

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
COOPER, MORRIS, and ARGUELLES*
Appellate Military Judges

UNITED STATES, Appellee
v.
Sergeant First Class MICHAEL S. MALONE, JR.
United States Army, Appellant

ARMY 20230151

Headquarters, 1st Armored Division and Fort Bliss
Jessica R. Conn, Military Judge
Colonel Andrew D. Flor, Staff Judge Advocate

For Appellant: Major Robert D. Luyties, JA (argued); Lieutenant Colonel Autumn R. Porter, JA; Captain Matthew S. Fields, JA; Major Cody Cheek, JA (on brief); Colonel Philip M. Staten, JA; Lieutenant Colonel Autumn R. Porter, JA; Major Mitchell D. Herniak, JA; Major Cody Cheek, JA (on reply brief); Colonel Philip M. Staten, JA; Lieutenant Colonel Autumn R. Porter, JA; Captain Amber L. Bunch, JA; Major Robert D. Luyties, JA (on supplemental brief and supplemental reply brief).

For Appellee: Captain Vy T. Nguyen, JA (argued); Colonel Christopher B. Burgess, JA; Lieutenant Colonel Jaqueline D. DeGaine, JA; Major Chase C. Cleveland, JA; Captain Vy T. Nguyen, JA (on brief); Colonel Richard E. Gorini, JA; Major Lisa Limb, JA; Captain Vy T. Nguyen, JA (on supplemental brief).

10 April 2026

DECISION ON REMAND

Per Curiam:

The first time this case came before a panel of this Court, we found that because appellant affirmatively waived his multiplicity challenge to the domestic violence specifications, there was no error for us to correct on appeal. *United States v. Malone*, ARMY 20230151, 2024 CCA LEXIS 217 (Army Ct. Crim. App. 23 May 2024) (mem. op.). After granting appellant's request for reconsideration, this Court sitting *en banc* held that appellant did *not* affirmatively waive his multiplicity challenge. *United States v. Malone*, 85 M.J. 573, 581 (Army Ct. Crim. App. 2025).

* Judge ARGUELLES decided this case while on active duty.

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The Judge Advocate General certified the waiver issue for review. The Court of Appeals for the Armed Forces [CAAF] held that appellant affirmatively waived any multiplicity challenge, reversed our *en banc* decision, and remanded the case back to this Court to complete its review under Article 66, UCMJ. *United States v. Malone, _ MJ _*, 2026 CAAF LEXIS 62 at *3 (C.A.A.F. 20 Jan. 2026).

Considering the CAAF's decision in this case, the findings of guilty and the sentence, as entered in the original Judgment of the Court, dated 25 April 2023, are AFFIRMED.

FOR THE COURT:



STEVEN P. HAIGHT.
Acting Clerk of Court