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

UNITED STATES
Appellee

v.

Thomas E. KRUSE, Corporal
United States Marine Corps, Appellant

No. 26-0156
Crim. App. No. 202500370

Argued May 19, 2026—Decided September 1, 2026

Military Judge: Todd J. Gaston

For Appellant: *Major Theodore H. Massey III*, USMC
(argued).

For Appellee: *Colonel Iain D. Pedden*, USMC (argued); *Lieutenant Commander Philip J. Corrigan*, JAGC, USN, *Lieutenant K. Matthew Parker*, JAGC, USN, and *Brian K. Keller*, Esq.

Amicus Curiae for Appellant: *Colonel Pilar G. Wennrich*, *Major Samantha M. Castanien*, and *Captain Olga Stanford* (on behalf of the Air Force Appellate Defense Division) (on brief).

Judge JOHNSON delivered the opinion of the Court, in which Chief Judge MAGGS, Judge OHLSON, Judge SPARKS, and Judge HARDY joined.

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The granted issue in this case is one of first impression, requiring this Court to answer whether the Office of Special Trial Counsel’s (OSTC) decision not to prosecute reported conduct that could have been prosecuted as a covered offense precludes the convening authority from prosecuting the same conduct, charged as a different offense. Here, the convening authority referred charges of assault and aggravated assault after the OSTC determined that the same underlying conduct did not meet the OSTC’s charging standard for domestic violence. We hold that both the OSTC’s deferral and the convening authority’s subsequent referral of charges for the same underlying conduct are authorized by the plain language of Article 24a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 824a (2024), and the Rules for Courts-Martial (R.C.M.). Accordingly, we answer the granted issue in the negative and affirm the decision of the United States Navy-Marine Corps Court of Criminal Appeals (CCA).

I. Background

A. The Office of Special Trial Counsel

The National Defense Authorization Act for Fiscal Year 2022 established the OSTC as an independent prosecutorial role possessing exclusive authority over particularly serious, enumerated offenses such as domestic violence and sexual assault. National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, § 531(a), 135 Stat. 1541, 1692 (2021). The OSTC’s authorities were codified in Article 24a, UCMJ, 10 U.S.C. § 824a (Supp. III 2019-2022), which grants the OSTC “exclusive authority” over “covered offenses.”¹ Article 24a(c)(2)(A), UCMJ. “[C]overed offense” is defined as “[a]n offense under section 917a (article 117a), 918 (article 118), section 919 (article 119), section 919a (article 119a), section 920 (article 120), section 920a (article 120a), section 920b (article 120b), section 920c (article

¹ The President implemented the statutory scheme in R.C.M. 301(c), 303, 303A, 306A(a) and (b), and 401A.

120c), [and] section 928b (article 128b),” as well as the standalone offenses of child pornography and sexual harassment under Article 134, UCMJ, 10 U.S.C. § 934 (2024). Article 1(17), UCMJ, 10 U.S.C. § 801(17) (2024). Under Article 1(17), UCMJ, conspiracy, solicitation, or attempt to commit any of the covered offenses are also covered offenses. Articles 80, 81, and 82, UCMJ, 10 U.S.C. §§ 880, 881, 882 (2024).

Article 24a(c)(2)(A), UCMJ, grants the OSTC exclusive authority to determine whether reported conduct is a covered offense. Upon determining that reported conduct is a covered offense, the OSTC “may also exercise authority over any offense that the special trial counsel determines to be related to the covered offense and any other offense alleged to have been committed by a person alleged to have committed the covered offense.” Article 24a(c)(2)(B), UCMJ. With respect to any offense over which the OSTC exercises authority, the OSTC has exclusive authority to withdraw or dismiss charges and specifications, refer them for court-martial, enter into a plea agreement, and determine whether an authorized rehearing is impracticable. Article 24a(c)(3)(A)-(D), UCMJ.

