IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES, Appellee	**BRIEF ON BEHALF OF APPELLEE**
v.	Docket No. ARMY 20240101
Sergeant (E-5) **SIERRA L. SKEEN,** United States Army, Appellant	Tried at Camp Humphreys, Republic of Korea, on 15 December 2022, 3 February, 1 March, 29 March, 20 June 2023, and 26 February through 1 March 2024, before a general court-martial convened by the Commander, 19th Expeditionary Sustainment Command, Colonel Larry Babin, military judge, presiding.

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

Assignment of Error I[1]

WHETHER APPELLANT'S CONVICTION FOR SPECIFICATION 9 OF ADDITIONAL CHARGE I IS FACTUALLY AND LEGALLY SUFFICIENT.

Assignment of Error II

WHETHER SPECIFICATION 1 OF ADDITIONAL CHARGE II IS FACTUALLY AND LEGALLY SUFFICIENT.

[1] The government reviewed the matters submitted by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and respectfully submits that they lack merit. Should this court consider any of those matters meritorious, the government requests notice and an opportunity to file a supplemental brief addressing the claimed error.

PANEL NO. 2

Assignment of Error III

WHETHER THE GOVERNMENT FAILED TO DISCLOSE EVIDENCE OF A RELATIONSHIP BETWEEN A KEY WITNESS AND [redacted]

Statement of the Case

On 1 March 2024, an enlisted panel sitting as a general court-martial convicted appellant, contrary to her pleas, of one specification of domestic violence and two specifications of forgery, in violation of Articles 128b and 105, Uniform Code of Military Justice [UCMJ], 10 U.S.C. §§ 928b and 905.[2] (R. at 1265; Charge Sheet). The military judge sentenced appellant to reduction to the grade of E-1, confinement for six months, and forfeiture of $1,000 pay per month for six months. (R. at 1331–32). On 15 March 2024, the convening authority took no action on the findings or sentence. (Action). On 21 March 2024, the military judge entered judgment. (Judgment).

Statement of Facts

The appellant and the victim, [redacted], first met through a dating application in November 2018. (R. at 438). Within a day or two of meeting on the application, they met in person and began a relationship. (R. at 439). Appellant wanted [redacted] to move in with her in Fairfax, Virginia, and [redacted] did so in February 2019. (R. at 441). In September 2019, appellant and [redacted] got married. (R. at 586). Between October 2019 and September 2020, appellant assaulted [redacted] on multiple occasions. (R. at 607–09, 615–19, 622–26, 679).

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[2] Unless otherwise stated, all references to the UCMJ and Rules for Courts-Martial [R.C.M.] are to the versions in the Manual for Courts-Martial, United States (2019 ed.) [*MCM*] [with 2020 and 2021 amendments].

Assignment of Error 1

WHETHER APPELLANT'S CONVICTION FOR SPECIFICATION 9 OF ADDITIONAL CHARGE I IS FACTUALLY AND LEGALLY SUFFICIENT.

Additional Facts Relevant to Assignment of Error I

Around "August to September 2020" [redacted] and appellant got into an argument in appellant's vehicle; appellant responded by "put[ing] [redacted]] in a head lock" while appellant was driving, then pulled the car over and "proceeded to punch the side of [redacted]] face." (R. at 550). [redacted] felt unable to breathe during this assault and was "gasping for my air." (R. at 552). [redacted] called her mother, [redacted], following the assault and told her, "she had been hit in the face, and she had been choked." (R. at 845). Around the time [redacted] made this phone call, [redacted] sent [redacted] photographs of her injuries on 23 and 25 August 2020, which depicted [redacted] with marks on her face and neck. (R. at 845–47; Pros. Exs. 25, 26). [redacted]'s sister, [redacted], also received photographs from [redacted] around September 2020 which depicted "bruising around her neck" and "right below her ear." (R. at 916; Pros. Exs. 5, 7).

Standard of Review and Law

A. Factual Sufficiency

The court reviews questions of factual sufficiency de novo. *United States v. Walters*, 58 M.J. 391, 395 (C.A.A.F. 2003); *United States v. Scott*, 84 M.J. 583,

584 (Army Ct. Crim. App. 2024). "The test for a factual sufficiency . . . is 'whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, the members of the service court are themselves convinced of appellant's guilt beyond a reasonable doubt.'" *Id.* (quoting *United States v. Oliver*, 70 M.J. 64, 68 (C.A.A.F. 2011)).[3]

A "major change" to a charge or specification is "one that adds a party, an offense, or a substantial matter not fairly included in the preferred charge or specification, or that is likely to mislead the accused as to the offense charged." R.C.M. 603(b)(1). A "minor change" to a charge or specification is "any change other than a major change." R.C.M. 603(b)(2).

