

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**REPLY BRIEF ON BEHALF OF
APPELLANT**

v.

Docket No. ARMY 20210638

Private (E-1)

LUKE A. WATKINS

United States Army

Appellant

Tried at Fort Hood, Texas, on 12 August,

27 September, 30 November, and 1–3

December 2021, before a general court-

martial appointed by Commander, III

Corps and Fort Hood, Lieutenant Colonel

Tiffany D. Pond, military judge, presiding.

TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Assignment of Error

**WHETHER THE MILITARY JUDGE ERRED IN
NOT INSTRUCTING ON PARTIAL MENTAL
RESPONSIBILITY NEGATING MENS REA.**

Statement of the Case

On 21 February 2023, appellant filed his brief. On 21 June 2023, the government filed its brief. This is appellant's reply brief.

Argument

This reply only addresses some of the government's arguments. Appellant submits the government's other arguments are meritless, and for those appellant rests on his initial brief.

A. The military judge erred.

The pertinent question to determine whether the military judge erred in failing to instruct is simply whether there was *some evidence* before the factfinder that appellant's mental responsibility was diminished in a way that may negate a *mens rea* element. *United States v. Tarver*, 29 M.J. 605, 09 (A.C.M.R. 1989) (citing *United States v. Pohlot*, 827 F.2d 889 (3d Cir. 1987)); *United States v. Lewis*, 65 M.J. 85, 87 (C.A.A.F. 2007) (citing R.C.M. 920(e) Discussion).

The government presents a myriad of arguments that are irrelevant to the question of error. Whether the government's generalized claim that it proved the *mens rea* elements beyond a reasonable doubt ignores the particularized concern of whether or not there was *some evidence* of diminished mental responsibility. (Gov't Br. at 15-16). Further, a motion to compel production of an expert, and the bases for such motion, is immaterial to what evidence appeared before the factfinder, especially considering such motions carry a significantly different and higher burden than an instructional requirement. (Gov't Br. at 17-18). Similarly, the results of an R.C.M. 706 inquiry directed to address full, not partial mental responsibility, and which were not before the factfinder, bear no relevance to whether *some evidence* was admitted to require the instruction.

The government also overlooks that the *some evidence* standard does not take into account source, credibility, or alternative interpretations. *Lewis*, 65 M.J.

at 87. The government suggestion that “appellant offered no evidence at trial” ignores that the instructional requirement is triggered based on evidence from the government’s case-in-chief, specifically the testimony of multiple witnesses that appellant was in an altered mental state, identified people incorrectly, and displayed aberrant behavior. Such testimony is *some evidence*, as a panel member could rely on this evidence as symptomatic manifestations of a condition limiting appellant’s mental responsibility for the purposes of *mens rea*.

Additionally, contrary to the government’s suggestion, a voluntary intoxication instruction was insufficient. (Gov’t Br. at 19). In order to find for appellant under voluntary intoxication, the panel would have to find he voluntarily ingested an intoxicant. *See United States v. MacDonald*, 73 M.J. 426, 437 (C.A.A.F. 2014) (finding involuntary intoxication substantially different from mental responsibility test, because the later requires proof of a mental disease or defect). There was no evidence that appellant ingested intoxicants at the time of the alleged offenses, and a voluntary intoxication instruction alone improperly forecloses an interpretation of the evidence that appellant suffered diminished capacity unrelated to ingestion of intoxicants. Such an interpretation was fairly available for the panel to make, had they received the proper partial mental responsibility instruction.

B. Appellant was prejudiced.

The government incorrectly suggests the error at issue is non-constitutional because it is merely instructional. (Gov't Br. at 20, n. 18). Where "there are constitutional dimensions at play," related instructional errors are tested under the constitutional test. *United States v. Wolford*, 62 M.J. 418, 420 (C.A.A.F 2006). Accordingly, there is no meaningful distinction with *Ellis v. Jacob*, 26 M.J. 90, 93 (C.M.A. 1988) addressing the substantive exclusion of evidence, and the military judge's failure to instruct on such evidence here. (Gov't Br. at 20, n. 18).

Moreover, the government's argument addressing the focus and attention on the mental responsibility issue at trial weighs in favor of prejudice. (Gov't Br. at 17, 21). Of note, the argument presented by the trial counsel regarding appellant's statement that he could "act like that again" is not as compelling as the government suggests. (Gov't Br. at 21). Such statement is no more indicative of intent to feign cognitive issues as it is indicative of someone experiencing cognitive issues. The government can only merely suggest such statement was made lucidly, but the harm at issue is that the panel members were ill-equipped without the required instruction to properly evaluate such arguments.

Conclusion

WHEREFORE, appellant respectfully requests this honorable court set aside his convictions and sentence.



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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army
Court and Government Appellate Division on July 10, 2023.



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