Once the OSTC has exercised authority over an offense, the OSTC may defer prosecutorial authority to the convening authority in accordance with the statute, which provides:

DEFERRAL TO COMMANDER OR CONVENING AUTHORITY.—If a special trial counsel exercises authority over an offense and elects not to prefer charges and specifications for such offense or, with respect to charges and specifications for such offense preferred by a person other than a special trial counsel, elects not to refer such charges and specifications, a commander or convening authority may exercise any of the authorities of such commander or convening authority under this chapter with respect to such offense, except that such commander or convening authority may not refer charges and specifications for a covered offense for trial by special or general court-martial.

Article 24a(c)(5), UCMJ.

B. Facts

On September 26, 2024, law enforcement responded to a reported domestic disturbance at Appellant's home. Appellant's wife, RK, accused him of strangling her multiple times and pushing her down a flight of stairs in an intoxicated rage. Two neighbors reported that RK and Appellant had arrived at home in separate cars, suggesting Appellant drove while intoxicated. The neighbors then heard yelling inside the house and RK's cries for help. In the wake of the domestic abuse allegations, Appellant's commanding officer issued a military protective order (MPO) against Appellant which prohibited him from contacting RK. Appellant was subsequently accused of violating the MPO.

On September 27, 2024, the OSTC notified Appellant's commanding officer that it would exercise authority over the covered offense of domestic violence, Article 128b, UCMJ, 10 U.S.C. § 928b (2024), and lesser included and related offenses alleged in the crime report. However, the OSTC subsequently notified Appellant's commanding officer that while there was probable cause to believe Appellant committed the offense of domestic violence, the available evidence did not meet the charging standard of sufficient admissible evidence to obtain and sustain a verdict. Accordingly, the OSTC deferred all of the allegations against Appellant to the commanding officer for resolution.

Following preferral of charges and an Article 32, UCMJ, 10 U.S.C. § 832 (2024), preliminary hearing, the convening authority referred charges against Appellant to a general court-martial, alleging violation of a lawful military protective order (MPO), drunken operation of a vehicle, aggravated assault, assault consummated by a battery, and drunk and disorderly conduct, in violation of Articles 92, 113, 128, and 134, UCMJ, 10 U.S.C. §§ 892, 913, 928, 934 (2024). Appellant and the convening authority entered into a plea agreement whereby Appellant agreed to plead guilty to drunk and disorderly conduct, violating the MPO, and drunken operation of a vehicle. In exchange, the convening

authority agreed to withdraw and dismiss the Article 128, UCMJ, charge and its specifications, and to withdraw and then re-refer the remaining charges and specifications to a special court-martial. The parties agreed that Appellant would be sentenced to thirty to sixty days of confinement for each offense, to be served concurrently.

Before Appellant was arraigned, the military judge ordered the Government to provide information about the OSTC's involvement in the case. Specifically, the military judge sought to clarify whether the OSTC had determined that the reported conduct was a covered offense, whether the OSTC exercised authority over any conduct as known or related offenses, and whether the OSTC deferred any offense. The Government explained that the OSTC had determined Article 128b, UCMJ, domestic violence—a covered offense—was at issue in the case and asserted authority over “ ‘[a]ll covered offenses and lesser included offenses’ ” before deferring the allegations to the convening authority for disposition. (Alteration in original.) In response, Appellant moved to dismiss the Article 128, UCMJ, charge and its specifications and the Article 92, UCMJ, MPO violation charge and specification, arguing that the court-martial lacked jurisdiction over those offenses because the convening authority had no authority to refer charges pertaining to covered offenses.

The military judge granted the defense motion to dismiss the assault charges, while denying the motion as to the MPO violation. He reasoned that the OSTC's deferral to the convening authority did not impact the OSTC's determination that the charged conduct constituted the covered offense of domestic violence. According to the military judge, “[t]hat conduct remains a covered offense even after deferral by the OSTC.” Therefore, he concluded, only the OSTC, not the convening authority, had authority under Article 24a, UCMJ, to refer such charges to court-martial.