B. Charging "on or about."

"The words 'on or about' in pleadings mean that 'the government is not required to prove the exact date, if a date *reasonably near* is established." *United States v. Hunt*, 37 M.J. 344, 347 (C.M.A. 1993) (emphasis added) (quoting *United States v. Nersesian*, 824 F.2d 1294, 1323 (2d Cir. 1987). Further, if an offense is

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[3] The pre-2021 version of Article 66, UCMJ applies to this case because Specification 9 of Additional Charge I concerned conduct occurring before 1 January 2021. *See* (STR). The 2021 amendment to Article 66, UCMJ altering the Court's factual sufficiency responsibilities applies only to cases "in which *every* finding of guilty entered into the record . . . is for an offense that occurred on after" the date of the 2021 amendment's enactment." Pub. L. No. 116-283, 134 Stat. 3612-13 (emphasis added); *see also United States v. Scott*, 84 M.J. 583, 584 (Army Ct. Crim. App. 2024).

charged "on or about" a specific date, any change by the factfinder that is reasonably near to the original date is not a material variance, which may be "a range of days to weeks." *United States v. Simmons*, 82 M.J. 134, 139 (C.A.A.F. 2022) (citing *Hunt*, 37 M.J. at 347; *United States v. Barner*, 56 M.J. 131, 137 (C.A.A.F. 2001)).

C. Legal Sufficiency

Questions of legal sufficiency are decided de novo. *United States v. Csiti*, 85 M.J. 414, 419 (C.A.A.F. 2025) (additional citations omitted). A conviction is legally sufficient "if any rational fact-finder . . . could have found all essential elements of the offense beyond a reasonable doubt." *Csiti*, 85 M.J. at 419 (internal citations omitted). Legal sufficiency review requires courts to consider "the evidence in the light most favorable to the prosecution." *United States v. Rosario*, 76 M.J. 114, 117 (C.A.A.F. 2017). Though reviewed de novo, this is a deferential standard: while considering legal sufficiency, the courts must "draw every reasonable inference from the evidence in the record in favor of the prosecution." *United States v. Barner*, 56 M.J. 131, 134 (C.A.A.F. 2001).

During its legal sufficiency review, the court considers all available facts within the record and is "not limited to [an] appellant's narrow view of the record." *United States v. Cauley*, 45 M.J. 353, 356 (C.A.A.F. 1996). In analyzing legal sufficiency, our superior court "has long recognized that the government is

free to meet its burden of proof with circumstantial evidence." *United States v. King*, 78 M.J. 218, 221 (C.A.A.F. 2019). "[T]he ability to rely on circumstantial evidence is especially important in cases . . . where the offense is normally committed in private." *Id.* The "standard for legal sufficiency involves a very low threshold to sustain a conviction." *Id*.

Argument

A. Variance in date ranges of the charged misconduct.

The government did not introduce a variance in the charged misconduct as the date range provided in Specification 9 of the Additional Charge I—"between on or about 1 September 2020 and on or about 30 September 2020"—gave defense reasonable notice of the charged misconduct. The evidence at trial was that the actual misconduct may have occurred only a week or so prior to this range. (R. at 550, 846–47; Charge Sheet). If an offense is charged "on or about" a specific date, any change by the factfinder that is reasonably near to the original date is not a material variance, which may be "a range of days to weeks." *Simmons*, 82 M.J. at 139 (citing *Hunt*, 37 M.J. at 347; *Barner*, 56 M.J. at 137).

Moreover, defense fails to show that the government made a "major change" to the charge sheet after referral, as is prohibited under R.C.M. 603(d)(1), as government did not make any change that would have "[likely misled] the accused as to the offense charged." R.C.M. 603(b). The change here—a matter of

approximately a week—is not a major variance and was not prejudicial to appellant.

