged in Specifications 2 and 3 and their locations are as follows:⁴⁸

⁴⁵ R. at 2019.

⁴⁶ R. at 2028.

⁴⁷ App. Ex. CXI at 2-4; R. at 1923-26 (emphasis added).

⁴⁸ Appellant’s wife’s testimony did not tie either alleged assault to a particular specification.

	Specification 2 (conviction)		Specification 3 ⁴⁹ (acquittal)	
	Body Part	Location	Body Part	Location
MJ's LIO Instructions: ⁵⁰	Neck	None identified	Neck	None identified
	Mouth	None identified		
Govt's Argument: ⁵¹	Neck	Kitchen	Neck	Closet
	Mouth	Closet ⁵²	Mouth ⁵³	
	Neck	Closet ⁵⁴		

During deliberations, the Members expressed confusion about the difference between Specifications 2 and 3 of Charge I and asked the Military Judge to clarify the location in the house to which each specification pertained: “Can you confirm the location *in the house* for Charge I Specification 2? Can you confirm the location *in the house* for Charge I Specification 3?”⁵⁵ The Military Judge declined to answer the questions asked and responded by instructing that “[t]he cleansed charge sheet lays out what the charged offenses are *and their locations*.”⁵⁶ However, the cleansed

⁴⁹ The Government never used the words “Specification 3” during closing. Instead, the Government argued, “the last offense he committed that day was one final strangulation on his spouse[.]” R. at 1973.

⁵⁰ R. at 1923-25.

⁵¹ R. at 1966-76.

⁵² “[A]fter he pushed into that ledge under the stairs, he also covered her nose and mouth.” R. at 1967.

⁵³ “He suffocated her one more time—strangled her one more time.” R. at 1973.

⁵⁴ “And he grabbed her by the neck, and he pushed her into the shelf under the stairs.” R. at 1967.

⁵⁵ App. Ex. CXIV.

⁵⁶ R. at 2044 (emphasis added).

charge sheet alleges only that the alleged acts in each specification occurred “at or near Iwakuni, Japan”—not the specific location within the house.⁵⁷

In their announced findings, the Members acquitted Appellant of the greater offenses charged in Specifications 2 and 3, as well as the LIO of domestic violence by assault consummated by a battery for Specification 3, but convicted him of the LIO of domestic violence by assault consummated by a battery for Specification 2.⁵⁸ As revealed in the Findings Worksheet, the Members found Appellant both guilty (under Specification 2) and not guilty (under Specification 3) of exactly the same LIO language:⁵⁹

A.2. Of Specification 2 of Charge I:

~~[a] Not Guilty~~

~~[b] Guilty~~

~~[c] Guilty, except for the words _____ . Of the excepted words, Not Guilty. Of the specification as excepted, Guilty.~~

☒ [d] Not Guilty of Assault by Strangulation or Suffocation in violation of Article 128b; but guilty of Violent Offense: Assault Consummated by a Battery in violation of Article 128b.

A.3. Of Specification 3 of Charge I:

☒ [a] Not Guilty

~~[b] Guilty~~

~~[c] Not Guilty of Assault by Strangulation or Suffocation in violation of Article 128b; but guilty of Violent Offense: Assault Consummated by a Battery in violation of Article 128b.~~

Despite this ambiguity, the Military Judge took no action to clarify which instance Appellant was acquitted of and which he was convicted of, either upon

⁵⁷ App. Ex. LVII at 3.

⁵⁸ R. at 2053; App. Ex. CX at 1; Statement of Trial Results, Mar. 15, 2024; Entry of J., July 23, 2024.

⁵⁹ App. Ex. CX at 1.

reviewing the Findings Worksheet or after the findings were announced.⁶⁰ As a result, there is no clarifying language in the findings announcement, Findings Worksheet, Statement of Trial Results, or Entry of Judgment describing the particular assault of which Appellant was convicted (e.g., by unlawfully touching what body part) or its location (e.g., in either the kitchen or the closet) to distinguish it from the assault of which he was acquitted.

D. The lower court affirmed the findings and sentence despite finding the Military Judge erred.

On appeal, the lower court affirmed the findings and sentence.⁶¹ With respect to the M.R.E. 801(d)(1)(B)(i) issue, the lower court found the Military Judge “intend[ed] to make a finding of fact that a motive to fabricate existed in January of 2023 (and then increased as divorce proceedings began).”⁶² But the court held there was no abuse of discretion by taking the Military Judge’s finding—of a “central motive” to fabricate (the consideration of divorce proceedings) that later “escalated”—and separating it into two different motives: (a) the consideration of divorce proceedings and (b) the “filing and progressing” of divorce proceedings.⁶³

⁶⁰ R. at 2053-54.

⁶¹ *Williams*, slip op. at 3.

⁶² *Id.* at 10 n.33.

⁶³ *Id.* at 11.

With respect to the residual hearsay issue under M.R.E. 807, the lower court found error but no prejudice.⁶⁴ The court held the Military Judge abused his discretion in concluding Alice’s videotaped interview was more probative than the in-court testimony of the complaining witness herself, which the court found “far more probative on the question of whether she was assaulted.”⁶⁵ However, the court discounted the Government’s reliance on the “mere 82 seconds” of video it played during closing (of a thirty-minute video prosecution exhibit it repeatedly urged the Members to review during deliberations) and concluded this evidence from a third-party percipient witness, corroborating the only two allegations of which Appellant was convicted, was “relatively inconsequential” to the findings.⁶⁶

Finally, with respect to the ambiguity of the verdict, the lower court held “the findings were not ambiguous, and do not preclude a proper factual sufficiency review,” which it conducted based on its own read of the evidence and arguments.⁶⁷ The court concluded, “It is clear to us what distinct conduct each specification alleged, and we can discern the specific conduct that formed the basis of the acquittal.”⁶⁸

⁶⁴ *Id.* at 4-9.

⁶⁵ *Id.* at 7.

⁶⁶ *Id.* at 8.

⁶⁷ *Id.* at 16.

⁶⁸ *Id.*

Reasons to Grant Review

The lower court decided these three issues in ways that conflict with the decisions of the Supreme Court, this Court, U.S. Circuit Courts of Appeals, other military Courts of Criminal Appeals (CCAs), and its own reasoning elsewhere in the same opinion. First, the lower court decision on the M.R.E. 801(d)(1)(B)(i) issue conflicts with the Supreme Court's established requirement in *Tome v. United States* that prior consistent statements must be made *before* the motive to fabricate "originated."⁶⁹ And its attempt to split the Military Judge's finding of one central, escalating motive to fabricate into two separate motives conflicts with precedent from the Supreme Court, this Court, and the First Circuit Court of Appeals.

Second, the lower court clearly erred by finding harmless error in the admission of a thirty-five-minute videotaped child interview, which was the sole third-party corroboration for the only two allegations of which Appellant was convicted and the central focus of the Government's closing arguments.

And third, the lower court improperly resolved the ambiguous verdict issue by doing precisely what this Court's precedent holds that CCA's cannot do: "perform an independent review of the record to determine which of the possible incidents most likely formed the basis of the conviction."⁷⁰

⁶⁹ *Tome v. United States*, 513 U.S. 150, 156 (1995).

⁷⁰ *United States v. Trew*, 68 M.J. 364 (C.A.A.F. 2010) (quoting *United States v.*

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The lower court decided a question of law regarding the timing of the motive to fabricate for prior consistent statements in a way that conflicts with decisions from both the Supreme Court and this Court.

In *Tome v. United States*, the Supreme Court held with respect to Federal Rule of Evidence (F.R.E.) 801(d)(1)(B)—M.R.E. 801(d)(1)(B)’s civilian counterpart—that “the prior consistent statement has no relevancy to refute the charge unless the consistent statement was made *before* the source of the bias, interest, influence or incapacity originated.”⁷¹ This Court has adopted the Supreme Court’s temporal requirement from *Tome* and “consistently interpreted [M.R.E. 801(d)(1)(B)(i)] to require that a prior statement, admitted as substantive evidence, *precede* any motive to fabricate or improper influence that it is offered to rebut,”⁷² based on the same reasoning that “[s]tatements made *after* an improper influence arose do not rehabilitate a witness’s credibility.”⁷³ And when M.R.E. 801(d)(1)(B) was amended in 2016, the Drafter’s Analysis made clear it was subject to the *Tome* rule:

The amendment retains the requirement set forth in *Tome v. United States*, 513 U.S. 150 (1995): that under Rule 801(d)(1)(B), a consistent statement offered to rebut a charge of recent fabrication of improper influence or motive must have been made *before* the alleged fabrication

Wilson, 67 M.J. 424, 428 (C.A.A.F. 2009)).

⁷¹ *Tome*, 513 U.S. at 156 (emphasis added).

⁷² *United States v. Allison*, 49 M.J. 54, 57 (C.A.A.F. 1998) (emphasis added).