On the Government's appeal pursuant to Article 62, UCMJ, 10 U.S.C. § 862 (2024), the CCA reversed the military judge's ruling, holding that the “plain language of the statute is clear”: the convening authority may refer charges

for non-covered offenses to special or general court-martial following OSTC's deferral. *United States v. Kruse*, 86 M.J. 556, 559-60 (N-M. Ct. Crim. App. 2026). We granted Appellant's petition to review the issue of "[w]hether the lower court's ruling on the exclusive authority granted to the Special Trial Counsel under Article 24a, UCMJ, runs counter to the statute's plain meaning, the will of Congress, and creates an absurd result." *United States v. Kruse*, __ M.J. __ (C.A.A.F. 2026) (order granting review).

II. Standard of Review

In an Article 62, UCMJ, appeal, this Court " 'reviews the military judge's decision directly and reviews the evidence in the light most favorable to the party which prevailed at trial.' " *United States v. Becker*, 81 M.J. 483, 488 (C.A.A.F. 2021) (quoting *United States v. Pugh*, 77 M.J. 1, 3 (C.A.A.F. 2017)). Questions of law, including questions of statutory interpretation, are matters of law this Court reviews de novo. *United States v. Mays*, 83 M.J. 277, 279 (C.A.A.F. 2023).

III. Applicable Law

This Court uses "well-established principles of statutory interpretation to construe provisions" of the UCMJ. *United States v. Lewis*, 65 M.J. 85, 88 (C.A.A.F. 2007) (first citing *United States v. McNutt*, 62 M.J. 16, 20 n.27 (C.A.A.F. 2005); and then citing *United States v. Lucas*, 1 C.M.A. 19, 22, 1 C.M.R. 19, 22 (1951)). The Supreme Court has " 'stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.' " *United States v. Sager*, 76 M.J. 158, 161 (C.A.A.F. 2017) (quoting *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992)). Therefore, we start any statutory analysis by examining plain language. *United States v. Stout*, 79 M.J. 168, 171 (C.A.A.F. 2019). " 'The plain language will control, unless use of the plain language would lead to an absurd result.' " *Id.* (quoting *Lewis*, 65 M.J. at 88).

IV. Discussion

A plain reading of Article 24a, UCMJ, reveals a clear and unambiguous statutory directive: the OSTC has exclusive authority over covered offenses, to include the determination whether reported conduct is a covered offense, but if the OSTC defers a covered offense, the convening authority may then exercise authority over the underlying conduct, so long as it is not charged as a covered offense. The Rules for Courts-Martial echo the statutory directive by providing that “[i]f a special trial counsel defers the offense, the special trial counsel shall promptly forward the offense to a commander or convening authority for disposition, and the commander or convening authority shall dispose of the offense pursuant to R.C.M. 306.” R.C.M. 306A(a)(2). R.C.M. 306 emphasizes the commander’s disposition authority over deferred offenses; it provides that “[e]xcept for offenses over which a special trial counsel has exercised authority *and has not deferred*, each commander has discretion to dispose of offenses by members of that command.” R.C.M. 306(a)(1) (emphasis added); *see also* R.C.M. 401(a) Discussion (“When a special trial counsel has exercised authority, a commander may not dispose of charges in accordance with this rule *unless the special trial counsel defers*.” (emphasis added)). Nothing in the statute or its implementing rules precludes a convening authority from referring to court-martial a non-covered offense for underlying conduct that the OSTC could have referred as a covered offense.

Here, the OSTC determined that the reported conduct was domestic violence under Article 128b, UCMJ, a covered offense, but then deferred action on that covered offense. The convening authority then referred a charge and specifications of assault and assault consummated by battery in violation of Article 128, UCMJ, for the same underlying conduct. Article 128, UCMJ, offenses are not covered offenses under the statute. Article 1(17), UCMJ. The OSTC’s deferral of action on the covered offense, coupled with the convening authority’s decision to charge the conduct under a provision of the UCMJ not considered a

“covered offense” under Article 1(17), UCMJ, is precisely the procedure contemplated by Congress in Article 24a(c)(5), UCMJ, and the President’s implementing rules.