B. The evidence was factually sufficient to establish appellant assaulted her spouse on or about September 2020.

Appellant argues that the government failed to produce evidence at trial that showed appellant committed the assault, the main contention being the timeframe alleged on the charge sheet. (Appellant's Br. 12). However, the "on or about" language in Specification 9 would reasonably include some of August 2020, as the inclusion of "on or about" particularly makes the charged offense *not* restricted to *only* the dates between 1 and 30 September 2020. The actual date of the offense being in late August 2020 is "reasonably near" the date range charged, as established in *Hunt*, and the charged range itself—"1 September 2020 to 30 September 2020"—constitutes a "reasonable" date variance of "a range of days to weeks," as CAAF found in *Simmons*. *Hunt*, 37 M.J. at 347 (quoting *United States v. Nersesian*, 824 F.2d 1294, 1323 (2d Cir. 1987)); *Simmons*, 82 M.J. at 139. Unlike *United States v. Parker*, where the military judge denied government's motion to amend the date range in a specification to *two years* earlier than originally alleged, in this case, defense had adequate notice of the alleged misconduct and the effective change constituted minimal variance—only a week or two prior to the "on or about" date rate provided on the charge sheet. *United States v. Parker*, 59 M.J. 195 (C.A.A.F. 2003). The court in *Parker* reasoned that an

amended date range to encapsulate misconduct from two years earlier would have given defense inadequate notice to defend against misconduct, a stark contrast from the week or two prior in this case. *Parker*, 59 M.J. at 195.

The government provided sufficient evidence for both elements of the offense. The accused committed a violent offense when she attacked [redacted] in her vehicle some time "on or about" September 2020, supported by direct testimony from [redacted], [redacted], [redacted], and photographs taken by [redacted] of the injuries she sustained from the attack. Furthermore, appellant's violent attack was committed against her spouse, [redacted], who appellant married in September 2019, roughly a year prior to the assault. (Pros. Ex. 3).[4]

Finally, regarding [redacted]'s statement to Fairfax County Police Department alleging that the assault had occurred in Virginia—[redacted]'s testimony clarified that she was mistaken and corrected herself on the record that the assault and relevant photographs of her injuries had, in fact, occurred in California, explaining "[t]here had been multiple abuse[s]" so she "may have gotten the date wrong, but this [incident] is in California." (R. at 679). Ultimately, the panel at the court-court

[4] Appellant contends it is persuasive that neither her father nor the victim's brother saw bruises or marks on [redacted]'s body after the fact. However, this testimony does not negate the evidence that appellant had assaulted [redacted] at an earlier time, as any injuries sustained could very well have healed by the time appellant's father saw her. Further, this is a likely and very reasonable explanation as to why injuries on [redacted] were not witnessed by [redacted]'s brother a few months later or [redacted]'s mother upon [redacted]'s return to California. (R. at 859, 924–25).

martial heard [redacted] testimony in-person, gave consideration to her credibility as a witness, and concluded that appellant had assaulted [redacted] on or about September 2020.

C. The evidence was legally sufficient to establish appellant assaulted her spouse on or about September 2020.

The "standard for legal sufficiency involves a very low threshold to sustain a conviction." *King*, 78 M.J. at 218 (C.A.A.F. 2019) (citing *United States v. Navrestad,* 66 M.J. 262, 269 (C.A.A.F. 2008)) (Effron, C.J., joined by Stucky, J., dissenting). Drawing every reasonable inference from the evidence in favor of the government and viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

A reasonable fact finder could have found all the essential elements of Specification 9 of Additional Charge I beyond a reasonable doubt. "'Reasonable doubt' does not mean that the evidence must be free from any conflict . . ." *King,* 78 M.J. at 221. Rather, the standard for legal sufficiency "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *United States v. Oliver,* 70 M.J. 64, 68 (C.A.A.F. 2011) (internal quotations and citations omitted). Further, appellant's conviction of Specification 9 of Additional Charge I is legally sufficient because a rational factfinder could have

found that the government proved all elements of Article 128b, including the "on or about" date range of the offense, to the required standard of proof.

Any rational panel could determine that [redacted] testimony was credible and that her testimony was sufficient to prove each element of Article 128b. [redacted] testified that appellant committed multiple acts of abuse against her during their marriage, so a factfinder may find it reasonable for her to confuse dates and locations of certain acts. (R. at 679). In fact, [redacted] does her best to narrow down this particular incident by recalling the timeframe relative to "near COVID time," another major event occurring during that time period. (R. at 550). Thus, this court should be clearly convinced of the finding of guilty for Specification 9 of Additional Charge I, affirm appellant's conviction as legally and factually sufficient, and affirm the sentence.

Assignment of Error 2

WHETHER SPECIFICATION 1 OF ADDITIONAL CHARGE II IS FACTUALLY AND LEGALLY SUFFICIENT.