⁷³ *United States v. Frost*, 79 M.J. 104, 111 (C.A.A.F. 2019) (emphasis in original).

or improper inference or motive arose.⁷⁴

Here, however, the Military Judge “use[d] incorrect legal principles” by not applying the *Tome* temporal requirement and instead admitting the complaining witness’s prior statements to NCIS under M.R.E. 801(d)(1)(B)(i) that were made *after* her alleged motive to fabricate arose.⁷⁵ The Military Judge himself found that the Defense’s cross-examination attacked the complaining witness’s credibility by presenting a “central motive *arising in early January [2023]* where divorce began to be considered and *[the complaining witness] began to consider how allegations might affect divorce proceedings.*”⁷⁶ Yet despite finding this central motive arose *before* the hearsay statements were made during the NCIS interview in February 2023, he ruled the statements would “serve to rebut those implied charges under [M.R.E.] 801(d)(1)(B)(i).”⁷⁷

The Military Judge concluded the prior statements could be admitted to rehabilitate the complaining witness based on the later “escalation in the divorce proceedings.”⁷⁸ However, the “escalation” of an improper influence necessarily

⁷⁴ MANUAL FOR COURTS-MARTIAL, UNITED STATES, App. 22, Sec. VIII, at A22-61 (2016) (emphasis added).

⁷⁵ *United States v. Rudometkin*, 82 M.J. 396, 401 (C.A.A.F. 2022).

⁷⁶ R. at 1185 (emphasis added).

⁷⁷ R. at 1188.

⁷⁸ R. at 1188.

requires that the improper influence had already “originated,” to use *Tome*’s term,⁷⁹ and this Court’s precedents likewise prohibit the admission of prior consistent statements made “*after* an improper influence *arose*.”⁸⁰ Here, it is the same improper motive to fabricate—consideration of divorce proceedings—which the Military Judge himself found to have arisen in early January 2023.

The U.S. Court of Appeals for the First Circuit addressed a similar scenario—and reached the opposite conclusion from the Military Judge here—in *United States v. Awon*, where the trial court admitted out-of-court statements under F.R.E. 801(d)(1)(B) that were made *after* the central motive to fabricate arose.⁸¹ In *Awon*, as here, the government argued that the defense ascribed various motives to fabricate, not all of which existed when the out-of-court statements were made, such as obtaining work release, favorable dispensation of other pending matters, anticipation of a lesser sentence, and influence by the agent or prosecutors.⁸²

But the First Circuit held that “the *overarching motive* alleged by the defense always was hope of leniency, and therefore, the ‘new’ motives amount to no more than smaller subsets of the larger theme.”⁸³ Citing a case by the Tenth Circuit

⁷⁹ *Tome*, 513 U.S. at 156.

⁸⁰ *Frost*, 79 M.J. at 111 (C.A.A.F. 2019) (emphasis added).

⁸¹ *United States v. Awon*, 135 F. 3d 96, 99-100 (1st Cir. 1998).

⁸² *Id.* at 99.

⁸³ *Id.* at 100 (emphasis added).

holding the same, the court explained that “even where the circumstances underlying a motive to fabricate have changed somewhat . . . prior consistent statements remain inadmissible if the motive remains *essentially the same*.”⁸⁴

So, too, here. The Defense’s theory throughout the case was that the complaining witness was motivated to fabricate allegations against Appellant due to considerations of divorce that arose in January 2023 and never went away. The Military Judge acknowledged this as the “central motive,” but ruled that “the increased stakes, the risk and danger to her custody of her children, to her other outcomes in the divorce proceedings such as alimony and child support”—in other words, “the escalation in divorce proceedings”—“serve[d] to rebut those implied charges[.]”⁸⁵ But those implied charges are *essentially the same* motive to fabricate that arose in January 2023: the considerations of how allegations against Appellant might affect divorce proceedings.

Nor does the lower court absolve the Military Judge of this error by attempting to split the central, escalating motive found by the Military Judge into two separate ones: the *consideration* of divorce proceedings vs. the *filing* of divorce proceedings.⁸⁶ “Escalate” does not mean to change from one thing to another, but

⁸⁴ *Id.* (citing *United States v. Albers*, 93 F.3d 1469, 1482-84 (10th Cir. 1996)) (emphasis added).

⁸⁵ R. at 1188.

⁸⁶ *Williams*, slip op. at 11.

only “[t]o increase in intensity, extent, or amount.”⁸⁷ Thus, the “escalation” of a prior motive is not the creation of a new motive or influence; it is merely the intensifying of *essentially the same* motive that arose in early January 2023, prior to the NCIS interview in February 2023. And the lower court’s attempt to distinguish between considering divorce proceedings and participating in them is far less consequential than the differences the First Circuit addressed in *Awon*. Indeed, here it is precisely the same motive—i.e., considering how allegations against Appellant might affect divorce proceedings—which had not changed one iota by the time the complaining witness was simply following through on it by testifying against Appellant at court-martial (in the wake of previously reporting her allegations to NCIS).

This Court should address the Military Judge’s erroneous view of M.R.E. 801(d)(1)(B)(i), now ratified by the lower court’s equally erroneous view, which conflicts with holdings of the Supreme Court, this Court, and the First Circuit.⁸⁸ As the Supreme Court explained in *Tome*, “[i]f the rule were to permit the introduction of prior statements as substantive evidence to rebut every implicit charge that a witness’ in-court testimony results from recent fabrication or improper influence or

⁸⁷ *Escalate*, *The American Heritage Dictionary of the English Language* (5th ed. 2018).

⁸⁸ See C.A.A.F. R. 21(b)(5)(B).

motive, the whole emphasis of the trial could shift to the out-of-court statements, not the in-court ones.”⁸⁹

That is exactly what occurred in Appellant’s case: a trial by hearsay video. Stripped of this erroneously admitted video evidence (as discussed further below), the Government’s case was weak. In this context, the lower court’s conclusion that the NCIS interview video, though material, was “not of significant quality” to cause prejudice is belied by its actual contents: detailed, emotional allegations from a tearful complaining witness made to law enforcement at the inception of a criminal investigation.⁹⁰

II

The lower court’s determination that the erroneously admitted child interview video did not prejudice Appellant is clear error and conflicts with this Court’s case precedent.

In *United States v. Pablo*, this Court granted review of the CCA’s determination that the military judge’s erroneous admission of hearsay under the residual hearsay exception was harmless.⁹¹ This Court concluded it had “grave doubt” about whether the “erroneously-admitted testimony had a substantial

⁸⁹ *Tome v. United States*, 513 U.S. 150, 165 (1995).

⁹⁰ *Williams*, slip op. at 14; Appellate Ex. XCVI.

⁹¹ *United States v. Pablo*, 53 M.J. 356, 357 (C.A.A.F. 2000).

influence on the findings,” and reversed the lower court’s holding of a lack of prejudice.⁹²

Here, too, this Court should be left in “grave doubt.” The lower court’s prejudice analysis ignores the only two offenses of which Appellant was convicted were precisely those addressed by the erroneously admitted child interview video. The Members acquitted Appellant of nine other alleged offenses.⁹³

The lower court opinion also ignores that the Military Judge himself found that the interview video made “significant corroborations” of the complaining witness’s testimony.⁹⁴ Specifically, the Military Judge found that the “only percipient witnesses capable [of] providing information aside from [the complaining witness] were [Sierra] and [Alice] as well as the only source of evidence that can clarify and tie that testimony to a time and place, and that can provide the corroborating statements regarding threats being made against the family.”⁹⁵

In other words, after the Military Judge excluded Sierra’s child forensic interview, Alice was the *only* third-party percipient witness who could corroborate the complaining witness’s testimony regarding the exact offenses of which Appellant was convicted. Indeed, with respect to Alice’s videotaped interview by

⁹² *Id.* at 359.

⁹³ R. at 2053-54.

⁹⁴ R. at 1978.

⁹⁵ R. at 1472.

NCIS, the Military Judge found “there isn’t any other evidence which can be procured aside from these statements; and they are the statements that are most probative than other evidence that could be procured.”⁹⁶

The lower court erred in concluding this thirty-five-minute video, which the Government played portions of five times during its closing argument, while “material,” was not of significant enough quality to cause prejudice. While emphasizing that only a total of eighty-two seconds of the video were played during the Government’s closing, the lower court ignores that the Government played the *entire* video in open court during trial, sent the video back with the Members and encouraged them to view the video again as part of their deliberations, , and focused on the *contents* of the video throughout its closing slides and argument, including:

- The Trial Counsel told the Members that during deliberations they would “have the opportunity to review [the videotaped interview] again with speakers, and . . . can go back and listen to it.”⁹⁷
- The Trial Counsel told the Members to “please listen carefully” to Alice’s interview video because it would tell them “what happened that morning” and “what she saw.”⁹⁸

⁹⁶ R. at 1472.

⁹⁷ R. at 1963.

⁹⁸ R. at 1963.

