

October 6, 2026

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

UNITED STATES,
Appellee,

v.

Julius Vongphachanh,
Airman Basic (E-1), U.S. Air Force,
Appellant.

Crim. App. No. 40741

USCA Dkt. No. 26-0292/AF

SUPPLEMENT TO PETITION FOR GRANT OF REVIEW

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v.	)	
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Julius Vongphachanh,	)	
Airman Basic (E-1)	)	USCA Dkt. No. 26-0292/AF
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<i>Appellant.</i>	)	October 6, 2026

Issues Presented

I.

Should this Court remand a case for a new factual sufficiency review when a Court of Criminal Appeals: (1) acknowledged in a later order that its opinion contains an error that reveals the court overlooked portions of Appellant’s briefs; (2) misconstrued a crucial witness’s testimony; and (3) relied on guilt by association?

II.

Were Appellant’s constitutional rights violated when he was convicted of offenses with no requirement that the court-martial panel (the functional equivalent of the jury) vote unanimously for guilt?¹

Statement of Statutory Jurisdiction

The Air Force Court of Criminal Appeals (AFCCA) had jurisdiction over this case pursuant to Article 66(b)(3), Uniform Code of Military Justice (UCMJ),

¹ Appellant raises this issue for preservation purposes.

10 U.S.C. § 866(b)(3). This Court has jurisdiction under Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3).

Statement of the Case

At a general court-martial tried at Nellis Air Force Base, Nevada, on January 3, April 8 to 10, May 20, and June 17 to 27, 2024, Appellant, Airman Basic Julius Vongphachanh, pled not guilty to all charges and specifications. Trial Tr. 12. A panel of officer and enlisted members found him guilty of one specification of wrongfully and willfully discharging a firearm under circumstances such as to endanger human life and one specification of unlawfully carrying a concealed weapon, both in violation of Article 114, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 914.² Trial Tr. 1687. The panel found him not guilty of one specification of murder in violation of Article 118, UCMJ, 10 U.S.C. § 918, and one specification of manslaughter in violation of Article 119, UCMJ, 10 U.S.C. § 919. Trial Tr. 1687. The military judge sentenced Appellant to a reprimand, a bad-conduct discharge, total forfeiture of pay and allowances, and confinement for a total of 360 days. Trial Tr. 1747–48. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action (July 11, 2024).

² Appellant was convicted of the version of Article 114, UCMJ, as revised by the Military Justice Act of 2016. National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 5426, 130 Stat. 2000, 2948 (2016). The current version of Article 114 is unchanged.

The Air Force Court of Criminal Appeals issued its first opinion on May 29, 2026. Appendix A. That decision affirmed the findings while remanding the record to the convening authority for a new decision on action. Appendix A at 15. The court ordered that the record then be returned to it for completion of appellate review under Article 66, UCMJ, 10 U.S.C. § 866. *Id.*

On June 15, 2026, the convening authority executed a new decision on action, which left the findings and sentence undisturbed. Convening Authority Decision on Action (June 15, 2026).

On June 26, 2026, Appellant filed a timely motion for reconsideration of the Air Force Court's May 29, 2026, decision. On July 29, 2026, the Air Force denied that motion. Appendix B. On August 4, 2026, the Air Force Court issued an opinion affirming the sentence. Appendix C. A copy of the opinion was mailed to Appellant on August 6, 2026. Notification of Mailing. On September 14, 2026, Appellant filed a timely petition for grant of review. *United States v.*

Vongphachanh, __ M.J. __, No. 26-0292/AF, 2026 CAAF LEXIS 784 (C.A.A.F. Sep. 14, 2026). On September 15, 2026, this Court extended Appellant's time to file a supplement to the petition for grant of review until October 7, 2026. *United States v. Vongphachanh*, __ M.J. __, No. 26-0292/AF, 2026 CAAF LEXIS 781 (C.A.A.F. Sep. 15, 2026).

Statement of Facts

A. Appellant was found guilty of unlawfully carrying a concealed weapon.

The Government charged Appellant with four offenses, all arising from a house party in North Las Vegas on or about July 3, 2022. Charge Sheet. A civilian, AM, was shot in the head at the party. Trial Tr. 860–61, 912, 923; Pros. Ex. 9. He later died. Pros. Ex. 16. The court-martial members found Appellant not guilty of murder and manslaughter in connection with AM’s death. Trial Tr. 1687. The members convicted Appellant of one specification of wrongfully and willfully discharging a firearm under circumstances such as to endanger human life and one specification of unlawfully carrying a concealed weapon. *Id.* The latter specification alleged that Appellant “did, at or near Las Vegas, Nevada, on or about 3 July 2022, unlawfully carry on or about his person a concealed weapon, to wit: a handgun.” Charge Sheet, Charge I, Specification 2.

B. The only witness supporting the concealed carry specification was IM-A, whose testimony was limited to responding, “No, I hadn’t, not that night,” when asked, “Did you see a weapon on him?”

At trial, the defense did not dispute that Appellant possessed a pistol on July 3, 2022, and fired two shots at the party. *See, e.g.*, Trial Tr. 1085. During an interrogation by civilian Las Vegas Metropolitan Police Department detectives, Appellant recounted that after gunfire erupted at the party, “I shot in the air.” *Id.* He explained that after hearing a shot, he decided his “best option was to shoot into

the sky” to deter whoever else was shooting. *Id.* at 1086. Appellant’s pistol was a black 9mm Luger semiautomatic with a Polymer80 frame. *Id.* at 1076, 1247; Pros. Ex. 24 at 1; Pros. Ex. 25 at 1; Pros. Ex. 26 at 26.

The only witness who testified to seeing Appellant at the party where the shooting occurred was IM-A, a civilian acquaintance of Appellant’s. IM-A went to the party at issue after attending another party. *Id.* at 946. The party at issue was very crowded, with approximately 100 people jammed into a walled backyard. *Id.* at 909, 948, 977; Def. Ex. F. The yard was not well-lit; attendees described it as “dark.” Trial Tr. 928, 1085. IM-A and Appellant went to the party separately. *Id.* at 948. IM-A drank alcohol before arriving at the party and drank more once there. *Id.* at 977.

During IM-A’s direct examination by the prosecution, the following exchange occurred:

Q. Okay. Did you see Juju [Appellant’s nickname] there?

A. Yes.

Q. Did you see a weapon on him?

A. No, I hadn’t, not that night.

Id. at 948.

Later, during cross-examination, IM-A answered “No” when asked, “Do you know if Airman Basic Vongphachanh had a gun.” *Id.* at 978. IM-A also testified

that his brother, JA-C, did not have a firearm. *Id.* at 977. When the senior defense counsel pressed: “Do you know for a fact he didn’t?,” IM-A answered, “Yes.” *Id.*

IM-A also testified about a fight that broke out at the party. *Id.* at 949–50. IM-A’s brother, JA-C, was one of the combatants. *Id.* at 978. Another witness, WC-Q, testified that at the beginning of that altercation, JA-C brandished a firearm. *Id.* at 888. WC-Q also testified that the area where the fight broke out was particularly dark. *Id.* at 887–89.

During closing argument, the defense would suggest that it was IM-A’s brother, JA-C, who shot and killed AM. *Id.* at 1655–57.

In response to the prosecution’s question about where Appellant was when the fight broke out, IM-A testified that “[h]e was, like, on the side of me, kind of, like behind, but on the side, if that makes sense.” *Id.* at 951. The exchange continued:

Q. . . . So did he – when you were next to the fight, he was there next to you?

A. Yeah.

Q. Now were you two participating in the fight?

A. No. Well I wasn’t.

Q. You weren’t.

A. No.

Q. Okay. Did you see if Juju was participating in the fight?

A. No.

Q. Okay. No you didn't see him or no he wasn't?

A. No I didn't see.

Id.; *see also id.* at 953 (IM-A answering “Yeah” after being asked, “When you were making your way to the gate, you said when the fight started, Juju was right next to you. Is that right? When the fight was going on?”).

A few seconds after the fight began, gunfire erupted in the backyard. *Id.* at 978. IM-A testified that he did not see Appellant once the shooting started. *Id.* at 953.

During the prosecution's case-in-chief, Sergeant (Sgt) AS of the Las Vegas Metropolitan Police Department testified. *Id.* at 1225. Sgt AS's roles included serving as the sergeant of the Concealed Weapons Section. *Id.* Sgt AS testified that a concealed weapons permit, known as a “CCW,” is required to carry a weapon in a manner that is not discernible to the public. *Id.* at 1226. Sgt AS further testified that Appellant was not in a database of individuals to whom the state of Nevada had issued a CCW permit. *Id.* at 1229. He also testified that while Nevada has concealed carry reciprocity with some states, it does not with California. *Id.* at 1228. During his interrogation by Las Vegas Metropolitan Police Department detectives, when asked, “Where are you from,” Appellant responded, “California.” *Id.* at 1038–39.

Sgt AS also testified that Nevada is an open carry state, meaning that “you would not have to possess any type of permit or license to carry a firearm open, which means discernible to the public.” *Id.* When asked whether “open carry could be tucking the barrel of the gun into pants, having the handle exposed,” AS replied, “Yes, as long as part of the weapon is discernible to the public, that would be considered open carry.” *Id.* at 1230. He also testified that to legally “possess a handgun” in Nevada, “you basically have to be 21.” *Id.* at 1232. Appellant turned twenty-one two days before July 3, 2022, the date of the charged offenses. *Id.* at 1447.

The military judge instructed the members that “[t]he carrying of a concealed weapon may be inferred to be unlawful in the absence of evidence to the contrary. However, the drawing of this inference is not required.” *Id.* at 1595; App. Ex. CXXII at 2.