Additional Facts Relevant to Assignment of Error II

In December 2018, [redacted] was considering whether to move in with appellant when appellant devised a plan for [redacted] to break her lease so that she could move in with appellant sooner. (R. 441–42). "[Appellant] decided that she was going to take some of her deployment orders, and put [redacted] name on it in

replacement of [appellant's]." (R. at 442). Appellant's plan was to tell [redacted] leasing office that [redacted] had joined the military, that appellant was her recruiter, and that she needed to terminate the lease immediately due to [redacted] imminent "deployment." (R. at 442). In February 2019, [redacted] moved in with appellant. (R. at 442).

Standard of Review and Law

A. Factual sufficiency and legal sufficiency.

Adopted from Assignment of Error I.

B. Falsely altering military orders.

Article 105, UCMJ, as charged, requires the government to prove three elements: (1) that the accused falsely made or altered a certain signature or writing, (2) that the signature or writing was of a nature which would, if genuine, apparently impose a legal liability on another or change another's legal rights or liabilities to that person's prejudice, and (3) that the false making or altering was with the intent to defraud. "With respect to the apparent legal efficacy of the writing falsely made or altered, the writing must appear either on its face or from extrinsic facts to impose a legal liability on another, or to change a legal right or liability to the prejudice of another." UCMJ art. 105(c)(4).

Argument

Drawing every reasonable inference from the evidence in favor of the

government and viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. The government offered the altered document itself as well as testimony from [redacted] who spoke of her direct knowledge of appellant's plan and actions in altering her deployment order, and the panel was able to weigh her credibility at trial. (R. at 436–43; Pros. Ex. 1). This court should thus be clearly convinced of the finding of guilty for Specification 1 of Additional Charge II, affirm appellant's conviction as legally and factually sufficient, and affirm the sentence.

A. The evidence was factually sufficient to establish falsely altering military orders.

Appellant falsely altered a certain writing, in this case her deployment orders, to reflect [redacted] name instead of her own, as shown by [redacted] testimony and the admitted, altered orders. (R. at 442; Pros. Ex. 1).[5] Further, the alteration of the deployment orders was of a nature to change another's—both [redacted]s and Brittany Commons Apartments' (her landlord)—liability to one another, had the document been genuine. Due to the nature of the document, [redacted] could terminate the lease before the agreed upon termination date, and her landlord, to

[5] Prosecution Exhibit 1—the admitted, altered deployment orders dated 20 February 2019—reflects [redacted] maiden name, [redacted] ([redacted] and appellant were not legally married until 27 September 2019).

their detriment, would forfeit the benefits of an early termination of the lease agreement. Lastly, appellant altered her deployment document with the intent to defraud, as she knew that if the document was presented as genuine, [redacted] would be free to terminate said lease and move in with appellant. Appellant had already made it clear to [redacted] that they should live together in appellant's home, a clear motivating factor that further supports the intent element of the offense.

B. The evidence was legally sufficient to establish falsely altering military orders.

Appellant's conviction of Specification 1 of Additional Charge II is legally sufficient because a rational factfinder could have found that the government proved the all the elements of forgery to the required standard of proof, and that [redacted] testimony was a more credible and accurate source of information than the defense.

Appellant contends that the altered military orders would not have created any legal right or liability. On the contrary, had the military orders been real, [redacted] could break her lease prior to its agreed upon termination date on more favorable terms, and her landlord, to their detriment, would forfeit the benefits of the contract's terms. (Pros. Ex. 1). Unlike in *Hopwood,* which deals with a mere submission of an application for credit, in this case, a legal right or liability had already attached via the lease agreement into which [redacted] and her landlord entered. *United States v. Hopwood*, 30 M.J. 146, (C.M.A. 1990).

Lastly, the altering of the military orders dictated a legal liability or harm to the landlord, Brittany Commons Apartments, as it forced their forfeiture of the protection against an early termination of the lease. Unlike in *Espinal*, where appellant's alteration of his leave and earnings statement during the child support calculations process did not change another's legal rights or liabilities to that person's prejudice, in this case, the legal right or liability had already attached upon the entering of the lease agreement, and would have been affected if the document was genuine. *United States v. Espinal*, 2024 CCA LEXIS 299 (Army Ct. Crim. App. July 22, 2024) (mem. op.). Therefore, this court should be clearly convinced of the finding of guilty for Specification 1 of Additional Charge II, affirm appellant's conviction as legally and factually sufficient, and affirm the sentence.