- The Trial Counsel argued that “[Alice] saw him suffocate her,” and “[y]ou know [Appellant] said, ‘I’m going to kill you,’ because [the complaining witness] testified to that, and [Alice] heard it. *And she told [NCIS] what she heard.*”⁹⁹
- The Trial Counsel quoted Alice from the interview as saying, “‘My dad punched it.’ And then *she showed [NCIS] what else she saw her dad do in the closet under the stairs.* She saw her dad with his hand around her mom’s throat yet again.”¹⁰⁰
- Continuing to quote the interview, the Trial Counsel stated that Alice’s statements to NCIS were consistent with the complaining witness’s account of the assault and that she saw “Mommy’s boobos.”¹⁰¹
- The Trial Counsel also weaved the interview into the Government’s rebuttal argument: “[Alice] told NCIS what she saw.”¹⁰²

The Government relied so heavily on the video because it was the only witness corroboration for the allegations of the heavily-discredited complaining witness. That is why it is unsurprising that the Members acquitted Appellant of nine other offenses, but convicted him of the two corroborated by Alice’s interview video.

⁹⁹ R. at 1970, 1973 (emphasis added).

¹⁰⁰ R. at 1974 (emphasis added).

¹⁰¹ R. at 1976.

¹⁰² R. at 2021 (emphasis added).

The lower court downplays the quality of the video, in which Alice often can barely be heard, and reasons that she mostly said in the interview the same content she said on the stand. But this conclusion is unsupported by the record and cannot be squared with the Government's pervasive use of the video evidence throughout the trial and its repeated invocation of the video in closing to fill the gaps in its case. Indeed, other than the complaining witness's own erroneously admitted NCIS interview video (discussed above), this evidence was the only thing that could effectively be used to fill those gaps. Otherwise, the Government's weak case relied on the complaining witness's discredited testimony, Alice's in-court testimony, and the medical evidence—which was not enough for the Members to convict.

The lower court opinion also ignores that the most important portions of this child interview (which was conducted by *an NCIS agent*, as opposed to a forensic interviewer, while Alice was sitting next to the complaining witness) consisted of words *coming out of the NCIS agent's mouth*. This hearsay within hearsay, which neither the Military Judge nor the lower court addressed, was repeatedly invoked by the Government to fill the gaps in its case and depended on Alice's acquiescence to the words of the NCIS agent who was investigating the complaining witness's allegations.

The Government has not met *its burden* of proving the erroneous admission of this evidence was harmless. But for the Military Judge erroneously admitting and

allowing the Government to rely on this material hearsay, the Government's weak case would have resulted in an acquittal on the two convicted offenses as well. As in *Pablo*, the lower court's conclusion that the erroneous admission of this evidence did not prejudice Appellant is clear error that should be reviewed by this Court.

III

The lower court decided the ambiguous verdict issue in conflict with decisions of both this Court and other Courts of Criminal Appeals.

A garden variety ambiguous verdict occurs when the "exceptions and substitutions on the findings worksheet implicitly meant that the factfinder had found the accused was not guilty of some of the acts alleged at trial" and the military judge did not require them to state what conduct formed the basis of the conviction.¹⁰³ Ambiguous verdict analysis can also apply across specifications. For example, in *United States v. Williams-Clark*, the Army Court of Criminal Appeals (ACCA) held the findings were ambiguous where a conviction and an acquittal

¹⁰³ *United States v. Rodriguez*, 66 M.J. 201, 204-05 (C.A.A.F. 2008); *see, e.g., United States v. Walters*, 58 M.J. 391 (C.A.A.F. 2003) (finding the verdict ambiguous and dismissing the charge where the members excepted "on divers occasions" and did not indicate which of six instances of ecstasy use they convicted Walters of); *United States v. Saxman*, No. 200900412, 2010 CCA LEXIS 68 (N-M. Ct. Crim. App. May 27, 2010) (dismissing the charge with prejudice due to ambiguous verdict that resulted when members found Saxman guilty of possessing four video files of child pornography instead of 22 by exceptions and substitutions without indicating which four video files he possessed).

resulted from two specifications that “alleged sexual acts that occurred in the same place, on the same day, and perpetrated against the same victim.”¹⁰⁴ The ACCA did “not see a functional difference between a finding of ‘not guilty’ entered . . . when words . . . are excepted, and the case we have here, where the not guilty finding is to a separate specification that otherwise alleges the same factual basis for the crime.”¹⁰⁵

Appellant’s case presents the same issue as the one in *Williams-Clark*. Here, the two assault LIO’s alleged the same conduct against the same alleged victim in the same location on the same day. The ambiguity in findings occurred when the Members acquitted Appellant of one specification but convicted him of the other without distinguishing what conduct was the subject of the convicted offense.¹⁰⁶

Double jeopardy principles prevent CCAs from “perform[ing] an independent review of the record to determine which of the possible incidents most likely formed the basis for the conviction.”¹⁰⁷ Where the verdict is ambiguous, “the findings of guilty and not guilty do not disclose the conduct upon which each of them was based.”¹⁰⁸ Factual sufficiency review is impossible in these circumstances because

¹⁰⁴ No. ARMY 20230185, 2026 LEXIS 175228, at *12-13 (A. Ct. Crim. App. Mar. 25, 2026).

¹⁰⁵ *Id.* at *13.

¹⁰⁶ *Williams*, slip op. at 14-16.

¹⁰⁷ *Trew*, 68 M.J. at 368 (citations omitted).

¹⁰⁸ *Walters*, 58 M.J. 391, 397.

“[a] Court of Criminal Appeals cannot find as fact any allegation in a specification for which the factfinder below has found the accused not guilty.”¹⁰⁹ If the appellate court were to conduct an independent assessment of “fatally ambiguous findings,” it would create “the possibility that the reviewing court would affirm a finding of guilty based on an incident of which the appellant had been acquitted by the factfinder at trial[,]” creating a double jeopardy violation.¹¹⁰ As a result, the required remedy where factual sufficiency review is triggered is that the findings be dismissed with prejudice.¹¹¹

For example, in *United States v. Trew*, the military judge found the accused guilty of an LIO “on the one occasion.”¹¹² The NMCCA found this phrase was a shorthand reference for a single incident on 26 September; this finding was based on a motions hearing in which the parties referred to this incident as “the September incident.”¹¹³ This Court found that NMCCA was not permitted to review the record to determine what the military judge meant.¹¹⁴ Double jeopardy principles prohibited this.¹¹⁵ This Court dismissed the finding with prejudice.¹¹⁶

¹⁰⁹ *Id.* at 395, 397; *see also Trew*, 68 M.J. at 368; *Wilson*, 67 M.J. at 428.

¹¹⁰ *Trew*, 68 M.J. at 369 (cleaned-up) (quoting *Wilson*, 67 M.J. at 428).

¹¹¹ *Id.*

¹¹² *Id.* at 366.

¹¹³ *Id.* at 367-68.

¹¹⁴ *Id.* at 368.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 369.

The lower court did exactly what this Court has repeatedly said it could not do. It ““perform[ed] an independent review of the record to determine which of the possible incidents most likely formed the basis for the conviction.””¹¹⁷ It conducted an internally inconsistent analysis, illustrating the harm that results when double jeopardy principles are not followed.

The lower court resolved the ambiguous nature of the findings by finding it “clear . . . what distinct conduct each specification alleged” and stating its confidence that it could “discern the specific conduct that formed the basis of Appellant’s conviction from the specific conduct that formed the basis of his acquittal.”¹¹⁸ In this regard, the lower court concluded, definitively from its perspective, that the Members convicted Appellant of the alleged assault in the kitchen and acquitted him of the alleged assault in the closet.¹¹⁹

Yet, elsewhere in the same opinion, the lower court tacitly concluded the very opposite: that Appellant was convicted of the alleged assault in the closet, not the kitchen. In addressing the residual hearsay issue, for example, the lower court’s opinion dedicates five pages to analyzing whether the erroneous admission of Alice’s interview video prejudiced the findings (i.e., led to Appellant’s convictions).

¹¹⁷ *Id.* at 368 (C.A.A.F. 2010) (quoting *Wilson*, 67 M.J. at 428).

¹¹⁸ *Williams*, slip op. at 16.

¹¹⁹ *Id.* at 14-16.

But the complaining witness herself testified that Alice was only present for the alleged incident in the closet—such that everything Alice saw and spoke about in both her NCIS interview and trial testimony pertained only to the incident in the closet.¹²⁰ So, if Appellant was acquitted of the alleged assault in the closet, the lower court needlessly spent five pages discussing the prejudicial impact of an error on an acquittal.

Essentially, the lower court opinion analyzed the prejudicial effect of erroneously admitted hearsay evidence on an alleged offense that it elsewhere concludes Appellant was acquitted of. This is, in and of itself, sound reason to believe that in addressing the ambiguous verdict issue, the court’s “clear” discernment of conviction vs. acquittal in the ambiguous verdict discussion was exactly backwards. Instead, as the lower court demonstrated through its prejudice analysis, the Members convicted Appellant of the alleged assault in the closet, not the kitchen. Which would make sense because, as discussed above, the closet incident was the only allegation corroborated by the testimony (and the erroneously admitted NCIS interview) of a third-party percipient witness.