The members found Appellant guilty of carrying a concealed weapon, as well as wrongfully and willfully discharging a firearm under circumstances such as to endanger human life. Trial Tr. 1687.

C. Before the lower court, Appellant argued that the prosecution failed to prove beyond a reasonable doubt that he did not have lawful authority to carry a concealed weapon.

On appeal to the Air Force Court, Appellant challenged the factual sufficiency of the evidence supporting the carrying a concealed weapon specification. Appellant's Br., Assignment of Error I.³ Appellant's brief observed that the only evidence the prosecution produced to support the finding of guilty to that specification was the testimony of IM-A. *Id.* at 10. Appellant's brief challenged IM-A's credibility, noting that he testified that his brother was not armed at the party while another witness credibly testified that he was. *Id.* at 11 (citing Trial Tr. 977, 888). The brief also argued that even if IM-A had been a credible witness, his testimony would still be insufficient to prove beyond a reasonable doubt that Appellant was carrying a concealed weapon for at least three reasons. *Id.* at 11–12.

First, the party was dark and it was especially dark in the part of the backyard where, according to IM-A's testimony, he saw Appellant. *Id.* at 12 (citing Trial Tr. 881, 887–89, 928, 1085). He might not have seen the weapon on Appellant because of the darkness, especially since the pistol Appellant was

³ Because both findings of guilty were for offenses allegedly committed on or about July 3, 2022, the applicable statutory provision governing the factual sufficiency review was Article 66(d)(1)(B), UCMJ, as enacted by section 542(b) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. Pub. L. No. 116-283, 134 Stat. 3388, 3612–13 (2021).

carrying was black and fairly small. *Id.* (citing Pros. Ex. 26 at 26). Based on Prosecution Exhibit 26, the pistol's slide was less than eight inches long and the top of the slide to the bottom of the magazine well was approximately five inches:



Pros. Ex. 26 at 26. Appellant's reply brief noted that the Polymer80 pistol grip—the portion of a pistol most likely to be visible to the public when the weapon is carried openly—appears to be made of a non-reflective black synthetic substance, which would be particularly difficult to see in a dark area. Appellant's Reply Br. at 2. The black pistol grip would be even more difficult to see if worn in front of a

dark-colored shirt; in a photograph taken about two hours after the party, Appellant was wearing a dark-colored shirt. *Id.* (citing Pros. Ex. 15; Trial Tr. 1182).

Appellant's opening brief argued, "Due to the party venue's darkness and the firearm's color and size, there is more than a 'real possibility' that IM-A would not have noticed the black pistol even if some or all of it was uncovered." Appellant's Br. at 12 (quoting *United States v. Meeks*, 41 M.J. 150, 157 n.2 (C.M.A. 1994) (approvingly citing Federal Judicial Center, Pattern Criminal Jury Instructions 17–18 (1987); *United States v. McClour*, 76 M.J. 23, 26 (C.A.A.F. 2017))).

Second, Appellant's brief argued that the prosecution failed to establish IM-A's opportunity to observe Appellant. Appellant's Br. at 13. IM-A and Appellant did not travel to the party together. *Id.* (citing Trial Tr. 948). IM-A testified that when the fight broke out, Appellant "was, like, on the side of me, kind of, like behind, but on the side." Trial Tr. 951. Appellant's brief argued that was "hardly a vantage point from which IM-A would have had a 360-degree view of Appellant's torso. Yet that is the only information the prosecution elicited concerning IM-A's proximity to Appellant." Appellant's Br. at 13. Additionally, Appellant's brief observed that the prosecution failed to establish how long IM-A saw Appellant at the party, what portions of Appellant's body were visible to IM-A in the crowded backyard, and what the lighting conditions were when IM-A saw Appellant in the dark backyard. *Id.* Appellant's brief continued, "IM-A's testimony

would be consistent with catching a mere glimpse of Appellant's face immediately before the fight broke out. The responsibility for the negligible evidence concerning IM-A's observation of Appellant lies entirely with the prosecution." *Id.*

Third, Appellant's brief observed that IM-A testified that he drank alcohol at the party he attended before the party at issue and continued to drink at the party at issue. *Id.* (citing Trial Tr. 977). Appellant's brief argued that IM-A's "alcohol intake probably affected his ability to perceive and accurately remember what he perceived." *Id.*

In addition to challenging the finding of guilty based on the limitations of IM-A's testimony, Appellant's brief argued that "the prosecution also failed to prove beyond a reasonable doubt that the manner in which Appellant carried the pistol was unlawful." *Id.* at 14. The brief observed that Sgt AS of the Las Vegas Metropolitan Police Department testified that it was lawful in Nevada for a twenty-one-year-old to carry a handgun "as long as part of the weapon is discernible to the public." *Id.* (quoting Trial Tr. 1230). The brief argued that "IM-A's testimony does not establish beyond a reasonable doubt that no part of the pistol Appellant carried was discernible to the public." *Id.*

While addressing another assignment of error, Appellant's opening brief observed that Sgt AS "noted that Nevada has reciprocity with some jurisdictions concerning concealed carry permits." Appellant's Br. at 19 (citing Trial Tr. 1228).

Although the prosecution emphasized that California was not a state to which Nevada granted reciprocity, “no mention was made of the other 48 states, the District of Columbia, or U.S. territories.” *Id.* The brief concluded, “The mere fact that Appellant answered the question, ‘Where are you from,’ with ‘California’ is hardly sufficient to prove that he never established legal residence in another state.” *Id.* (internal footnote omitted) (quoting Trial Tr. 1038–39).

In its brief before the lower court, the Government asserted, “The prosecution presented evidence that Appellant did not obtain the required CCW permit.” Gov’t Br. at 6 (citing Trial Tr. 1228–29). Later in its brief, the Government argued that “the prosecution admitted evidence to prove the element of unlawfulness.” *Id.* The Government elaborated that Sgt AS “testified that he accessed a database to determine if Appellant had a CCW permit in other states and found no valid permit.” *Id.* (citing Trial Tr. 1228–29). The Government had previously written that “[i]f Appellant had a CCW permit in another state, SA [sic] would have found Appellant’s name in the databases.” *Id.* at 5 (citing Trial Tr. 1229).

An entire subsection of the reply brief’s factual insufficiency challenge argued that “[e]ven assuming *arguendo* that the prosecution proved beyond a

reasonable doubt that Appellant carried a concealed weapon on 2 July 2022,^[4] it failed to prove beyond a reasonable doubt that the carrying was unlawful.”

Appellant’s Reply Br. at 5–7. That subsection asserted that “the testimony of Sergeant AS of the Las Vegas Metropolitan Police Department creates a ‘real possibility’ that Appellant had a permit to carry a concealed weapon from another jurisdiction to which Nevada extends reciprocity.” *Id.* at 6. The subsection continued, “Sergeant AS’s duties included supervising the department’s concealed weapons section.” *Id.* (citing Trial Tr. 1225–26). He answered affirmatively when asked whether Nevada has “reciprocity with another state, if someone has a [permit to carry a concealed weapon] in another state.” *Id.* (citing Trial Tr. 1228). Although Sgt AS testified that Nevada does not have reciprocity with California, he was not asked about reciprocity with any other state and he offered no additional information about reciprocity with any other state. *Id.* (citing Trial Tr. 1265). After Sgt AS testified about two databases his section used to check whether an individual has or had a concealed carry permit, the trial counsel asked, “And in these databases, can you see if someone had applied for a CCW from another state?” *Id.* (quoting Trial Tr. 1228). Sgt AS answered, “From another state? We

⁴ While the charge sheet alleged that each offense occurred “on or about 3 July 2022,” the party where the shooting occurred began on the evening of 2 July 2022. *See, e.g.*, Pros. Ex. 2. The shootings occurred shortly after midnight, in the early morning of 3 July 2022. Trial Tr. 993.

would possibly be able to see that in [the Shared Computer Operations for Protection and Enforcement database], but generally no, we cannot.” *Id.* at 6–7 (quoting Trial Tr. 1228).

The subsection of Appellant’s reply brief addressing factual insufficiency concluded, “Based on the actual evidence at Appellant’s trial, the prosecution failed to prove beyond a reasonable doubt that, even if the weapon was concealed, such concealment was unlawful because the prosecution failed to prove the absence of a concealed carry permit from a jurisdiction to which Nevada extended reciprocity.” *Id.*

D. The lower court’s opinion affirming the carrying a concealed weapon conviction erroneously stated that Appellant had not argued on appeal that the prosecution failed to disprove that he was lawfully entitled to carry a concealed weapon.

The Air Force Court held that the evidence supporting the carrying a concealed weapon specification was factually sufficient. Appendix A at 6–7. The opinion for the court was written by Chief Judge Johnson and joined by Judges McCall and Kubler. *Id.* at 1.

The first paragraph of the court’s factual sufficiency analysis includes a statement that “[o]n appeal, Appellant does not suggest the Government failed to disprove he was lawfully entitled to carry a concealed weapon on the night in question.” *Id.* at 6. In fact, both Appellant’s opening and reply briefs had challenged whether the evidence disproved that he was lawfully entitled to carry a

concealed weapon. Appellant's Br. at 19; Appellant's Reply Br. at 5–7. On reconsideration, the Air Force Court would later concede that Appellant had made such an argument, although the court declined to reconsider its opinion based on that acknowledged error. Appendix B at 1.