The military judge erred in holding the reported conduct remained a covered offense even after deferral by the OSTC and referral of non-covered offenses by the convening authority. The fact that the OSTC initially determined the reported conduct was a covered offense does not convert the offenses charged under Article 128, UCMJ, to covered offenses. Article 1(17), UCMJ, enumerates a defined list of offenses that Congress placed in the exclusive jurisdictional purview of the OSTC. The plain language of the statute contains no conditional or expansive phrasing, and it lacks any catchall provision that would capture conduct that *might* or *could* qualify as a covered offense. Applying standard principles of statutory construction, the express inclusion of specific offenses necessarily excludes all others. Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012) (noting the negative-implication canon which establishes that the expression of one thing necessarily implies the exclusion of others). Therefore, the Article 128, UCMJ, offenses referred by the convening authority were not covered offenses even if the OSTC could have charged them as domestic violence, a covered offense.

The lower court’s determination that the convening authority had the authority to prefer assault charges under Article 128, UCMJ, after the OSTC determined the available evidence did not meet the charging standard for covered offenses, is consistent with the text of the UCMJ. We agree with the lower court’s conclusion:

The plain language of the statute is clear. Following the OSTC’s deferral, the [convening authority] “may exercise *any* of the authorities of such a commander or convening authority with respect to such offense, *except* that such commander or convening authority may not refer charges and specifications for a *covered offense* for trial by special or general court-martial.” Once the OSTC deferred the covered offenses of domestic violence

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under Article 128b, the [convening authority] regained authority to dispose of the remaining uncovered offenses—including those under Article 128—by referral to a special court-martial, as he did here.

Kruse, 86 M.J. at 559-60 (footnote omitted) (quoting Article 24a(c)(5)).

Appellant’s principal argument against this interpretation of Article 24a, UCMJ, is that it will produce “absurd, unworkable results . . . directly against the intent of Congress.” He contends that this interpretation will allow a convening authority to overcome the OSTC’s exclusive authority over covered offenses merely by “relabeling” the conduct at issue. For example, Appellant asserts that if the OSTC declines to prosecute conduct as a rape or sexual assault (i.e., a covered offense), a convening authority could reclassify the same conduct as an assault consummated by a battery, as an attempted assault, as disorderly conduct, or as some other non-covered offense with similar elements. Appellant argues that this possibility “defeats the entire . . . reform” contemplated by Congress.

Although we understand Appellant’s argument, we are not persuaded by it. As this Court recently explained in *United States v. Taylor*, 86 M.J. 1, 7 (C.A.A.F. 2025):

The absurdity doctrine allows a court to depart from the plain language of a statute only in very limited circumstances. In *United States v. McPherson*, this Court explained that “‘a departure from the letter of the law’ may be justified to avoid an absurd result if ‘the absurdity . . . is so gross as to shock the general moral or common sense.’” 81 M.J. 372, 380 (C.A.A.F. 2021) (alteration in original) (quoting *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930)).

In enacting Article 24a, UCMJ, Congress had to make choices about how much power to transfer from the commander to the OSTC, and how much power to leave in the commander. The plain language of Article 24a, UCMJ, draws a line. It grants the OSTC exclusive authority to decide whether to charge or not charge a long list of covered

offenses. But if the OSTC declines to charge conduct as a covered offense, the plain language does not preclude a convening authority from charging the conduct as a non-covered offense. Given the competing considerations at stake, and the need to draw a line somewhere, this division of authority does not shock general moral or common sense. If Congress wishes to adjust the balance of power established by the plain language of Article 24a, UCMJ, it may of course amend the statute.

V. Conclusion

We answer the granted issue in the negative. The decision of the United States Navy-Marine Corps Court of Criminal Appeals is affirmed.