In its ambiguous verdict discussion, however, the lower court reached the opposite conclusion, confidently asserting that the conviction rested on the kitchen

¹²⁰ R. at 688.

incident. This shifting treatment of the evidence demonstrates that the court could not reliably distinguish between the conviction and the acquittal, thereby exposing the fallacy of its asserted “clear” discernment and illustrating the dangers of violating double jeopardy principles by engaging in this analysis.

In this regard, the lower court’s focus on notice misses the mark. It improperly centered its analysis on the *parties’* understanding of the specifications and lesser-included offenses, rather than identifying which specific allegation the *Members* actually voted to convict or acquit on. Most of the lower court’s analysis is about how “both parties understood the distinction between the two specifications[.]” whether Appellant filed for a Bill of Particulars, the parties’ closing arguments, and whether the Defense “was able to distinguish between the two charged specifications[.]”¹²¹ First, Appellant did not raise or argue an assignment of error for lack of notice. The issue Appellant raises is not about the *parties’* understanding of the specifications and their LIOs. Rather, the issue is that it is unclear which alleged assault the *Members* acquitted Appellant of and which one they convicted him of. And for that issue, the most—if not only—relevant part of the record is the *Members’* request that the Military Judge clarify which specification pertained to which incident location. Yet this is what he affirmatively

¹²¹ *Williams*, slip op. at 15-16.

refused to provide, giving them, instead, the useless instruction that both occurred, as charged, in “Iwakuni, Japan.”¹²² And this is precisely the part of the record that the lower court ignored entirely, in focusing on an issue Appellant did not raise.

In impermissibly determining the findings were not ambiguous, the lower court engaged in its own (flawed) analysis of the evidence that this Court has repeatedly prohibited.¹²³ There is no way for the lower court to have known what the Members did. The lower court then compounded the error by focusing on the charged specifications as opposed to the Members’ findings, which included a conviction and an acquittal for the same LIO of domestic violence for assault consummated by a battery. As the lower court’s internally inconsistent analysis illustrates, the Members’ findings make it impossible for the reviewing court to avoid the risk of mistakenly affirming a guilty finding for alleged conduct that the Members acquitted.

Thus, review by this Court is warranted because the lower court decided a question of law in a way that conflicts with the applicable decisions of both this Court and another Criminal Court of Appeals.¹²⁴

¹²² R. at 2044.

¹²³ *Williams*, slip op. at 14-16.

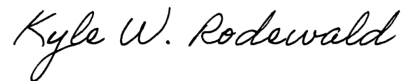
¹²⁴ See C.A.A.F. R. 21(b)(5)(B).

Conclusion

For the foregoing reasons, Appellant respectfully requests that this Court grant his Petition for Review.



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Kyle W. Rodewald

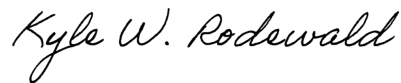
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Appendix

A. *United States v. Williams*, No. 202400331, slip op. (N-M. Ct. Crim. App. Apr. 28, 2026) (unpublished).

Certificate of Filing and Service

I certify that a copy of the foregoing was delivered to the Court and delivered to the Director, Appellate Government Division, at Code46-DAC@us.navy.mil, and to the Deputy Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity, at Joshua.D.Ricafrente.civ@us.navy.mil on July 15, 2026.



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This opinion is subject to administrative correction before final disposition.

United States Navy-Marine Corps Court of Criminal Appeals

Before
DALY, HARRELL, and KORN
Appellate Military Judges

UNITED STATES
Appellee

v.

Troy K. WILLIAMS
Staff Sergeant (E-6), U.S. Marine Corps
Appellant

No. 202400331

Decided: 28 April 2026

Appeal from the United States Navy-Marine Corps Trial Judiciary

Military Judges:
Adam Subervi (arraignment)
Benjamin B. Garcia (motions and trial)

Sentence adjudged 15 March 2024 by a general court-martial tried at Marine Corps Air Station Iwakuni, Japan. Sentence in the Entry of Judgment: confinement for three months, restriction to base for two months, and hard labor without confinement for three months.

For Appellant:
Captain Arthur L. Gaston III, JAGC, USN (on brief)
Captain Kyle W. Rodewald, USMC (argued)

United States v. Williams, NMCCA No. 202400331
Opinion of the Court

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Judge KORN delivered the opinion of the Court, in which Chief Judge DALY and Senior Judge HARRELL joined.¹

**This opinion does not serve as binding precedent but
may be cited as persuasive authority under
NMCCA Rule of Appellate Procedure 30.2.**

KORN, Judge:

A general court-martial composed of members with enlisted representation convicted Appellant of one specification of communicating a threat and one specification of domestic violence in violation of Articles 115 and 128b, Uniform Code of Military Justice (UCMJ).² Appellant was found not guilty of seven other specifications of domestic violence. The members sentenced Appellant to confinement for three months, restriction to base for two months, and hard labor without confinement for three months.

¹ We held oral argument on 18 March 2026 at The Louisiana State University Paul M. Hebert Law Center as part of the Court's outreach program. We are extremely appreciative of the law school graciously hosting and organizing this event. We further commend the efforts of the students at the Veterans Law Clinic, under the supervision of Professors Charlton J. Meginley and John C. Phillips, for their highly professional and effective briefs and outstanding oral arguments.

² 10 U.S.C. §§ 915, 928b.

Appellant raises four assignments of error (AOE), which we renumber as follows:

I. Whether the military judge abused his discretion in admitting hearsay under the residual hearsay exception, Military Rule of Evidence (Mil. R. Evid.) 807.

II. Whether the military judge abused his discretion in admitting excerpts of the complaining witness's interview with NCIS under Mil. R. Evid. 801(d)(1)(B)(i) despite finding she made the statements after her motive to fabricate arose.

III. Whether this Court can conduct a factual sufficiency review where the members returned ambiguous findings.

IV. Whether the evidence is factually sufficient to sustain Appellant's conviction for domestic violence.

We find no prejudicial error and affirm the findings and sentence.

I. BACKGROUND

Appellant was convicted of domestic violence by committing a violent offense against his wife, Dee,³ and of communicating a threat by threatening to kill her. These convictions stemmed from an incident where Appellant became angry that his children were being too loud, and he felt that Dee was not doing enough to quiet them. Appellant eventually grabbed Dee and put his hands around her neck and over her mouth, then threatened to kill her. Two of their children, Sierra and Alice, witnessed this incident.

At trial, Dee testified about the event in question and other charged misconduct. Defense counsel then cross-examined her about her motivations for testifying against Appellant, suggesting that she lied to gain leverage in a divorce and child custody proceeding. Following this cross-examination, the Government offered portions of Dee's interview with the Naval Criminal Investigative Service (NCIS) as prior consistent statements. The military judge admitted this evidence, over Defense objection, under Mil. R. Evid.

³ All names in this opinion, other than those of Appellant, the judges, and counsel, are pseudonyms.

801(d)(1)(B)(i), finding that “it serves to rebut the implied charge” that her testimony was based on “the risk and danger to her custody of her children, to her other outcomes in the divorce proceedings such as alimony and child support.”⁴

The Government called both Sierra and Alice to testify at trial. Both children had great difficulty recalling the events in question, but Alice was able to recall a bit more than her sibling, describing Appellant putting his hand around Dee’s neck.⁵ After Sierra’s and Alice’s testimony, the Government moved to introduce their recorded child forensic interviews (CFI) into evidence under Mil. R. Evid. 807, the residual hearsay exception, to prove that Appellant assaulted his wife and threatened to kill her. Appellant objected to this evidence, and the military judge sustained the objection to Sierra’s CFI but overruled the objection to Alice’s. He found that Alice’s CFI, which occurred when she was four years old, “is more probative of the point that’s offered than any other evidence that the proponent can obtain by reasonable efforts.”⁶

II. DISCUSSION

A. The military judge abused his discretion when he admitted testimony under Mil. R. Evid. 807, but Appellant suffered no prejudice.

1. Standard of Review

Rulings to admit evidence are reviewed for an abuse of discretion.⁷ It is an abuse of discretion when the military judge (1) predicates a ruling on findings of fact that are not supported by the evidence; (2) uses incorrect legal principles; (3) applies correct legal principles to the facts in a way that is clearly unreasonable; or (4) fails to consider important facts.⁸

2. Analysis

Mil. R. Evid. 807 is titled “residual exception.” It allows for the admissibility of hearsay statements “in rare circumstances”⁹ when:

⁴ R. at 1188.

⁵ R. at 1290.

⁶ R. at 1316.

⁷ *United States v. Humpherys*, 57 M.J. 83, 90 (C.A.A.F. 2002) (citing *United States v. Ayala*, 43 M.J. 296, 298 (C.A.A.F. 1995)).

⁸ *United States v. Rudometkin*, 82 M.J. 396, 401 (C.A.A.F. 2022).

⁹ *United States v. Czachorowski*, 66 M.J. 432, 435 (C.A.A.F. 2008).