The Air Force Court's first opinion agreed with Appellant's position that IM-A was the only witness who testified that he saw Appellant at the party. Appendix A at 1. Initially, the court found that it was "appropriate" to give "some deference" to the members' determination that "Appellant did carry his weapon concealed." *Id.* The court also found "credible" IM-A's supposed testimony "that Appellant was at the party and not openly carrying his handgun." *Id.* at 6–7. The court noted the party host's testimony that she asked her boyfriend to check guests' bags and purses for guns while acknowledging that the boyfriend "discontinued these inspections." *Id.* at 7. The court also noted text messages between Appellant and one of his friends indicating that they anticipated a possible confrontation that night with the individual who was killed at the party. *Id.* The court concluded, "Moreover, WC-Q's testimony indicated 'Jay' [JA-C] and 'Ace' [CE] were keeping guns hidden under their shirts until they approached AM. It stands to reason their friend, Appellant, would have also kept his weapon concealed, at least for some period of time, for similar motivations." *Id.*

E. On reconsideration, the lower court acknowledged its error but declined to correct it.

Appellant moved for reconsideration. Appellant's Motion for Reconsideration. The motion first argued that the Air Force Court's opinion misconstrued IM-A's testimony. The opinion stated that IM-A testified "that Appellant was at the party and not openly carrying his handgun." *Id.* at 3 (quoting Appendix A at 6–7). The reconsideration motion argued that IM-A actually merely responded "[n]o" when asked, "Did you see a weapon on him." Trial Tr. 948. Appellant's reconsideration motion discussed the difference between the testimony as described by the Air Force Court that Appellant was "not openly carrying his handgun" and the actual testimony that IM-A did not see a weapon on Appellant. Appellant's Motion to Reconsider at 3–4.

The reconsideration motion noted that the host's boyfriend checked bags for weapons for only "maybe like an hour" of the party, which started at 9 p.m. (the shooting occurred after midnight, Trial Tr. 993) and that the boyfriend did not recognize Appellant when he was pointed out in the courtroom. Appellant's Motion to Reconsider at 4 (citing Trial Tr. 868; Pros. Ex. 3).

The reconsideration motion also objected to the Air Force Court's reasoning that Appellant must have concealed his handgun because two of his friends concealed theirs, arguing that the Air Force Court's reasoning constituted impermissible guilt by association. *Id.* at 5.

Finally, the reconsideration motion demonstrated that while the Air Force Court’s opinion claimed that Appellant had not “suggest[ed] the Government failed to disprove he was lawfully entitled to carry a concealed weapon on the night in question,” in fact, Appellant’s briefs had made precisely such an argument. *Id.* The reconsideration motion argued that the mistaken claim that Appellant had not raised that issue was particularly significant because “[w]hile the evidence indicated that Nevada does not have reciprocity with California, [Trial Tr. 1256], no evidence was presented at trial concerning reciprocity with any other state. Nor did the evidence establish that Appellant did not have a concealed weapons permit from some other state.” *Id.* at 6.

The Air Force Court denied reconsideration. Appendix B. The original opinion’s author—Chief Judge Johnson—was no longer on the panel. Senior Judge Douglas joined Judges McCall and Kubler in ruling on the motion. *Id.*

The court’s order expressly “acknowledge[d] that on appeal Appellant did assert that the Government failed to disprove he was lawfully entitled to carry a weapon.” *Id.* Nevertheless, the court held that the original opinion’s erroneous statement that Appellant had made no such argument “does not warrant reconsideration of the court’s 29 May 2026 holding.” *Id.* The court claimed, “During the Article 66(d), UCMJ, review of Appellant’s case, the court fully

considered the factual sufficiency of Specification 2 of Charge I, to include the element that the carrying was unlawful.” *Id.*

REASONS TO GRANT REVIEW

Issue I

This Court should grant review to remand the case for a new factual sufficiency review that does not suffer from the irregularities of the first review.

Introduction

The lower court’s opinion rejecting Appellant’s factual sufficiency review includes a clear error. Despite acknowledging that error, the court refused to reconsider its opinion. The lower court implausibly claimed that it considered a specific challenge to the concealed carry conviction even though the court erroneously believed Appellant never raised that particular challenge. And even if the lower court did consider that challenge when it affirmed the findings, it ignored Appellant’s briefing while considering the issue. The implication of this error and its subsequent acknowledgement is clear: the Air Force Court overlooked portions of Appellant’s briefs. Deciding an issue while obviously having failed to read a party’s brief on the very subject does not comport with a criminal accused’s due process rights to be heard and to receive a meaningful appeal.

Even apart from the court’s acknowledged error, the lower court’s factual sufficiency analysis should be reversed. Its reasoning relied on guilt by association,

which this Court has called “a principle alien to American standards of justice.” *United States v. Jacobs*, 1 C.M.A. 209, 211 (1952). Moreover, the lower court abused its discretion by misinterpreting and mischaracterizing the testimony of the only witness who testified to seeing Appellant at the site of the alleged concealed carry offense.

Factual sufficiency review is a unique and vital protection for a military accused. As this Court has observed, it helps offset a military accused’s lack of a core constitutional right enjoyed by criminal defendants in every other U.S. state and federal court: the right to be convicted only upon a unanimous verdict. *United States v. Anderson*, 83 M.J. 291, 299 (C.A.A.F. 2023), *cert. denied*, 144 S. Ct. 1003 (2024). The irregularities in the lower court’s consideration of Appellant’s factual sufficiency challenge deprived Appellant of that hallmark protection. This Court should grant Appellant’s petition and remand the case for a proper factual sufficiency review.

Standards of Review

The standard for granting review of an issue that an accused raises before this Court is good cause shown. Art. 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3). This Court reviews a Court of Criminal Appeals’ application of Article 66(d)(1)(B), UCMJ, for abuse of discretion. *United States v. Csiti*, 85 M.J. 414, 420 (C.A.A.F. 2025).

Analysis

- A. Review is warranted where a Court of Criminal Appeals makes an acknowledged mistake in its factual sufficiency review and that mistake demonstrates the court overlooked portions of the appellant’s briefs.**

The Air Force Court admitted that its resolution of Appellant’s factual sufficiency challenge includes an erroneous statement. Appendix B at 1. The decision claimed that Appellant did “not suggest the Government failed to disprove he was lawfully entitled to carry a concealed weapon on the night in question” when, in fact, he had. *Contrast* Appendix A at 6, *with* Appellant’s Br. at 19; Appellant’s Reply Br. at 5–7. Despite acknowledging that error, the Air Force Court refused to reconsider its original opinion and instead left that known mistake in place. That choice compares poorly with other courts’ practice of correcting opinions upon the discovery of an error, even if not outcome-determinative. *See, e.g., Kennedy v. Louisiana*, 554 U.S. 407, *modified on denial of reh’g*, 554 U.S. 945 (2008); Andrew D. Hurwitz, *When Judges Err: Is Confession Good for the Soul?*, 56 ARIZ. L. REV. 343, 346 (2014) (noting Ninth Circuit’s practice of responding to its “goofs” by issuing an amended disposition). This Court has granted petitions to correct far less serious mistakes.⁵

⁵ *E.g., United States v. Rodriguez*, __ M.J. __, No. 26-0197/AR, 2026 CAAF LEXIS 623 (C.A.A.F. July 27, 2026) (mem.) (granting review and directing “that a corrected decision reflecting the correct appellate counsel representation be

What occurred here was no mere scrivener's error. Rather, the Air Force Court's mistake impeached its factual sufficiency review. Initially, the reconsideration denial order's claim that "the court fully considered the factual sufficiency of Specification 2 of Charge I, to include the element that the carrying was unlawful" is implausible. The original opinion's author, then-Chief Judge Johnson, did not believe that a Court of Criminal Appeals had the power to review a factual sufficiency challenge that an appellant did not raise. *United States v. Slayton*, No. ACM 40583, 2025 CCA LEXIS 427, at *37 & *37 n.6 (A.F. Ct. Crim. App. Sep. 8, 2025) (Johnson, C.J., dissenting in part/concurring in part), *certificate for review filed*, 86 M.J. 460 (2025). Although this Court held otherwise in *United States v. Hunt*, __ M.J. __, No. 25-0257, 2026 CAAF LEXIS 661 (C.A.A.F. Aug. 6, 2026), the Air Force Court announced its original opinion in this case more than two months before this Court issued its *Hunt* opinion.

issued"); *United States v. Knopik*, 77 M.J. 128 (C.A.A.F. 2017) (mem.) (granting review and directing "that the decision of the United States Army Court of Criminal Appeals be corrected to reflect Appellant's middle initial as 'A' vice 'E.'"); *United States v. Smedley*, 75 M.J. 5 (C.A.A.F. 2015) (mem.) (granting review and directing "that the court-martial promulgating order be corrected to change 'The Additional Charge' to 'The Charge' and to correct the spelling of the word, 'plea' with respect to the specification of the charge."); *United States v. Caldwell*, 71 M.J. 165 (C.A.A.F. 2012) (mem.) (granting review and directing that "the date of the United States Army Court of Criminal Appeals decision be corrected to 5 January 2012"). It is not apparent how those corrections were to be made without a remand returning the record to the relevant Court of Criminal Appeals.

After expressly noting (albeit erroneously) that “Appellant does not suggest the Government failed to disprove he was lawfully entitled to carry a concealed weapon on the night in question,” the original opinion offered no analysis of that issue. Appendix A at 6. On the other hand, the opinion discussed at some length what Chief Judge Johnson erroneously believed to be Appellant’s only factual sufficiency challenge: that “the Government introduced insufficient evidence the handgun was concealed.” *Id.* Given Chief Judge Johnson’s view that a Court of Criminal Appeals may not “set aside a conviction as factually insufficient on a specific basis not asserted by the appellant,” it would be strange if he nevertheless considered a basis for factual insufficiency that he believed Appellant did not assert. *Slayton*, 2025 CCA LEXIS 427, at *37 n.6

It would be inappropriate for Appellant to forfeit a complete factual sufficiency review based on guesswork that Chief Judge Johnson considered Appellant’s case in a manner inconsistent with his own view of the statutory limitations on a Court of Criminal Appeals’ factual sufficiency authority. As this Court observed in *United States v. Jenkins*, “the fact that Appellant received some of what he was entitled to does not mean that he received all to which he was entitled. The lower court’s opinion indicates that he did not.” 60 M.J. 27, 30 (C.A.A.F. 2004) (reversing Navy-Marine Corps Court of Criminal Appeals’

decision that “replicates large portions of the statement of facts, analysis, and conclusions of law from the Government’s Answer”).