Assignment of Error 3

WHETHER THE GOVERNMENT FAILED TO DISCLOSE A RELATIONSHIP BETWEEN A KEY WITNESS AND [redacted]

Additional Facts Relevant to Assignment of Error III

At some undetermined time, [redacted] (the victim's mother) and [redacted] (the government counsel in this case) became "friends" on Facebook and Instagram. (Defense App. Ex. A). Their interactions included [redacted] leaving public comments on posts [redacted] made on 10 May 2024, 31 July 2024, and 8 August 2024, and [redacted] making a post on 28 April 2024 regarding [redacted] adopting his

dog and thanking her for "giving [the dog] his forever home." (Defense App. Ex. A). The comments [redacted] left on [redacted] posts include: "And it lifts [our spirits] too," "[four clapping hands emojis]," and "What a [strong arm emoji] woman!" (Defense App. Ex. A).

Standard of Review

When there are factual issues that need resolution, and the record of trial must be expanded, this court can order an evidentiary hearing in accordance with *United States v. Dubay*. 17 C.M.A. 147, 37 C.M.R 411 (1967).

Law

Dubay hearings are a "well-accepted procedural tool [used by appellate courts in the military] for addressing a wide range of post-trial collateral issues." *United States v. Fagan,* 59 M.J. 238, 241 (C.A.A.F. 2004). In *Ginn,* the Court of Appeals for the Armed Forces (CAAF) announced six principles for the court of criminal appeals to apply in disposing of post-trial, collateral, affidavit-based claims. *United States v. Ginn*, 47 M.J. 236 (C.A.A.F. 1997). Relevant in this case, the second of the *Ginn* factors states, "if the affidavit does not set forth specific facts but consists instead of speculative or conclusory observations, the claim may be rejected on that basis." *Ginn*, 47 M.J. at 248.

Argument

A. Appellant's speculative observations do not merit a *Dubay* hearing in accordance with the *Ginn* factors.

[redacted] public comments written to [redacted] on Facebook and Instagram were neither inappropriate nor insinuated a personal relationship between the two before or during the trial that would have been grounds to necessitate government disclosure to defense. (Defense App. Ex. A). In fact, defense provides no evidence that [redacted] and [redacted] were personally familiar or friends on Facebook or Instagram prior to or during the trial, which concluded on 1 March 2024. The only documented interactions on Facebook between [redacted] and [redacted] took place on 28 April 2024, 10 May 2024, 31 July 2024, and 8 August 2024, multiple months following the adjournment of appellant's court-martial. (Defense App. Ex. A). A personal familiarity between [redacted] and [redacted] easily could have developed following the court-martial, as the government's interactions with [redacted] prior to the court-martial were limited. (R. at 136).

Additionally, the fact that [redacted] gave his dog to [redacted] on 28 April 2024, fifty-eight days after the court-martial's conclusion, lacks any indication of impropriety or personal acquaintance before or during trial whatsoever. (Defense App. Ex. A).

Appellant identifies no impropriety occurring during the court-martial, and therefore no improper withholding of information on the part of government. "[T]he threshold triggering further inquiry should be low, but it must be more than a bare allegation or mere speculation," which is all appellant provides in this

case. *United States v. Bess,* 80 M.J. 1, 13 (C.A.A.F. 2020) (citing *United States v. Johnston*, 39 M.J. 242, 244 (C.M.A. 1994)). Appellant's highly speculative assertions that [redacted] could have *theoretically* had a personal relationship with [redacted] before or during the court-martial do not merit a *Dubay* hearing in this case. Included in the *Ginn* factors, "if the affidavit does not set forth specific facts but consists instead of speculative or conclusory observations, the claim may be rejected on that basis." *Ginn*, 47 M.J. at 248. Here, appellant asserts speculative observations of obscure social media posts and comments between [redacted] and [redacted] in the months following the court-martial. No specific facts detailing government's knowledge of or failure to disclose a relationship between these two individuals are laid out by appellant, therefore, the claim may be rejected, and a *Dubay* hearing would not be appropriate.

B. Appellant was not prejudiced by government's nondisclosure.

Appellant was not prejudiced by the alleged nondisclosure from the government. In fact, appellant admits that the extent of the relationship between [redacted] and [redacted] throughout the preparation for this case is "unknown." (Appellant's Br. 29). Defense had the ability to present their case during the court-martial to the fullest extent.

Conclusion

WHEREFORE, the government respectfully requests this honorable court affirm the findings and sentence and deny appellant's request for a *Dubay* hearing.

[redacted]

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CERTIFICATE OF SERVICE

UNITED STATES v. SIERRA L. SKEEN, ARMY 20240101

I certify that a copy of the foregoing was sent via electronic submission to the Defense Appellate Division at [redacted] [redacted] on the 9th day of January, 2026.

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