(1) the statement is supported by sufficient guarantees of trustworthiness—after considering the totality of the circumstances under which it is made and evidence, if any, corroborating the statement; and

(2) the statement is more probative on the point for which it was offered than any other evidence that the proponent can obtain through reasonable efforts.¹⁰

The Government offered Alice’s CFI for two reasons: (1) “to prove the material facts surrounding the charged conduct that occurred on 31 January 2023, specifically that [Appellant] did put his hand around [Dee’s] throat and over [her] mouth and that he stated he wanted to kill . . . [Dee];”¹¹ and (2) because the CFI “provides in more detail the particularity for which [Alice] . . . remembered the incident three days post-event.”¹²

The military judge determined that the first prong of Mil. R. Evid. 807—that the statement was supported by sufficient guarantees of trustworthiness—was satisfied for multiple reasons. These included that Alice provided “a series of significant and probative unprompted statements,”¹³ there was “no notable evidence of coaching . . . and there are some contra indications of coaching,”¹⁴ the interviewer used open-ended questions,¹⁵ and Alice willingly told the interviewer when she didn’t know the answer and corrected him when he misunderstood her.¹⁶ We agree with the military judge and conclude that he did not abuse his discretion in determining that Alice’s CFI was supported by sufficient guarantees of trustworthiness.¹⁷

Appellant argues that the military judge abused his discretion by finding that Alice’s CFI was more probative on the point for which it was offered than any other evidence available to the Government. Specifically, Appellant argues that Dee “testified at length to the material facts in the case and *her* testimony

¹⁰ Mil. R. Evid. 807.

¹¹ App. Ex. X at 20.

¹² R. at 1297–98.

¹³ R. at 1474–75.

¹⁴ R. at 1475.

¹⁵ R. at 1473.

¹⁶ R. at 1474.

¹⁷ Appellant does not challenge this finding on appeal.

was the more probative evidence of those facts than Alice’s out-of-court statements during the interview.”¹⁸ We agree.

The military judge erred in his application of the second prong of Mil. R. Evid. 807, as Alice’s CFI was not more probative on the point for which it was offered than any other evidence that the Government could obtain through reasonable efforts. “The [second] prong may be satisfied where a witness cannot remember material facts and there is *no other more probative evidence of those facts*.”¹⁹ That was not the case here.

Alice provided minimal information in her CFI. The interviewer, the transcriptionist, and this Court all had difficulty understanding her speech. When her statements were intelligible, they offered few details and never provided evidence that hadn’t already been provided in significantly greater particularity through Dee’s testimony. Although Alice provided limited corroboration, at no time did she offer additional context, specificity, or circumstances to Dee’s testimony.

Before the military judge admitted the CFI, Alice testified as a government witness. Her testimony on direct examination takes up approximately two pages in the transcript. She testified that she did not remember her parents arguing but that she remembered Appellant putting his hand around her mother’s neck. Trial counsel asked her no questions about Appellant threatening to kill Dee. Trial counsel was unable to immediately orient Alice to the charged offenses. That was similar, though, to what occurred in the CFI, where Alice was frequently distracted and her answers were difficult to understand, requiring constant clarifying follow-up questions and reorientation. Trial counsel, however, made minimal efforts to focus Alice’s attention on the charged offenses. Because of the limited questions posed to Alice on direct examination, we are not convinced that Alice’s CFI was more probative than her own in-court testimony would have been had trial counsel made the “reasonable efforts” required by Mil. R. Evid. 807 and asked additional questions.

We need not determine whether the military judge abused his discretion by finding that Alice’s CFI provided more probative evidence than her own in-court testimony, however, as the more critical question is whether the CFI was more probative on the point for which it was offered than Dee’s testimony. It was not. Dee testified at length to the material facts about the charged assault and threat, and her testimony produced significantly more probative evidence

¹⁸ Appellant’s Brief at 29 (emphasis in original).

¹⁹ *United States v. Jackson*, 2017 CCA LEXIS 758, at *11 (N-M Ct. Crim. App. Dec. 19, 2017) (unpublished) (internal citations omitted) (emphasis added).

than Alice’s CFI. Although it is true that “[e]ven though residual hearsay may be ‘somewhat cumulative, it may be important in evaluating other evidence and arriving at the truth,’ ”²⁰ Alice’s CFI did not provide significant corroborative evidence due to its limited substance. We agree with Appellant that “[t]he sworn, in-court testimony of [Dee] is far more probative on the question of whether she was assaulted . . . than an unsworn, out-of-court video interview of a child observer who later cannot remember everything while testifying on the stand.”²¹

In determining that Alice’s CFI provided more probative evidence on the point for which it was offered than any other evidence that the Government could obtain, the military judge erred by applying the law to the facts in a way that was clearly unreasonable. We therefore must determine whether that error was materially prejudicial to Appellant’s rights. When a military judge errs in admitting evidence, “the government bears the burden of demonstrating that the admission of that erroneous evidence was harmless.”²² The analysis depends on the strength of the Government and Defense cases and the materiality and quality of the erroneously-admitted evidence.²³ To determine the materiality and quality of the evidence, we assess how much it may have affected the court-martial.²⁴

Both the Government and Defense cases were relatively strong. The Government’s case revolved largely around Dee, who testified credibly about Appellant’s behavior. Some of the incidents about which she testified included corroborating evidence, most notably the altercation on 31 January, which led to an immediate report, officers observing her in a distressed state, and supporting medical documentation. Defense, on the other hand, effectively attacked Dee’s credibility, arguing that she was fabricating the allegations against Appellant to gain leverage in ongoing divorce and custody proceedings. The mixed findings in this case indicate that both sides presented strong cases and Defense’s efforts damaged, but did not destroy, Dee’s credibility.

²⁰ *United States v. Kelley*, 45 M.J. 275, 280 (C.A.A.F. 1996) (quoting *United States v. Shaw*, 824 F.2d 601, 610 (8th Cir. 1987)).

²¹ Appellant’s Reply at 3.

²² *United States v. Finch*, 79 M.J. 389, 398 (C.A.A.F. 2020) (citing *United States v. Frost*, 79 M.J. 104, 111 (C.A.A.F. 2019)).

²³ *United States v. Kerr*, 51 M.J. 401, 405 (C.A.A.F. 1999).

²⁴ See *United States v. Washington*, 80 M.J. 106, 111 (C.A.A.F. 2020).

Turning to the materiality and quality of Alice’s CFI, we conclude that while material, it is not of significant quality. That lack of quality is due primarily to the limited amount of information it contains. Additionally, Alice provided some of that same information during her testimony at trial. Appellant argues that “the erroneous admission of the child forensic interview substantially influenced the findings,”²⁵ and “the Government made [Alice’s CFI] the linchpin of its case.”²⁶ We disagree on both points.

To demonstrate the importance of the evidence, Appellant focuses on how many times trial counsel played clips of it during closing argument (five times). But the frequency with which trial counsel referred to Alice’s CFI during closing argument does not affect the *substance* of the CFI, which was relatively inconsequential. The entire interview lasted less than 30 minutes. Much of the conversation between Alice and the interviewer was unrelated to the charged misconduct, and the majority of what Alice said was very difficult, if not impossible, to understand. There was therefore only a limited amount of the CFI that related to the allegations for which Appellant was convicted. Additionally, Alice had already testified before the members, where she demonstrated Appellant putting his hand around Dee’s throat.

Appellant’s argument that “the Government made [Alice’s CFI] the linchpin of its case” is belied by a review of the record. Although the Government played clips from Alice’s CFI five times throughout the 85-minute closing argument, the combined length of those clips was a mere 82 seconds. Hardly a linchpin, much less an effective one. Furthermore, much of the CFI played during the Government’s closing argument contained nothing of substance at all, instead involving the interviewer questioning Alice or following up in an effort to understand her answers. And regarding the portions of the CFI where the interviewer was speaking, the military judge instructed the members that

[Alice’s] answers are the substantive evidence in the exhibit. What that means is, you must come to your own conclusion about what her statements and answers are. To the extent that . . . [the interviewer’s] questions can inform that, such as when he attempts to restate what she said, and she either agrees or tells him no, you [can] consider his question in interpreting her

²⁵ Appellant’s Brief at 29.

²⁶ Appellant’s Brief at 30.

answer. But . . . you cannot simply adopt or accept his interpretation. His question and the statements are only useful to you to the extent they inform [Alice's] answers and statements.²⁷

Therefore, considering the limited information contained in the CFI, how difficult Alice was to understand, and the way the members were able to consider the interviewer's comments,²⁸ Alice's CFI was of very limited consequence.

Because Alice's CFI contained minimal evidence, some of which came in previously through her testimony, the quality of the erroneously admitted evidence was extremely low. We therefore conclude that although the military judge abused his discretion in admitting Alice's CFI under Mil. R. Evid. 807, that error was harmless because it did not prejudicially influence the court-martial.

B. The military judge did not abuse his discretion in admitting excerpts of Dee's interview with NCIS under Mil. R. Evid. 801(d)(1)(b)(i).