It appears that the lower court failed to consider Appellant’s challenge to the factual sufficiency of the evidence supporting the unlawfulness element of the concealed carry specification; it is *certain* that not merely Chief Judge Johnson, but every judge on the original panel overlooked portions of Appellant’s briefs while deciding this case. Obviously, no judge would have joined Chief Judge Johnson’s opinion knowing it contained a mistake—which a judge would have known had the judge read all of Appellant’s briefs.

The lower court’s mistaken assertion, its refusal to correct that mistake despite acknowledging it, and the disturbing implications of that mistaken assertion concerning the lower court’s consideration of Appellant’s briefs “so far departed from the accepted and usual course of judicial proceedings . . . as to warrant review by the Court.” C.A.A.F. R. 21(b)(5)(F).

Although appellate review of criminal convictions is not constitutionally required, where a criminal justice system uses appellate courts as an integral part of the system for finally adjudicating guilt or innocence, “the procedures used in deciding appeals must comport with the demands of the Due Process [Clause].” *Evitts v. Lucey*, 469 U.S. 387, 393 (1985). “The fundamental requisite of due process of law is the opportunity to be heard.” *Grannis v. Ordean*, 234 U.S. 385,

394 (1914). That opportunity “must be granted . . . in a meaningful manner.” *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). An appeal must be more than a “meaningless ritual.” *Evitts*, 469 U.S. at 394 (quoting *Douglas v. California*, 372 U.S. 353, 358 (1963)). Yet the Air Force Court engaged in a practice verging on a meaningless ritual by deciding Appellant’s case without actually considering portions of his briefs.

The lower court’s error prejudiced Appellant. In *Jenkins*, this Court noted that “Article 66(c) review is a substantial right. It follows that in the absence of such a complete review, Appellant has suffered material prejudice to a substantial right.” 60 M.J. at 30. The same is true of Article 66(d) review today. Indeed, what occurred here is worse than what occurred in *Jenkins*, where a Court of Criminal Appeals cut and pasted portions of the government’s brief into its opinion.

The record presented grounds for overturning the finding of guilty to the concealed carry specification. Sgt AS’s testimony establishes a “real possibility” that Appellant had a permit to carry a concealed weapon from another jurisdiction to which Nevada extends reciprocity. Sgt AS answered affirmatively when asked whether Nevada has “reciprocity with another state, if someone has a CCW in another state.” Trial Tr. at 1228. He stated that Nevada does not have reciprocity with California, *id.*, but he was neither asked nor provided information about reciprocity with the other 48 states, the District of Columbia, or U.S. territories.

Significantly, many states issue concealed carry permits to non-residents. *See* Non Resident Permits/Licenses, Handgunlaw.us, July 9, 2026, <https://handgunlaw.us/documents/NonResidentPermits.pdf>.

For example, Arizona—a short distance from where Appellant was stationed—will issue a concealed carry permit to non-residents. Ariz. Rev. Stat. § 13-3112 (LexisNexis 2026). Particularly significantly, Arizona will issue such a permit to a military member who is at least 19 years old. *Id.*, § 13-3112.E.2. It was not Appellant’s burden at trial to prove that he had a permit from another state that allowed him to carry a concealed weapon in Nevada. Rather, it was the prosecution’s burden to prove he did not. The prosecution’s cursory presentation of evidence concerning whether Appellant possessed an out-of-state permit that would be recognized in Nevada failed to carry that burden. But the Air Force Court’s consideration of that issue was at best faulty and at worst non-existent. For the reasons discussed above, the latter is more likely.

Just as it did in *Jenkins*, this Court should grant review and ultimately remand Appellant’s case “for a new Article 66[(d)] review before a panel comprised of judges who have not previously participated in this case.” *Id.*

B. Review is warranted where a Court of Criminal Appeals’ factual sufficiency analysis misconstrues a key witness’s testimony.

In rejecting Appellant’s argument that the evidence failed to prove beyond a reasonable doubt that no portion of Appellant’s handgun was visible at the party,

the lower court misconstrued IM-A's testimony. The opinion stated that IM-A testified "that Appellant was at the party and not openly carrying his handgun." Appendix A at 6. But IM-A did not testify that Appellant did not openly carry his handgun. Rather, he answered "No, I hadn't, not that night," when asked, "Did you see a weapon on him?" Trial Tr. 948. The prosecution failed to clarify with IM-A his opportunity to observe Appellant and the extent to which it was probable that he would have seen a handgun if Appellant carried it openly. Thus, the prosecution, as the party bearing the burden of proof, failed to disprove the reasonable possibility that Appellant was openly carrying his handgun but IM-A did not see it.

The following hypothetical demonstrates the opinion's misconstruction of IM-A's testimony. Hypothesize that IM-A had been asked, "Did you see if Appellant's eyes were blue?" and IM-A responded, "No." That could hardly be characterized as IM-A testifying that Appellant's eyes were not blue—much less proving beyond a reasonable doubt that his eyes were not blue. That testimony would be just as consistent with IM-A not noticing the color of Appellant's eyes. Here, IM-A's testimony is consistent with not noticing the areas of Appellant's body where he might openly carry a firearm, such as Appellant's waist.

A court abuses its discretion "if it based its ruling . . . on a clearly erroneous assessment of the evidence." *Highmark Inc. v. Allcare Health Mgmt. Sys.*, 572 U.S. 559, 565 n.2 (2014) (quoting *Cooter & Gell v. Hartmax Corp.*, 496 U.S. 384, 405

(1990)). That occurred here, where the lower court's assessment of IM-A's testimony was clearly erroneous. That error prejudiced Appellant's substantial rights.

IM-A's testimony establishes only that he saw Appellant at a crowded party, that Appellant was to his side in a particularly dark area in the backyard, and that IM-A did not notice a fairly small flat-black handgun while Appellant was wearing a dark shirt. The evidence establishes that at the only point IM-A testified to seeing Appellant, Appellant was situated to IM-A's side and a bit behind him. Trial Tr. 951, 958. While they were so positioned, if Appellant was on IM-A's right side, facing the same direction as IM-A, and wearing his handgun openly on his right hip, IM-A would almost certainly not have seen it. Amid the crowded party, the evidence does not even establish whether IM-A saw any portion of Appellant's body other than, presumably, his face. That is not proof beyond a reasonable doubt.

Without the misconstruction of IM-A's testimony as a statement that Appellant was "not openly carrying his handgun," Appendix A at 6, the evidence would have been factually insufficient to support the finding of guilty to the concealed carry specification. Evidence that two *other* individuals carried concealed firearms at the party is hardly proof beyond a reasonable doubt that Appellant did so as well. *See id.* at 7.

Nor does evidence that the host's boyfriend checked for weapons at the party's entry point for a limited portion of the evening constitute proof beyond a reasonable doubt that Appellant concealed his firearm. *See id.* According to the host, her boyfriend sporadically checked bags of those arriving for "maybe like an hour" of a party that started at 9 p.m. and lasted past midnight. Trial Tr. 868; Pros. Ex. 3. When Appellant was pointed out to him in the courtroom, the boyfriend testified that he did not know him. Trial Tr. 938. There is no reason to assume that Appellant arrived at the party during one of the interludes during which the boyfriend was checking bags; in fact, the odds are against it. Thus, not only did the lower court abuse its discretion by misconstruing IM-A's testimony, that misconception prejudiced Appellant's substantial rights. It may have been the difference between affirmance and reversal.

C. Review is warranted where a Court of Criminal Appeals' factual sufficiency analysis relies on guilt by association.

The lower court also abused its discretion by relying on guilt by association to uphold the concealed carry conviction. The court reasoned that "WC-Q's testimony indicated [Appellant's friends] 'Jay' [JA-C] and 'Ace' [CE] were keeping guns hidden under their shirts until they approached AM. It stands to reason their friend, Appellant, would have also kept his weapon concealed, at least for some period of time, for similar motivations." Appendix A at 7.

JA-C and CE carrying their firearms in a concealed manner is not legitimate evidence that Appellant carried his handgun in a concealed manner. WC-Q expressly testified that Appellant was *not* with JA-C and CE when they lifted their shirts to show that they were armed. Trial Tr. 904; *see also id.* at 871–72. Leaping to the conclusion that Appellant carried his pistol in a concealed manner because JA-C and CE concealed their firearms is guilt by association, which this Court has aptly called “a principle alien to American standards of justice.” *Jacobs*, 1 C.M.A. at 211. Granting review would be appropriate if for no other reason than to correct the Air Force Court’s departure “from the accepted and usual course of judicial proceedings” by relying on guilt by association. C.A.A.F. R. 21(b)(5)(F).

Conclusion

For the foregoing reasons, this Court should grant review of Issue I.

Issue II

This Court should reassess its holding in *United States v. Anderson*.⁶

Additional Facts

The defense moved to require that any finding of guilty be by a unanimous vote. App. Ex. XXV; Trial Tr. 17. The prosecution opposed the motion. App. Ex. XXVI; Trial Tr. 17. The military judge denied it. Trial Tr. 320–21.