1. Standard of Review

A military judge's decision to admit evidence under Mil. R. Evid. 801(d)(1)(B)(i) is reviewed using the same abuse of discretion analysis that we applied in the previous section.

2. Analysis

Mil. R. Evid. 801(d)(1)(B)(i) provides that a declarant witness's prior consistent out-of-court statement is not hearsay if offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying.²⁹ To be admissible under Mil. R. Evid. 801(d)(1)(B)(i), "the prior statement, admitted as substantive evidence, must precede any motive to fabricate or improper influence that it is offered to rebut."³⁰ "[W]here multiple motives to fabricate . . . are asserted, the statement need not precede all such motives or influences, but only the one it is offered to

²⁷ R. at 1765.

²⁸ See, e.g., *United States v. Baumann*, 54 M.J. 100, 105 (C.A.A.F. 2000) (concluding that an error was harmless in part because the military judge gave "extensive instructions on the proper use" of the evidence).

²⁹ *United States v. Ruiz*, 86 M.J. 75, 80 (C.A.A.F. 2024).

³⁰ *United States v. Ayala*, 81 M.J. 25, 28–29 (C.A.A.F. 2020) (quoting *Frost*, 79 M.J. at 110).

rebut.”³¹ “If the statement occurred after the motive arose, then the declarant’s consistency signifies nothing.”³²

Defense attacked Dee’s credibility on the basis that she had a motive to fabricate the allegations against Appellant to gain an advantage in divorce and custody proceedings. The Government offered portions of Dee’s interview with NCIS as prior consistent statements under the theory that actual divorce proceedings did not start until approximately five months *after* Dee spoke with NCIS (and were initiated by Appellant, not by Dee), so the defense-identified motive to fabricate did not exist at the time of the interview. Defense countered this argument with the contention that the motive to fabricate already existed at the time of the NCIS statement, as Appellant had previously informed his wife of his intention to seek a divorce. The military judge ultimately overruled the Defense objection and admitted the interview portions into evidence, finding that although

[t]he defense presented a central motive arising [before the NCIS interview] where divorce began to be considered and [Dee] began to consider how allegations might affect divorce proceedings. . . . [Her statement to NCIS] serves to rebut the implied charge that improper influences specifically be increased stakes, the risk and danger to her custody of her children, to her other outcomes in the divorce proceedings such as alimony and child support, that it demonstrates that the escalation in the divorce proceedings has not changed the central testimony she’s provided this Court and therefore it does serve to rebut those implied charges under 801(d)(1)(B)(i).³³

Although the military judge described the “escalation” of the original motive to fabricate rather than concluding that the pending proceedings provided

³¹ *Id.* at 29 (quoting *Frost*, 79 M.J. at 110).

³² *Id.*

³³ R. at 1185–88. At oral argument, Appellee disputed Appellant’s contention that the military judge made a finding of fact that Dee’s motive to fabricate began when the topic of divorce first arose prior to the NCIS interview, arguing that the military judge merely recognized—as opposed to finding—that Defense presented evidence that a motive to fabricate existed at that time. We acknowledge that the military judge’s ruling is somewhat ambiguous on this point. However, it appears from our reading of the record that the military judge did intend to make a finding of fact that a motive to fabricate existed in January of 2023 (and then increased as divorce proceedings began). However, since we conclude that the military judge did not abuse his discretion in admitting the prior consistent statement, our ultimate decision would not change even if we agreed with Appellee.

an additional or different motive to fabricate, we agree with his ultimate conclusion. The record establishes that Appellant initially mentioned the word “divorce” during a conversation with Dee in January of 2023. However, there is a substantial difference between the general topic of divorce coming up during a disagreement between spouses and the actual filing for divorce and initiation of a custody dispute. The military judge therefore did not abuse his discretion, as the filing and progressing of divorce proceedings constituted a more recent improper influence than the one that existed when Appellant merely mentioned divorce.

Defense made the ongoing divorce and custody proceedings the cornerstone of its case. We need look no further than Defense’s cross-examination of Dee to confirm how critical the nature of the divorce proceedings *at the time of the court-martial* was to Defense’s theory: “This entire family court matter is pending the outcome of this court-martial, isn’t it?”³⁴ Defense later asked her, “You’re worried that if there’s an acquittal in this trial, that [Appellant] might get custody of the children?”³⁵ Also, in closing argument, Defense told the members, “She’s trying to use all eight of you to get a verdict against her husband so she can take that piece of paper . . . and obtain custody . . . of her children and never see her husband again. . . . [S]he wants to show violence against her children so she can show this to a judge, not this judge, a family court judge.”³⁶

Allowing Appellant to allege that Dee fabricated her testimony to impact the pending divorce and custody proceedings—which had not yet been initiated at the time of her NCIS interview—without allowing the Government to demonstrate that the allegations had remained consistent since before those proceedings began would allow Defense to have its cake and eat it too. For although Appellant argues that “it is the same improper motive—considerations of divorce proceedings—which the military judge found to have arisen in early January 2023,”³⁷ Defense did not cross-examine Dee about “considerations of divorce proceedings.” Instead, Defense zealously cross-examined Dee about how she intended to use the results of the court-martial in her ongoing family court trial. Defense then focused on this motive to fabricate in closing argument, repeatedly telling the members that Dee would immediately use a guilty verdict to attempt to obtain full custody of her children.

³⁴ R. at 884.

³⁵ R. at 934.

³⁶ R. at 1991–93.

³⁷ Appellant’s Brief at 36.

Dee’s NCIS statement preceded the improper influence or motive asserted by Defense—the divorce filing, custody battle, and family court proceeding, which, again, *were initiated by Appellant*. The military judge therefore did not abuse his discretion in finding that the admitted portions of the NCIS statement were admissible under Mil. R. Evid. 801(d)(1)(B)(i) to rebut the express or implied charge that she testified falsely due to a recent improper influence or motive.

Even if the military judge abused his discretion by admitting portions of Dee’s NCIS interview, we would still have to determine whether that error was materially prejudicial to Appellant’s substantial rights. When a military judge errs in allowing evidence to be admitted, the “government bears the burden of demonstrating that the admission of that erroneous evidence was harmless.”³⁸ The analysis depends on the strength of the government and defense cases and the materiality and quality of the erroneously-admitted evidence.³⁹ To determine the materiality and quality of the evidence, we assess how much it may have affected the court-martial.⁴⁰ As analyzed in greater detail with regards to AOE I in the previous section, both the Government and Defense cases were relatively strong, as was reflected by the mixed findings by the members.

Appellant argues that the Government’s case was weak, and “Defense . . . demonstrated through cross-examination that [Dee] had a compelling motive to fabricate that preceded the report of her allegations against Appellant to NCIS.”⁴¹ Appellant further argues that “[T]he Government relied on [Dee’s] emotional NCIS interview to secure Appellant’s conviction.”⁴² But if Appellant is correct that Dee’s motive to fabricate arose in January 2023, then those two statements are inherently contradictory. If Appellant was successful in demonstrating that Dee had a compelling motive to fabricate the allegations against him, then evidence that her in-court testimony was consistent with her NCIS interview, which occurred after Appellant argues that same motive to fabricate arose, would be of no consequence.⁴³ Instead, the NCIS statement would be

³⁸ *Finch*, 79 M.J. at 398 (quoting *Frost*, 79 M.J. at 111).

³⁹ *Kerr*, 51 M.J. at 405.

⁴⁰ *See Washington*, 80 M.J. at 111.

⁴¹ Appellant’s Brief at 30.

⁴² Appellant’s Brief at 38.

⁴³ *See, e.g., United States v. Walker*, 42 M.J. 67, 74 (C.A.A.F. 1995) (concluding that an error was harmless in part because the court was “confident that the members--using their common sense and everyday experiences--placed this evidence in a proper perspective and did not afford it substantial weight”).

entirely cumulative with,⁴⁴ and subject to the same motive-to-fabricate impeachment as, her in-court testimony.

Dee testified at great length about Appellant's abuse and threats. Additionally, the general facts about the two charges for which Appellant was convicted were also corroborated by other admitted evidence. This evidence came in through the testimony of the physician's assistant (PA) who treated Dee at the emergency room and Prosecution Exhibit 21, the medical records associated with that visit. Appellant affirmatively declined to object to this evidence.⁴⁵ According to the PA, Dee

said that she was strangled by her husband twice [on 31 January] Her husband had been upset, he was yelling, he strangled [her], pushed her against the wall threatening to kill both the patient and two of her children, and she had said at one point that one hand was grasping around her neck and lifting her and the other was covering [her] mouth.⁴⁶

The medical records describe Dee reporting

being strangled by her husband twice [on 31 January]. Patient reports her husband got upset . . . prompting yelling and physical aggression . . . patient's husband was strangling the patient Patient was forcefully pushed against the wall on several occasions . . . with verbal attempts threatening to kill the patient . . . one hand grasping patient's neck . . . while the other hand was covering her mouth. . . . This was not the first time this had happened.⁴⁷

Additionally, despite the fact that Dee described many of the charged offenses in her NCIS interview, Appellant was found not guilty of seven of the nine charged specifications. These findings clearly demonstrate that Dee's NCIS statement did not have a significant impact on the verdict, contradicting Appellant's contention that "the Government relied on the complaining witness's emotional NCIS interview to secure Appellant's conviction."⁴⁸

⁴⁴ Cumulative testimony is not automatically inadmissible, but the military judge may exclude relevant evidence if its probative value is substantially outweighed by a danger of needlessly presenting cumulative evidence. Mil. R. Evid. 403.

⁴⁵ R. at 1605.

⁴⁶ R. at 1605–06.

⁴⁷ Pros. Ex. 21 at 1.

⁴⁸ Appellant's Brief at 38.

Although material, the admitted portions of Dee’s NCIS statement were not of significant quality. That limited quality is because, if they were improperly admitted under Mil. R. Evid. 801(d)(1)(B)(i), then the same motive to fabricate existed when Dee spoke with NCIS that existed when Defense effectively cross-examined her at trial. The lack of quality is additionally due to the fact that similar evidence came in without objection from the PA and medical records.⁴⁹ Dee’s NCIS statement therefore did not influence the court-martial, and we conclude that even if the military judge abused his discretion in admitting Dee’s statements under Mil. R. Evid. 801(d)(1)(B)(i), that error was harmless.

C. The findings were not ambiguous, and this Court can conduct a factual sufficiency review.

1. Standard of Review

Whether a verdict is ambiguous, precluding a service court’s factual sufficiency review, is a question of law reviewed de novo.⁵⁰ We cannot conduct a factual sufficiency review of a conviction if “the findings of guilty and not guilty do not disclose the conduct upon which each of them was based.”⁵¹

2. Analysis

Appellant was charged with two similar specifications of domestic violence stemming from two discrete instances that occurred during the altercation on 31 January 2023. The first specification alleged that Appellant committed an assault upon Dee by unlawfully strangling and suffocating her with his hands.⁵² The second specification alleged that Appellant unlawfully strangled Dee with his hands.⁵³ The members found Appellant not guilty of the first specification, but guilty of the lesser included offense of domestic violence by committing a violent offense—assault consummated by a battery—in violation of Article 128b. The members found Appellant not guilty of the second specification.

⁴⁹ See, e.g., *United States v. Hursey*, 55 M.J. 34, 36 (C.A.A.F. 2001) (concluding that an error was harmless in part because the record was replete with similar admissible evidence).

⁵⁰ *United States v. Ross*, 68 M.J. 415, 417 (C.A.A.F. 2010).

⁵¹ *United States v. Walters*, 58 M.J. 391, 397 (C.A.A.F. 2003).

⁵² This was Specification 2 of Charge I on the Charge Sheet.

⁵³ This was Specification 3 of Charge I on the Charge Sheet.

Appellant argues, “The findings in this case are ambiguous because it is not ‘possible to determine which act formed the basis of the finding []’ of guilty and which act formed the basis of the acquittal.”⁵⁴ Appellant further argues that “this ambiguity prevents this Court’s factual sufficiency review.”⁵⁵ We disagree. The findings are unambiguous, and we can conduct a proper factual sufficiency review.

Dee testified unambiguously that Appellant assaulted her two separate times on 31 January 2023. First,

He came into the kitchen and he grabbed me by my neck and started choking me on the wall by the window. . . . He continued to choke me with his hand around my throat and then he put his other hand over my mouth and nose. . . . He, like, squeezed my neck, like, one last time against the wall and then he let me go and he went back into the kitchen.⁵⁶

She also testified that minutes later, Appellant appeared to believe she was preparing to leave the house with the children, and he said “Where the ‘f’ do you think you’re going? You’re not ‘f-ing’ going anywhere.” She said Appellant “grabbed me by my neck and took me back to the - - in the little closet to the wall.”⁵⁷ She further testified that once in the closet, Appellant’s hands were “[o]n my neck. . . . He was choking me on that wall and I was trying to scoot to get away from him.”⁵⁸

It was clear throughout Appellant’s trial that both parties understood the distinction between the two specifications. Appellant moved pretrial for a Bill of Particulars to provide the requisite specificity for certain charges in the case, but notably did not request a Bill of Particulars for the specifications which he now argues resulted in ambiguous findings.⁵⁹ The closing arguments of both parties further demonstrated the lack of confusion about the specifications. Regarding the first specification at issue, trial counsel argued, “And then he saw

⁵⁴ Appellant’s Brief at 46 (quoting *United States v. Stewart*, 71 M.J. 38, 43 (C.A.A.F. 2012)).

⁵⁵ Appellant’s Brief at 47.

⁵⁶ R. at 678–80.

⁵⁷ R. at 682–83.

⁵⁸ R. at 686–87.

⁵⁹ App. Ex. XXIX.

trash on the counter. . . . And he grabbed her by the neck, and he pushed her into the shelf under the stairs . . . after he pushed her into the ledge under the stairs, he also covered her nose and mouth. That’s suffocation.”⁶⁰ Trial counsel later argued about the second specification, “That on 31 January, the last offense he committed that day was one final strangulation on his spouse You know he strangled her in the closet under the stairs because he thought she was going to leave.”⁶¹

It was equally clear from defense counsel’s closing argument that he was able to distinguish between the two charged specifications, as he drew clear distinctions between the factual basis of each: “If he had strangled her in the living room [the first specification], why would he need to take her into the closet [the second specification]? If he already threw her against the wall in front of the children and strangled her in the living room [the first specification] which she’s claiming, why would he need to take her into a closet away from the children [the second specification]?”⁶²

While the two specifications at issue alleged similar conduct and occurred in close temporal and spatial proximity, it is evident that Appellant understood the distinction between them at trial, and we have no difficulty distinguishing between them now. It is clear to us what distinct conduct each specification alleged, and we can discern the specific conduct that formed the basis of Appellant’s conviction from the specific conduct that formed the basis of his acquittal. We therefore conclude that the findings were not ambiguous, and do not preclude a proper factual sufficiency review, which we conduct below.

D. The evidence was factually sufficient to sustain Appellant’s conviction for domestic violence.

1. Standard of Review

This “Court may consider whether a finding of guilty is correct in fact upon request of an appellant who makes a specific showing of a deficiency in proof.”⁶³ If an appellant makes such a showing, this “Court may weigh the evidence and determine controverted questions of fact,” providing “appropriate deference to

⁶⁰ R. at 1967.

⁶¹ R. at 1973–74.

⁶² R. at 2001.

⁶³ Art. 66(d)(1)(B), UCMJ, 10 U.S.C. § 866(d)(1)(B).

the fact that the trial court saw and heard the witnesses and other evidence.”⁶⁴ If this Court is “clearly convinced that the finding of guilty was against the weight of the evidence,” we “may dismiss, set aside, or modify the finding, or affirm a lesser finding.”⁶⁵

2. Analysis

We must first consider whether Appellant has made a specific showing of a deficiency in proof. Appellant asserts the following as a specific deficiency of proof: “[T]he Government presented weak, conflicting, and uncorroborated evidence to support its theory that Appellant did, in fact, unlawfully place his hands on the complaining witness’s neck and her mouth.”⁶⁶ We assume without deciding that Appellant’s attack on the Government’s evidence amounts to a sufficient showing of a deficiency of proof to initiate our factual sufficiency review. We nonetheless find the evidence factually sufficient to sustain Appellant’s conviction for domestic violence.

In order to prove Appellant guilty of the lesser included offense of Specification 2 of Charge I, the Government had to prove beyond a reasonable doubt that: (1) Appellant committed a violent offense; and (2) the violent offense was committed against his spouse, intimate partner, or an immediate family member.⁶⁷ The term “violent offense” includes a violation of assault consummated by a battery under Article 128, UCMJ,⁶⁸ the elements of which are: (a) that the accused did bodily harm to a certain person; (b) that the bodily harm was done unlawfully; and (c) that the bodily harm was done with force or violence.⁶⁹

Appellant argues that his conviction for domestic violence is factually insufficient because Dee lacked credibility, there was insufficient corroboration of her claims, and there was sufficient contradictory evidence to clearly convince this Court that the finding of guilt was against the weight of the evidence. We disagree. Dee credibly and convincingly testified that Appellant grabbed her by the throat, pushed her against a wall, and placed his hand over her

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Appellant’s Brief at 42.

⁶⁷ *Manual for Courts-Martial, United States* (2023 ed.) (*MCM*) pt. IV, para. 78a.b(1).

⁶⁸ *MCM*, pt. IV, para. 78a.c.1.

⁶⁹ *MCM*, pt. IV, para. 77.b(2).

mouth and nose.⁷⁰ She immediately reported the battery to law enforcement officers, who observed her acting “scared and frantic.”⁷¹ She underwent a medical examination, and the treating PA observed bruises on her arm and neck.⁷² Although Appellant demonstrated that Dee had a potential motive to fabricate the allegation against him in order to put her in a better position to gain custody of their children, when viewing the evidence as a whole, we are not “clearly convinced that the finding of guilty was against the weight of the evidence.”⁷³ We therefore find that Appellant’s conviction for domestic violence is factually sufficient.