⁶ *United States v. Anderson*, 83 M.J. 291 (C.A.A.F. 2023), *cert. denied*, 144 S. Ct. 1003 (2024).

During the prosecution’s closing argument, the special trial counsel erroneously informed the members, “It requires two-thirds to convict.” *Id.* at 1637.

The military judge subsequently instructed the members:

The concurrence of at least three-fourths of the members present when the vote is taken is required for any finding of guilty, but since we have eight members, that means six members must concur in any finding of guilty. If you have at least six votes of guilty of any offense then that will result in a finding of guilty for that offense.

Id. at 1663 (paragraph break omitted).

The members found Appellant guilty of Charge I and its two specifications.

Id. at 1687. It is unknown and unknowable whether the conviction for each specification was based on a vote of 6-2, 7-1, or 8-0.

In his appeal to the Air Force Court, Appellant challenged the military judge’s instructions permitting the members to find Appellant guilty by a non-unanimous vote. Appellant’s Br., Assignment of Error V. Citing *Anderson*, the Air Force Court held that this issue “does not warrant discussion or relief.” Appendix A at 2.

Standards of Review

The standard for granting review of an issue that an accused raises before this Court is good cause shown. UCMJ art. 67(a)(3), 10 U.S.C. § 867(a)(3).

This Court reviews issues of constitutional law de novo. *United States v. Castillo*, 74 M.J. 160, 165 (C.A.A.F. 2015).

Analysis

Appellant raises this issue for preservation purposes.

Respectfully Submitted,

/s/



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Certificate of Compliance

1. This supplement complies with the type-volume limitation of Rule 21(b) because it contains 7,195 words excluding the index, table of cases, appendix, and certificates of counsel.
2. This supplement complies with the typeface and type style requirements of Rule 37 because it has been prepared in Times New Roman font, using 14-point type with one-inch margins.



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Certificate of Filing and Service

I certify that the foregoing was electronically filed with the Court and served on the Air Force Government Trial and Appellate Operations Division at af.jajg.afloa.filing.workflow@us.af.mil on October 6, 2026.

A handwritten signature in black ink, appearing to read "Dwight H. Sullivan".

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APPENDIX A

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

No. ACM 40741

UNITED STATES

Appellee

v.

Julius VONGPHACHANH

Airman Basic (E-1), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary

Decided 29 May 2026

Military Judge: Tiny L. Bowman (pretrial motion); Matthew P. Stoffel (arraignment and pretrial motions); Joshua D. Rosen (trial).

Sentence: Sentence adjudged 27 June 2024 by GCM convened at Nellis Air Force Base, Nevada, and the Municipal Courthouse in North Las Vegas, Nevada. Sentence entered by military judge on 22 July 2024: Bad-conduct discharge, confinement for 360 days, forfeiture of all pay and allowances, and a reprimand.

For Appellant: Captain Joyclin N. Webster, USAF; Dwight H. Sullivan, Esquire.

For Appellee: Colonel Matthew D. Talcott, USAF; Major Vanessa Bairos, USAF; Major Jocelyn Q. Wright, USAF; Mary Ellen Payne, Esquire.

Before JOHNSON, MCCALL, and KUBLER, *Appellate Military Judges*.

Chief Judge JOHNSON delivered the opinion of the court, in which Judge MCCALL and Judge KUBLER joined.

**This is an unpublished opinion and, as such, does not serve as
precedent under AFCCA Rule of Practice and Procedure 30.4.**

JOHNSON, Chief Judge:

A general court-martial composed of officer and enlisted members found Appellant guilty, contrary to his pleas, of one specification of wrongfully and willfully discharging a firearm under circumstances such as to endanger human life, and one specification of unlawfully carrying a concealed weapon, both in violation of Article 114, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 914.¹ Appellant elected to be sentenced by the military judge, who adjudged a bad-conduct discharge, confinement for 360 days, forfeiture of all pay and allowances, and a reprimand. The convening authority took no action on the findings or sentence, and provided the language of the reprimand.

Appellant raises five assignments of error on appeal: (1) whether his conviction for unlawfully carrying a concealed weapon is factually insufficient; (2) whether the military judge plainly erred by providing the court members an improper findings instruction; (3) whether the convening authority erroneously failed to act on Appellant's request to commute the adjudged forfeitures; (4) whether Appellant is entitled to relief for unreasonable post-trial delay; and (5) whether Appellant's convictions and sentence should be set aside because the Constitution requires a unanimous verdict.

We have carefully considered issue (5) and find it does not warrant discussion or relief. *See United States v. Matias*, 25 M.J. 356, 361 (C.M.A. 1987); *see also United States v. Anderson*, 83 M.J. 291, 302 (C.A.A.F. 2023) (holding an accused servicemember does not have a constitutional right to a unanimous court-martial verdict), *cert. denied*, 114 S. Ct. 1003 (2024).

We find no relief is warranted with respect to issues (1) and (2). As to issue (3), we find Appellant is entitled to some relief, and we take corrective action in our decretal paragraph. In light of our disposition of issue (3), we defer consideration of issue (4) pending the completion of our Article 66, UCMJ, 10 U.S.C. § 866, review.

I. BACKGROUND

Appellant's court-martial resulted from an incident in which a civilian, AM, was fatally shot during a birthday party in the back yard of a residence in North Las Vegas, Nevada. Appellant was present at the party and was suspected of firing the fatal shot.

¹ Unless otherwise noted, all references in this opinion to the UCMJ, Rules for Courts-Martial, and Military Rules of Evidence (Mil. R. Evid.) are to the *Manual for Courts-Martial, United States* (2019 ed.).

In the summer of 2022, Appellant was stationed at Nellis Air Force Base, Nevada. He lived in an off-base apartment. Appellant was friends with a group of civilian young men who also lived in the local community. For reasons that are not entirely clear from the record, in the early summer of 2022 there existed a feud of sorts between members of Appellant's friend group and another group of young men that included AM.

One night in early July 2022, a young woman, JT-C, hosted a party at her family's home in North Las Vegas, Nevada, to celebrate her birthday. JT-C, attempting to avoid violence, asked her boyfriend JA-L to check bags and purses for guns when guests arrived at the party, which he did for a period of time. AM, who had been a friend of JA-L, attended the party, where a large crowd gathered in the back yard.

Appellant and several of his friends also arrived at the party. At trial, one of Appellant's friends, IM-A, testified he went to the party separately from Appellant, but he saw Appellant there. IM-A testified he did not see a weapon on Appellant when Appellant was at the party.

At trial, one of AM's friends, WC-Q, testified he and AM were toward the rear of the back yard when four individuals approached them. WC-Q recognized two of them—friends of Appellant who went by the nicknames "Jay" and "Ace"—who proceeded to lift up their shirts to display concealed firearms. Shortly thereafter, a fistfight broke out between this group and WC-Q and AM.

Soon after the fight started, someone fired two shots from a firearm. The person who fired these shots was never identified. After the shots were fired, people began to flee the area, either through the gate to the front of the property, into the house, or over the walls surrounding the back yard. WC-Q testified that he escaped over one of the walls. As he was going over the wall, he heard two more shots, after which he saw someone in the back yard fall to the ground. At trial, Appellant's friend IM-A testified he also began to run after the first two shots, and he heard additional shots after that, although he did not see a shooter. Among the witnesses who testified at trial, there was general agreement that at least four shots were fired in all, and possibly more, although no one identified a shooter. Appellant's friends "Jay" and "Ace" were not called as witnesses at trial.

At some point after the shots began, AM was struck in the back of the head by a bullet. He was found lying toward the rear of the back yard. AM fell into a coma and died within two days.

After the shots were fired and the party broke up, Appellant and some of his friends met up at a nearby parking lot. From there, they went to Appellant's apartment. While they were there, "Jay," "Ace," and Appellant took a

photograph of themselves holding firearms in front of a mirror with their faces covered. This photograph was introduced at trial.

Civilian police conducted an investigation of the incident, which led them to interview Appellant. A recording of the interview was entered in evidence at Appellant's trial. During the interview, Appellant eventually admitted he was at the party at JT-C's house. He stated he saw a fight break out, which caused people to gather around, after which "shots went off and everybody started running." Appellant stated that after people started running, as he stood facing the rear of the back yard he fired two shots "into the sky" with a handgun that he brought to the party. This weapon was a so-called "ghost gun" without a serial number, which Appellant had assembled himself using parts he had ordered. Appellant stated that he did not fire at anyone, but shot over the heads of the people in the back yard. During the interview, Appellant eventually claimed he later disassembled the handgun, but civilian police later recovered the weapon from a separate incident in North Las Vegas not involving Appellant. Ballistics testing matched two shell casings recovered from JT-C's back yard to this weapon.

Civilian authorities ceded jurisdiction over Appellant to the Air Force. Appellant was eventually placed into pretrial confinement and charged with the murder and involuntary manslaughter of AM, in violation of Articles 118 and 119, UCMJ, 10 U.S.C. §§ 918, 919, as well as one specification each of wrongfully and willfully discharging a firearm under circumstances such as to endanger human life, and unlawfully carrying a concealed weapon in violation of Article 114, UCMJ. The court members found Appellant not guilty of the homicide charges, but guilty of the Article 114, UCMJ, offenses.

II. DISCUSSION

A. Factual Sufficiency of Conviction for Unlawfully Carrying a Concealed Weapon

1. Law

We are neither required nor empowered to review the factual sufficiency of the evidence unless an appellant both (1) asserts an assignment of error and (2) shows a specific deficiency in the proof. *United States v. Harvey*, 85 M.J. 127, 130 (C.A.A.F. 2024). The current version of Article 66(d)(1)(B), UCMJ, states:

(B) FACTUAL SUFFICIENCY REVIEW.

- (i) In an appeal of a finding of guilty under subsection (b), the Court may consider whether the finding is correct in fact

upon a request of the accused if the accused makes a specific showing of a deficiency of proof.

(ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—

(I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and

(II) appropriate deference to findings of fact entered into the record by the military judge.

(iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

10 U.S.C. § 866(d)(1)(B) (*Manual for Courts-Martial, United States* (2024 ed.) (2024 *MCM*)). This factual sufficiency standard applies to courts-martial in which every finding of guilty in the entry of judgment is for an offense occurring on or after 1 January 2021. *See* William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116–283, § 542(e)(2), 134 Stat. 3388, 3612–13 (2021).

“[T]he requirement of ‘appropriate deference’ when a [Court of Criminal Appeals (CCA)] ‘weigh[s] the evidence and determine[s] controverted questions of fact’ . . . will depend on the nature of the evidence at issue.” *Harvey*, 85 M.J. at 130 (third and fourth alterations in original). It is within this court’s discretion to determine what level of deference is appropriate. *Id.* at 131.

“[T]he quantum of proof necessary to sustain a finding of guilty during a factual sufficiency review is proof beyond a reasonable doubt, the same as the quantum of proof necessary to find an accused guilty at trial.” *Id.* (internal quotation marks omitted).

For this court “to be ‘clearly convinced that the finding of guilty was against the weight of the evidence,’ two requirements must be met.” *Id.* at 132. First, this court must decide that the evidence, “as the CCA has weighed it, does not prove that the appellant is guilty beyond a reasonable doubt.” *Id.* Second, this court “must be clearly convinced of the correctness of this decision.” *Id.*

In order to convict Appellant of unlawfully carrying a concealed weapon as alleged in Specification 2 of Charge I, the Government was required to prove: (1) that Appellant carried a certain weapon, to wit: a handgun, concealed on or about his person; (2) that the carrying was unlawful; and (3) that the weapon was a dangerous weapon. *See* 10 U.S.C. § 914(d); *Manual for Courts-Martial, United States* (2019 ed.) (*MCM*), pt. IV, ¶ 52.b.(7). “A weapon is concealed when

it is carried by a person and intentionally covered or kept from sight.” *MCM*, pt. IV, ¶ 52.c.(4)(a).

2. Analysis

As described in the Background *supra*, Appellant admitted to police that he carried a handgun while he was at JT-C’s birthday party. In addition, at trial the Government introduced evidence that carrying a concealed firearm without a permit was illegal in Nevada, and that Appellant did not have a Nevada permit. On appeal, Appellant does not suggest the Government failed to disprove he was lawfully entitled to carry a concealed weapon on the night in question. However, Appellant contends his conviction for unlawfully carrying a concealed weapon is factually insufficient because the Government introduced insufficient evidence the handgun was concealed.

As an initial matter, we find Appellant has made a sufficiently “specific showing of a deficiency of proof” to enable this court to review the factual sufficiency of the findings. *See* 10 U.S.C. § 866(d)(1)(B)(i); *Harvey*, 85 M.J. at 130. Accordingly, we address Appellant’s argument below.

As Appellant notes, the only witness who testified that he saw Appellant at the party was Appellant’s friend IM-A.² When trial counsel asked IM-A, “[D]id you see a weapon on [Appellant],” IM-A responded, “No, I hadn’t, not that night.” Appellant contends IM-A is not a credible witness. Appellant notes IM-A was “Jay’s” brother, and IM-A also testified “Jay” did not have a gun that night. However, this testimony about “Jay” was contradicted by AM’s friend WC-Q, who testified both “Jay” and “Ace” lifted up their shirts to reveal concealed handguns when they approached him and AM. Appellant also suggests Appellant may have been openly carrying his weapon and IM-A simply failed to observe it in the dark back yard.

Considering the totality of the evidence, we are not clearly convinced the Government failed to prove Appellant concealed his weapon that night. Although IM-A, as “Jay’s” brother and Appellant’s friend, perhaps had some incentive to downplay any awareness that they were armed on the night of the fatal shooting, the court members heard and observed the testimony of the witnesses and concluded Appellant did carry his weapon concealed. We find some deference to this determination is appropriate.

In addition, considering the evidence as a whole, and applying common sense and an understanding of the ways of the world, we find credible IM-A’s testimony that Appellant was at the party and not openly carrying his

² During his police interview, Appellant did not describe where or how he was carrying his handgun at the party before he fired it.

handgun. JT-C testified she asked her boyfriend, JA-L, to check guests' bags and purses for guns when the first guests were arriving at the party. Although at some point JA-L discontinued these inspections, this evidence suggests that Appellant and his friends openly bringing weapons to the party would not have been welcome or socially acceptable. This is particularly so given that, unlike AM, there was little evidence Appellant and his friends were socially connected to the hosts of the party. JT-C's boyfriend JA-L testified he and AM had been good friends in the past. In contrast, a reasonable factfinder could conclude Appellant and his friends "Jay" and "Ace" were not friends of the party hosts. In addition, the Government introduced text messages between Appellant and "Jay" on the night of the party indicating they anticipated a possible confrontation with AM that night. Moreover, WC-Q's testimony indicated "Jay" and "Ace" were keeping guns hidden under their shirts until they approached AM. It stands to reason their friend, Appellant, would have also kept his weapon concealed, at least for some period of time, for similar motivations.

Accordingly, we are not clearly convinced Appellant's conviction for unlawfully carrying a concealed weapon is against the weight of the evidence.

B. Findings Instruction

1. Additional Background

At the conclusion of the evidence, the military judge discussed his draft findings instructions with counsel. With respect to Specification 2 of Charge I, alleging Appellant unlawfully carried a concealed weapon, the military judge proposed to instruct the court members that "[t]he carrying of a concealed weapon may be inferred to be unlawful in the absence of evidence to the contrary. However, the drawing of this inference is not required."³ The military judge drew the parties' attention to this proposed instruction in the following exchange:

[Military Judge]: A couple questions for the counsel, at least things to point out. You'll notice in Specification 2 of Charge I, it's really the last line regarding that specification on page two. I just ended at "However the drawing of this inference is not required." I did consider specifying some specific evidence to include the testimony of the sergeant that testified^[4] and

³ See *United States v. Lyons*, 33 M.J. 88, 89 (C.M.A. 1991); *Military Judge's Benchbook*, Dept. of the Army Pamphlet 27-9 at 1311–12 (29 Feb. 2020).

⁴ The Government called a civilian police sergeant to testify to the effect that Appellant did not have a permit to carry a concealed weapon in Nevada.

[Appellant’s] father⁵] but I did not. Do either parties request further articulations of evidence that might go to drawing of the inference?

[Trial Counsel]: No, Your Honor.

[Trial Defense Counsel]: No, Your Honor.

The military judge discussed other instructions with counsel, including defense requests for certain novel instructions, but there was no further discussion of a permissive inference instruction with respect to Specification 2 of Charge I. At the conclusion of the discussion, the military judge asked, “Are there any other instructions that the parties request?” Counsel for both parties replied, “No, Your Honor.”

The military judge read the permissive inference instruction to the court members as drafted. At the conclusion of the military judge’s findings instructions, he asked, “Do counsel have any additional objections to the instructions given or requests for additional instructions?” Counsel for both parties again replied, “No, Your Honor.”

2. Law

In general, “[f]ailure to object to an instruction or to an omission of an instruction before the members close to deliberate forfeits the objection.” Rule for Courts-Martial (R.C.M.) 920(f).

Appellate courts review forfeited issues for plain error. *United States v. Davis*, 79 M.J. 329, 331 (C.A.A.F. 2020) (additional citation omitted). Plain error occurs where “(1) there is error; (2) the error is clear or obvious; and (3) the error materially prejudiced a substantial right.” *United States v. Robinson*, 77 M.J. 294, 299 (C.A.A.F. 2018) (citation omitted).

“Waiver is different from forfeiture. Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the intentional relinquishment or abandonment of a known right.” *United States v. Gladue*, 67 M.J. 311, 313 (C.A.A.F. 2009) (internal quotation marks and citation omitted) (quoting *United States v. Olano*, 507 U.S. 725, 733 (1993)). Unlike forfeiture, “[w]hen an issue is waived, ‘it is extinguished and may not be raised on appeal.’” *United States v. Harborth*, 85 M.J. 469, 475 (C.A.A.F. 2025) (quoting *Gladue*, 67 M.J. at 313). Whether an appellant has waived or forfeited an issue is a legal question we review de novo. *United States v. Schmidt*, 82 M.J. 68, 72 (C.A.A.F. 2022) (citations omitted).

⁵ The Defense called Appellant’s father to testify to Appellant’s date of birth.

In *Davis*, the United States Court of Appeals for the Armed Forces (CAAF) addressed whether a trial defense counsel’s statement to the military judge that the defense had no objections and no request for additional instructions waived an alleged instruction error on appeal. 79 M.J. at 330–32. In *Davis*,

the military judge explained to counsel for both parties the instructions that he chose to give, including the consent element instruction. Afterwards, the military judge asked whether the defense had any objections or requests for additional instructions. After consulting with the assistant defense counsel, the defense counsel answered, “No changes, sir.” After the military judge granted a finding of not guilty on one of the specifications and marked the instructions as an appellate exhibit, he again asked the defense if there were any objections to the findings instructions. The defense counsel replied: “No, Your Honor.”

79 M.J. at 330. The CAAF held that by “affirmatively declin[ing] to object to the military judge’s instructions and offer[ing] no additional instructions,” the appellant “waived all objections to the instructions, including in regards to the elements of the offense.” *Id.* at 331 (citations omitted).