III. CONCLUSION

After careful consideration of the record, the briefs of appellate counsel, and the oral argument held on 18 March 2025, we have determined that the findings and sentence are correct in law and fact and that no error materially prejudicial to Appellant’s substantial rights occurred.⁷⁴ We note that the Entry of Judgment (EOJ) does not fully comply with R.C.M. 1111(b)(1), as it contains errors in the listing of some of Appellant’s pleas and some of the findings. In accordance with R.C.M. 1111(c)(2), we therefore modify the EOJ and direct that it be included in the record.

The findings and sentence are **AFFIRMED**.



FOR THE COURT:

Mark K. Jamison
MARK K. JAMISON
Clerk of Court

⁷⁰ R. at 678–80.

⁷¹ R. at 1039.

⁷² R. at 1616–17.

⁷³ Article 66(d)(1)(B), UCMJ.

⁷⁴ Articles 59 & 66, UCMJ.

United States Navy-Marine Corps Court of Criminal Appeals

UNITED STATES

v.

Troy K. WILLIAMS
Staff Sergeant (E-6)
U.S. Marine Corps

Accused

NMCCA NO. 202400331

**ENTRY
OF
JUDGMENT**

As Modified on Appeal

28 April 2026

Between 4 March 2024 and 15 March 2024, the Accused was tried at Marine Corps Air Station Iwakuni, Japan, by a general court-martial, consisting of officer and enlisted members. Military Judge Benjamin Garcia presided.

FINDINGS

The following are the Accused's pleas and the Court's findings to all offenses the convening authority referred to trial:

**Charge I: Violation of Article 128b, Uniform Code of Military Justice,
10 U.S.C. § 928b.**

Plea: Not Guilty.

Finding: Guilty.

**Specification 1: In that Staff Sergeant Troy Williams, on active
duty, did, at or near Iwakuni, Japan, on or about
31 January 2023, commit a violent offense
against D.W., the spouse of the accused, to wit:
unlawfully throw a bottle at D.W. that contacted
D.W. on the upper body.**

Plea: Not Guilty.

Finding: Not Guilty.

**Specification 2: In that Staff Sergeant Troy Williams, on active
duty, did, at or near Iwakuni, Japan, on or about**

31 January 2023, commit an assault upon D.W., the spouse of the accused, by unlawfully (a) strangling and (b) suffocating her with his hands.

Plea: Not Guilty.

Finding: Guilty to the Lesser Included Offense of Violent Offense: Assault Consummated by a Battery in violation of Article 128b.

Specification 3: In that Staff Sergeant Troy Williams, on active duty, did, at or near Iwakuni, Japan, on or about 31 January 2023, commit an assault upon D.W., the spouse of the accused, by unlawfully strangling her with his hand.

Plea: Not Guilty.

Finding: Not Guilty.

Specification 4: In that Staff Sergeant Troy Williams, on active duty, did, at or near Iwakuni, Japan, on or about 31 January 2023, commit a violent offense against D.W., the spouse of the accused, to wit: assault D.W. by punching at her with the accused's hand.

Plea: Not Guilty.

Finding: Not Guilty.

Specification 5: In that Staff Sergeant Troy Williams, on active duty, did, at or near Iwakuni, Japan, on or about 27 September 2021, commit an assault upon D.W., the spouse of the accused, by unlawfully strangling her with his hands.

Plea: Not Guilty.

Finding: Not Guilty.

Specification 6: In that Staff Sergeant Troy Williams, on active duty, did, at or near Iwakuni, Japan, on or about 27 September 2021, commit a violent offense against D.W., the spouse of the accused, to wit: assault D.W. by slapping her with the accused's hand.

Plea: Not Guilty.

Finding: Not Guilty.

Specification 7: In that Staff Sergeant Troy Williams, on active duty, did, at or near Iwakuni, Japan, on or about 4 October 2019, commit an assault upon D.W., the spouse of the accused, by unlawfully strangling her with his hands.

Plea: Not Guilty.

Finding: Not Guilty.

Charge II: Violation of Article 115, Uniform Code of Military Justice, 10 U.S.C. § 915.

Plea: Not Guilty.

Finding: Guilty.

Specification: In that Staff Sergeant Troy Williams, on active duty, did, at or near Iwakuni, Japan, on or about 31 January 2023, wrongfully communicate to D.W. a threat, to wit: “I’m going to kill you,” or words to that effect.

Plea: Not Guilty.

Finding: Guilty.

Charge III: Violation of Article 90, Uniform Code of Military Justice, 10 U.S.C. § 890.

Plea: Not Entered.

Finding: Withdrawn and dismissed.

Specification 1: In that Staff Sergeant Troy Williams, on active duty, having received a lawful command from Major T.W.S., his superior commissioned officer, then known by the accused to be his superior commissioned officer, to not initiate contact or communication with A.W., or words to that effect, did, at or near Iwakuni, Japan, on or about 5 March 2023, willfully disobey the same.

Plea: Not Entered.

Finding: Withdrawn and dismissed.

Specification 2: In that Staff Sergeant Troy Williams, on active duty, having received a lawful command from Major T.W.S., his superior commissioned officer, then known by the accused to be his superior commissioned officer, to not initiate contact or communication with D.W., or words to that effect, did, at or near Iwakuni, Japan, on or about 4 March 2023, willfully disobey the same.

Plea: Not Entered.

Finding: Withdrawn and dismissed.

Additional Charge I: Violation of Article 128b, Uniform Code of Military Justice, 10 U.S.C. § 928b.

Plea: Not Guilty.

Finding: Not Guilty.

Specification 1: In that Staff Sergeant Troy Williams, on active duty, at or near Iwakuni, Japan, on or about March 2020, commit a violent offense against An. W., the immediate family member of the accused, to wit: unlawfully hit An. W, on the head with the accused's hand.

Plea: Not Guilty.

Finding: Not Guilty.

Specification 2: In that Staff Sergeant Troy Williams, on active duty, did, at or near Iwakuni, Japan, on or about 26 June 2021, commit an assault upon An. W., the immediate family member of the accused, by unlawfully strangling him with the accused's hand.

Plea: Not Entered.

Finding: Withdrawn and dismissed.

Specification 3: In that Staff Sergeant Troy Williams, on active duty, did, at or near Iwakuni, Japan, on or about 26 June 2021, commit a violent offense against An. W., the immediate family member of the accused, to wit: unlawfully hit An. W. on the body with (a) the accused's hand, and (b) a flip-flop.

Plea: Not Entered.

Finding: Withdrawn and dismissed.

Specification 4: In that Staff Sergeant Troy Williams, on active duty, did, at or near Iwakuni, Japan, on or about 27 September 2021, commit a violent offense against Am. W., the immediate family member of the accused, to wit: unlawfully hit Am. W. on the body with the accused's hands.

Plea: Not Guilty.

Finding: Not Guilty.

Additional Charge II: Violation of Article 119b, Uniform Code of Military Justice, 10 U.S.C. § 919b.

Plea: Not Entered.

Finding: Withdrawn and dismissed.

Specification 1: In that Staff Sergeant Troy Williams, on active duty, at or near Iwakuni, Japan, between on or about 4 October 2019 and 31 January 2023, had a duty of care of An. W., a child under the age of 16 years and did endanger the mental health, physical health, safety and welfare of said child by (a) hitting his mother D.W. in front of him, (b) strangling his mother D.W. in front of him, (c) pushing his mother D.W. in front of him, (d) threatening his mother D.W.'s life in front of him, (e) threatening his life, (f) threatening the lives of his siblings in front of him, (g) hitting him, and (h) strangling him, and that such conduct constituted culpable negligence, which resulted in harm, to wit: mental distress.

Plea: Not Entered.

Finding: Withdrawn and dismissed.

Specification 2: In that Staff Sergeant Troy Williams, on active duty, at or near Iwakuni, Japan, between on or about 4 October 2019 and 31 January 2023, had a duty of care of Am. W., a child under the age of 16 years and did endanger the mental health, physical health, safety and welfare of said child by (a) hitting her mother D.W. in front of her, (b) strangling her mother D.W. in front of her, (c) pushing her mother D.W. in front of her, (d) threatening her mother D.W.'s life in front of her, (e) threatening her life, (f) threatening the lives of her siblings in front of her, and (g) hitting her, and that such conduct constituted culpable negligence, which resulted in harm, to wit: mental distress.

Plea: Not Entered.

Finding: Withdrawn and dismissed.

SENTENCE

On 15 March 2024, members sentenced the Accused to the following:

Confinement for a total of 3 months.

Period and limits of restriction of 2 months restriction to base.

Hard labor for a period of 3 months.

The Accused served 5 days of pretrial confinement and was credited with 5 days of confinement already served, to be deducted from the adjudged sentence to confinement.



FOR THE COURT:

Mark K. Jamison
MARK K. JAMISON
Clerk of Court