In *United States v. Lyons*, the CAAF’s predecessor, the United States Court of Military Appeals (CMA), held that with respect to the offense of unlawfully carrying a firearm in violation of Article 134, UCMJ, 10 U.S.C. § 934, “unlawfulness may be inferred, absent some evidence to the contrary, from the fact of the [concealed] carrying.” 33 M.J. 88, 91 (C.M.A. 1991). This principle was subsequently incorporated into the *Military Judge’s Benchbook* as a potential instruction in appropriate cases. *See, e.g., Military Judge’s Benchbook*, Dept. of the Army Pamphlet 27-9 at 952–53 (10 Sep. 2014).

In *United States v. Caswell*, an unpublished opinion, a panel of this court declined to apply the permissive inference recognized in *Lyons* in its review of a January 2023 prosecution for unlawfully carrying a concealed weapon in violation of Article 114, UCMJ. No. ACM 23035, 2025 CCA LEXIS 98, at *6–25 (A.F. Ct. Crim. App. 17 Mar. 2025) (unpub. op.). In reaching this conclusion, the panel cited, *inter alia*, two significant “intervening events” since the CMA decided *Lyons*: (1) “Congress’s choice to move this offense from Article 134, UCMJ, to Article 114, UCMJ,” a change which went into effect 1 January 2019; and (2) “new Second Amendment⁶ case law” from the United States Supreme Court, specifically *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), and *District of Columbia v. Heller*, 554 U.S. 570 (2008). *Caswell*, unpub. op. at *25. In doing so, the panel “acknowledge[d] [it] d[id] not have the authority to

⁶ U.S. CONST. amend. II.

opine or to conclude whether our superior court’s holding in *Lyons* remains good law after the Supreme Court’s ruling in *Bruen*, only to determine if it is directly applicable to the case at bar.” *Id.* at *21 n.18.

“An appellant gets the benefit of changes to the law between the time of trial and the time of his appeal.” *United States v. Tovarchavez*, 78 M.J. 458, 462 (C.A.A.F. 2019) (citations omitted). However, rulings subsequent to an appellant’s trial that do not “create new law” may not excuse waiver. *See Davis*, 79 M.J. at 332.

3. Analysis

Appellant contends that in light of *Caswell*, the military judge’s instruction regarding the permissive inference that Appellant’s concealed carrying of a weapon was unlawful absent evidence to the contrary was plainly erroneous. We find Appellant waived the issue, and therefore no relief is warranted.

As an initial matter, we note a significant distinction between how the issue of the permissive inference arose in *Caswell* and how Appellant raises it here. Unlike Appellant’s case, *Caswell* involved a trial by a military judge alone; it did not involve members instructions on findings. *See Caswell*, unpub. op. at *1. The relevant question before the panel in *Caswell* was whether this court would apply the *Lyons* permissive inference to its review of the sufficiency of the evidence.⁷ The panel concluded it would not apply it, *inter alia* for reasons related to Congress’s relocation of the offense from Article 134, UCMJ, to Article 114, UCMJ, and because of intervening Supreme Court precedent, particularly *Bruen*. *Id.* at *25. Thus, *Caswell* did not present a question of waiver or forfeiture.

In Appellant’s case, we find *Davis* controlling with respect to waiver. As in *Davis*, trial defense counsel not only failed to object to the instruction Appellant challenges on appeal, but affirmatively denied the Defense had an objection. *See Davis*, 79 M.J. at 330–31. Indeed, more so than in *Davis*, the military judge in Appellant’s case specifically drew the parties’ attention to the instruction in question.

Appellant contends waiver should not apply because “the law had changed while Appellant’s case was pending on appeal,” referring to this court’s opinion in *Caswell*. However, we are not persuaded *Caswell* represents a “new rule of law.” *See Davis*, 79 M.J. at 331. As an opinion of a Court of Criminal Appeals, *Caswell* did not and could not purport to overrule *Lyons*. *See United States v. Andrews*, 77 M.J. 393, 399 (C.A.A.F. 2018) (“[C]ourts ‘must strictly follow the

⁷ The appellant in *Caswell* also challenged the constitutionality of Article 114, UCMJ, as it applied to him, but the panel effectively did not reach a decision on that point. *See Caswell*, unpub. op. at *6, 8–9, 32–33.

decisions handed down by higher courts’ (vertical stare decisis).”); *Caswell*, unpublished op. at *21 n.18 (disclaiming the conclusion that *Lyons* is not good law after *Bruen*); see also *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989) (“If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.”). As an *unpublished* opinion, *Caswell* is not even binding precedent for this court. See A.F. CT. CRIM. APP. R. 30.4(a) (“Published opinions serve as precedent . . .”).

Moreover, the panel in *Caswell* drew its conclusions regarding the applicability of the *Lyons* permissive inference based on developments in the law that occurred *before* Appellant’s court-martial, specifically Congress moving the offense from Article 134, UCMJ, to Article 114, UCMJ, and the Supreme Court’s decisions in *Heller* and *Bruen*. The fact that *Heller* and *Bruen* occurred before Appellant’s trial is significant because to the extent those opinions changed law of consequence to Appellant’s decisions, they did so prior to his trial, not after. This court’s opinion in *Caswell* may represent persuasive authority that future litigants may draw on, but in terms of binding authority, *Caswell* did not alter the state of the law. Accordingly, we find waiver applies, and Appellant is not entitled to relief.

Assuming for purposes of analysis that Appellant merely forfeited rather than waived the alleged instructional error, we also find no plain error. The military judge’s instruction was consistent with the CMA’s longstanding precedent in *Lyons*, which the CAAF has not renounced. The future of the permissive inference of unlawfulness might be questionable in light of *Bruen*, but we do not find the military judge *clearly or obviously* erred by continuing to apply *Lyons*, where the instruction was unchallenged. See *Robinson*, 77 M.J. at 299.

C. Action on Request to Commute Forfeitures

1. Additional Background

The military judge sentenced Appellant to a bad-conduct discharge, confinement for 360 days, forfeiture of all pay and allowances, and a reprimand. Because Appellant was sentenced to confinement for more than six months, as well as a punitive discharge, automatic forfeiture of all pay and allowances would also apply during the period of confinement by operation of law. See 10 U.S.C. § 858b(a).

After Appellant’s court-martial, pursuant to R.C.M. 1106, trial defense counsel submitted matters for the convening authority’s consideration before the convening authority decided whether to take action on the sentence pursuant to R.C.M. 1109. The opening paragraph of trial defense counsel’s memorandum requested the convening authority “*waive* [Appellant’s] adjudged

forfeitures of ‘all pay and allowances’ in accordance with Article 60a, UCMJ and R.C.M. 1109(c)(5).” (Emphasis added). In the “Law and Analysis” section of the memorandum, trial defense counsel again cited R.C.M. 1109(c)(5) and stated, “it is appropriate to *commute* the portion of the sentence that calls for forfeiture of all pay and allowances.” (Emphasis added). The memorandum cited Appellant’s one-year-old son as one of the reasons why commutation of adjudged forfeitures was appropriate. It stated, *inter alia*, that Appellant had been the “primary financial provider” for his son, and that the adjudged forfeitures “only go[] to harm his son,” but did not refer to Appellant’s son as a “dependent.” At the conclusion of the memorandum, trial defense counsel wrote, “[Appellant], by and through counsel, respectfully request[s] that pursuant to Article 60, [sic] UCMJ and R.C.M. 1109(c)(5) the portion of his sentence which calls for forfeiture of all pay and allowances be *waived*.” (Emphasis added).

The convening authority issued his decision on action in Appellant’s case on 11 July 2024. The convening authority stated in his memorandum he took “no action on the sentence in this case.” He characterized Appellant’s request for sentence relief as follows:

[Appellant] requested waiver of the adjudged forfeitures for the benefit of his dependent child. I deny the request because in accordance with Article 58b and R.C.M. 1103(h)(1)[,] only automatic forfeitures may be waived. To the extent [Appellant’s] submission of matters may be construed as a requested waiver of automatic forfeitures for the benefit of his dependent child, the waiver request is hereby denied.

The Defense did not move to correct an error with respect to the convening authority’s decision on action.

2. Law

A convening authority may reduce, commute, or suspend a sentence of forfeiture of pay and allowances. *See* 10 U.S.C. § 860a(b)(1); R.C.M. 1109(c)(5)(C). “[T]o commute a sentence means ‘a reduction of penalty,’ not ‘merely a substitution.’” *United States v. Carter*, 45 M.J. 168, 170 (C.A.A.F. 1995) (citation omitted).

A court-martial sentence that includes either confinement for more than six months, or confinement for six months or less and a punitive discharge, “shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole.” 10 U.S.C. § 858b(a). However, “[i]n a case involving an accused who has dependents,” the convening authority may waive these “automatic forfeitures” for a period not to exceed six months for the benefit of the accused’s dependents. 10 U.S.C. § 858b(b).

R.C.M. 1106 permits an accused to “submit matters to the convening authority for consideration in the exercise of the convening authority’s powers under R.C.M. 1109” The convening authority is required to consider the accused’s timely written submissions. *See* R.C.M. 1109(b)(1); *see also* 10 U.S.C. § 860a(e)(1) (“In accordance with rules prescribed by the President, in determining whether to act under this section, the convening authority shall consider matters submitted in writing by the accused”).

In general, “[t]he standard of review for determining whether post-trial processing was properly completed is *de novo*.” *United States v. Miller*, 82 M.J. 204, 207 (C.A.A.F. 2022). “R.C.M. 1104(b)(2)(B) provides that either party may file a post-trial motion within five days of receiving the convening authority’s action to address an asserted error in the . . . action.” *Id.* “An accused’s failure to file a post-trial motion within the allotted time forfeits his or her right to object to the accuracy of the convening authority’s decision on action, absent plain error.” *Id.*; *see also United States v. McAlhaney*, 83 M.J. 164, 167 (C.A.A.F. 2023) (quoting *Miller*, 82 M.J. at 207). “Plain error occurs when (1) there is error, (2) the error is plain or obvious, and (3) the error results in material prejudice to a substantial right of the accused.” *Miller*, 82 M.J. at 207–08 (citing *United States v. McPherson*, 81 M.J. 372, 377 (C.A.A.F. 2021)). To meet this burden in the context of a convening authority’s discretionary decision on action, regardless of whether the alleged error is preserved or is reviewed for plain error, an appellant “must make ‘some colorable showing of possible prejudice.’” *Id.* at 208 (quoting *United States v. Scalo*, 60 M.J. 435, 436–37 (C.A.A.F. 2005)).

3. Analysis

Appellant contends the convening authority erroneously “failed to act” on Appellant’s request to commute the adjudged forfeitures. Appellant concedes the Defense’s R.C.M. 1106 memorandum “imprecisely” referred to waiver while requesting clemency. However, he contends the repeated references to the convening authority’s clemency power and the statement that commutation of forfeitures was appropriate make it clear Appellant sought an actual reduction in the sentence, specifically the adjudged forfeitures. Appellant therefore requests the case be remanded for new consideration of his R.C.M. 1106 submission.

In response, the Government concurs with the convening authority’s interpretation of the R.C.M. 1106 submission:

Appellant did not request a commutation of sentence – a reduction in penalty. Instead, Appellant requested that “the portion of his sentence which calls for forfeiture of all pay and allowances be waived” for the benefit of his dependent child

Nowhere in Appellant's submission of matters did he request a commutation. As a result, the convening authority did not consider commuting a part of Appellant's sentence.

(Emphasis added).

We agree with Appellant and find the convening authority plainly erred by failing to recognize Appellant requested an exercise of the convening authority's clemency power to reduce the sentence under Article 60a, UCMJ, and R.C.M. 1109, and not merely waiver pursuant to Article 58b, UCMJ. Appellant's clemency request cited Article 60a, UCMJ, and R.C.M. 1109, and did not refer to Article 58b, UCMJ. Although the request referred to Appellant's support for his son, it conspicuously did not refer to Appellant's son as his "dependent." The memorandum did request "waiver" of the adjudged forfeitures at two points, but even if the convening authority took that term strictly at face value—in spite of the references to Article 60a, UCMJ, and R.C.M. 1109—the memorandum also stated the convening authority should "commute" the adjudged forfeitures under R.C.M. 1109(c)(5). We find the Government's assertion that "nowhere" did Appellant request commutation is incorrect.

To be clear, we do not hold a convening authority must explain a decision not to take action on a sentence. The convening authority's plain error was not in that he failed to state why he took no action on the sentence. The error lies in what the convening authority did say, which indicates he did not appreciate, and therefore did not appropriately consider, the nature of Appellant's clemency request. The Government's answer essentially doubles down on this error and flatly states the convening authority *did not consider* granting Appellant the relief he requested—commutation of his adjudged forfeitures.

With respect to prejudice, our superior court has held that due to the discretionary nature of a convening authority's decision to act on a sentence, the low "colorable showing of possible prejudice" standard applies, whether we review de novo or for plain error. *See Miller*, 82 M.J. at 208. We find such a colorable showing here. The decision on action memorandum indicates, and the Government's brief drives home, the convening authority did not consider Appellant's clemency request for what it was. The Government has not offered any proof of what the convening authority would have done had he correctly appreciated the nature of the request. Appellant was entitled to consideration and an informed decision on his request. Under these circumstances, we will not simply assume the convening authority would have denied it. Furthermore, we agree with Appellant that he might benefit from relief from the adjudged forfeitures to some extent even if the automatic forfeitures remain in place—for example, during any interim between Appellant being released from confinement and being placed on appellate leave, or to receive pay and allowances

during a period of accrued leave after being ordered onto appellate leave. Accordingly, we find remand appropriate.⁸

III. CONCLUSION

As entered, the findings are correct in law and fact,⁹ and are **AFFIRMED**. Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) (2024 *MCM*). The record of trial is **REMANDED** to the convening authority for a new decision on action on Appellant's submission of matters dated 7 July 2024, consistent with this opinion, and a new entry of judgment by the military judge. Thereafter, the record of trial will be returned to the court for completion of appellate review under Article 66, UCMJ, 10 U.S.C. § 866.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court

⁸ We note the convening authority did not have the power to modify the findings. *See* 10 U.S.C. § 860a(a)(1)(B); R.C.M. 1109(b). Accordingly, we also find it appropriate to affirm the findings of guilty before remanding the record for further consideration of Appellant's request for sentence relief.

⁹ Appellant did not request factual sufficiency review of his conviction for the specification of wrongfully discharging a firearm in violation of Article 114, UCMJ. Accordingly, this court determined the finding of guilty for this specification is correct in law, without conducting a factual sufficiency review. *See* 10 U.S.C. § 866(d)(1)(B), UCMJ (2024 *MCM*).

APPENDIX B

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

UNITED STATES	)	No. ACM 40741
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Julius VONGPHACHANH	)	
Airman Basic (E-1)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 2

On 26 June 2026, Appellant moved for this court to reconsider its decision in *United States v. Vongphachanh*, No. ACM 40741, 2026 CCA LEXIS 252 (A.F. Ct. Crim. App. 29 May 2026.) (unpub. op.). Appellee opposed the motion.

In the motion for reconsideration, counsel for Appellant avers that the court erroneously stated, “On appeal, Appellant does not suggest the Government failed to disprove he was lawfully entitled to carry a concealed weapon on the night in question.” While we acknowledge that on appeal Appellant did assert that the Government failed to disprove he was lawfully entitled to carry a weapon, this statement does not warrant reconsideration of the court’s 29 May 2026 holding. During the Article 66(d), UCMJ, review of Appellant’s case, the court fully considered the factual sufficiency of Specification 2 of Charge I, to include the element that the carrying was unlawful.

For these reasons, the panel consisting of Senior Judge Douglas, Judge McCall, and Judge Kubler voted 3–0 against reconsideration.

Accordingly, it is by the court on this 29th day of July, 2026,

ORDERED:

Appellant’s Motion for Reconsideration, dated 26 June 2026, is hereby **DENIED**.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court

APPENDIX C

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

No. ACM 40741 (f rev)

UNITED STATES

Appellee

v.

Julius VONGPHACHANH

Airman Basic (E-1), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary

Decided 4 August 2026

Military Judge: Tiny L. Bowman (pretrial motion); Matthew P. Stoffel (arraignment and pretrial motions); Joshua D. Rosen (trial).

Sentence: Sentence adjudged 27 June 2024 by GCM convened at Nellis Air Force Base, Nevada, and the Municipal Courthouse in North Las Vegas, Nevada. Sentence entered by military judge on 22 July 2024 and reentered on 2 July 2026: Bad-conduct discharge, confinement for 360 days, forfeiture of all pay and allowances, and a reprimand.

For Appellant: Captain Joyclin N. Webster, USAF; Dwight H. Sullivan, Esquire.

For Appellee: Colonel G. Matt Osborn, USAF; Colonel Matthew D. Talcott, USAF; Major Vanessa Bairos, USAF; Major Jocelyn Q. Wright, USAF; Mary Ellen Payne, Esquire.

Before DOUGLAS, MCCALL, and KUBLER, *Appellate Military Judges*.

**This is an unpublished opinion and, as such, does not serve as
precedent under AFCCA Rule of Practice and Procedure 30.4.**

PER CURIAM:

A general court-martial composed of officer and enlisted members found Appellant guilty, contrary to his pleas, of one specification of wrongfully and willfully discharging a firearm under circumstances such as to endanger human life, and one specification of unlawfully carrying a concealed weapon, both in violation of Article 114, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 914.* Appellant elected to be sentenced by the military judge, who adjudged a bad-conduct discharge, confinement for 360 days, forfeiture of all pay and allowances, and a reprimand. The convening authority took no action on the findings or sentence, and provided the language of the reprimand.

In its 29 May 2026 opinion, this court affirmed the findings, but found “the convening authority did not appreciate, and therefore did not appropriately consider, the nature of Appellant’s clemency request.” *United States v. Vongphachanh*, No. ACM 40741, 2026 CCA LEXIS 252, at *25–26 (A.F. Ct. Crim. App. 29 May 2026) (unpub. op.). Therefore, this court remanded the case back to the convening authority for a new decision on action on Appellant’s 7 July 2024 submission of matters, consistent with the court’s opinion, and a new entry of judgment by the military judge. *Id.* at *27. Thereafter, the record of trial was returned to the court for completion of its Article 66, UCMJ, 10 U.S.C. § 866, review.

Upon further review, we note that the convening authority properly corrected his action, as reflected in the Convening Authority’s Decision on Action memorandum, dated 15 June 2026, in accordance with this court’s 29 May 2026 opinion by addressing Appellant’s request to commute the portion of the sentence that called for adjudged forfeitures. The military judge properly annotated this change in the entry of judgment, reentered on 2 July 2026.

The findings were previously affirmed *See id.* The sentence as entered on 2 July 2026 is correct in law and fact, and no error materially prejudicial to Appellant’s substantial rights occurred. Articles 59(a) and 66(d), UCMJ, 10 U.S.C. §§ 859(a), 866(d). Accordingly, the sentence as entered is **AFFIRMED**.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court

* All references in this opinion to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.).