

No. _____

In the Supreme Court of the United States

ANTHONY M. CLARK,
HOSPITAL CORPSMAN PETTY OFFICER FIRST CLASS,
UNITED STATES NAVY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE ARMED FORCES

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

At Petitioner’s trial, the United States admitted drug lab results through a surrogate expert who testified to their accuracy and veracity, despite that he neither observed nor took any part in the testing or the production of the documents. During Petitioner’s appeal, this Court issued its decision in *Smith v. Arizona*, 602 U.S. 779, 792-93, 800-01 (2024), in which it held the prosecution violates the Confrontation Clause when it calls a surrogate expert witness to convey the statements of an absent lab analyst if: (1) the absent analyst’s statements are introduced for their truth; and (2) the statements conveyed are testimonial.

Petitioner challenged this evidence on appeal based on *Smith*, but the lower court affirmed, finding no Confrontation Clause violation because “[a]fter independently reviewing each exhibit generally and the computer-generated data specifically, [the surrogate expert] concluded that [Petitioner]’s urine tested positive for [controlled substances].” App. 15.

Military courts have now joined a split among the circuits and state courts of last resort regarding the proper application of *Smith*’s second prong. This Court has yet to resolve this issue of what statements are “testimonial” under its varying, primary-purpose test.

The question presented is:

Did the surrogate expert’s testimony about the accuracy and veracity of the lab results used to convict Petitioner violate the Confrontation Clause?

PARTIES TO THE PROCEEDING

All parties to this proceeding appear in the caption on the cover page of this petition. Those parties are Petty Officer First Class Anthony M. Clark, the Petitioner, and the United States, the Respondent.

CORPORATE DISCLOSURE STATEMENT

No nongovernmental corporations are parties to this proceeding.

RELATED PROCEEDINGS

The related proceedings below are:

- (1) *United States v. Clark*, No. W-2019-USN-100680 (Special Court-Martial Convened by Commander, Navy Medicine Readiness and Training Command) – Judgment entered on October 28, 2022.
- (2) *United States v. Clark*, No. 202400217 (N-M. Ct. Crim. App.) – Judgment entered on December 30, 2025.
- (3) *United States v. Clark*, No. 26-0140/NA (C.A.A.F.) – Review denied on April 16, 2026.

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OPINIONS BELOW

The order denying the petition for review from the United States Court of Appeals for the Armed Forces (CAAF) is reported at *United States v. Clark*, No. 26-0140/NA, __ M.J. __, 2026 CAAF LEXIS 365 (C.A.A.F. Apr. 16, 2026) (publication pending), and is reproduced in the Appendix (App.) at 1.

The panel opinion of the United States Navy-Marine Corps Court of Criminal Appeals (NMCCA) is unreported but is available at *United States v. Clark*, No. 202400217, 2025 CCA LEXIS 584, 2025 WL 3762828 (N-M. Ct. Crim. App. Dec. 30, 2025), and is reproduced in the Appendix at 3-22.

JURISDICTION

After reviewing Petitioner’s case under its 10 U.S.C. § 866(b)(1)(A) (2024) authority, the NMCCA entered its judgment on December 30, 2025. App. 3. The CAAF denied Petitioner’s petition for review under 10 U.S.C. § 867(a)(3) (2024) and issued its order on April 16, 2026. App. 1. Accordingly, this Court now has jurisdiction under 28 U.S.C. § 1259(3) (2024).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution states in relevant part, “In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him” U.S. Const. amend. VI.

INTRODUCTION

Like many servicemembers of his generation, Hospital Corpsman (HN) Clark repeatedly answered the call of duty and deployed to Iraq and Afghanistan multiple times with both Marines and Navy SEALs. Leaving the comforts of home, he served as a battlefield medic, witnessing horrific and violent injuries and deaths. As the most experienced medic on his final deployment, he oversaw the treatment of over 2,800 trauma casualties. After fulfilling our nation's highest calling, HN Clark returned broken—physically and mentally.

While receiving treatment through the Navy, his command ordered him to provide multiple urine samples involuntarily to ensure his fitness for duty. His command sent those samples to the Navy Drug Screening Laboratory (NDSL), where lab analysts tested the specimens, which came back positive. HN Clark's command then court-martialed him for wrongful use of controlled substances—a military crime that has no civilian equivalent.

At his trial, the prosecution presented only one witness from the NDSL. But it was not someone who tested HN Clark's samples or documented the results at issue. Rather, it was a substitute expert who simply reviewed the results contained in the written reports that were “hand[ed] to [him].” He then testified that: (1) the lab tests were, in fact, conducted, (i.e., the tests' veracity); (2) that those lab tests were conducted correctly without discrepancies (i.e., the tests' accuracy); and (3) the urine samples tested positive for controlled substances. Because of this evidence, HN Clark was convicted of federal drug charges and discharged from the Navy (three years before

retirement eligibility)—without ever having the opportunity to confront those who ran the lab tests.

At his trial, HN Clark seemingly had no recourse to challenge the surrogate lab expert testimony given the state of the law under *Williams v. Illinois*, 567 U.S. 50, 78 (2012) (plurality opinion). But now he does because, in between his trial and appeal, this Court decided *Smith v. Arizona*, 602 U.S. 779, 792 (2024), which abrogated *Williams*. The Government is now prohibited from introducing the exact type of surrogate expert testimony the Government used to convict HN Clark.

Accordingly, he challenged his drug convictions at the Navy-Marine Corps Court of Criminal Appeals (NMCCA). But that court found (as it has several times before) that, despite *Smith*, the surrogate expert's testimony was admissible. It found *Smith* did not prohibit this testimony because “[a]fter independently reviewing each exhibit generally and the computer-generated data specifically, he concluded that [Petitioner]’s urine tested positive for methamphetamine or a combination of methamphetamine and THC.” App. 15. The military’s highest court, the Court of Appeals for the Armed Forces (CAAF) denied review of *Smith*’s impact on its *Williams*-aligned precedent, as it has done before when this precise issue was presented to it.

The result is that military servicemembers like HN Clark are denied a right to confront and cross-examine the lab personnel who actually generate the key evidence that is used to convict them of federal drug charges and destroy their military careers and livelihood. Further, the military effectively joined the First Circuit in its current split with the Fourth,

Sixth, and Ninth Circuits—as well as five state supreme courts—over how to apply *Smith* to this type of surrogate expert testimony. This case presents a clean opportunity for this Court to resolve an issue it was unable to settle in *Smith*—namely the precise standard courts should employ when determining whether statements from absent lab analysts that are not subject to cross-examination violate the Confrontation Clause. In so doing, this Court can answer once and for all a question that “continues to confound courts, attorneys, and commentators.” *Franklin v. New York*, 145 S. Ct. 831 (2025) (Alito, J., concurring).

STATEMENT OF THE CASE

Petitioner, then an active-duty Hospital Corpsman in the United States Navy, was court-martialed for multiple instances of wrongful use of a controlled substance after his urine samples tested positive at the NDSL. App. 5-10.

At Petitioner’s trial, the Defense successfully objected to a cover memorandum attached to one of the urinalysis lab reports (Prosecution Exhibit 27) based on “testimonial hearsay.” App. 8, 85. The Government then admitted the other urinalysis lab reports (Prosecution Exhibits 23 through 26)—without their corresponding cover memoranda—through the testimony of Dr. Furman, a substitute expert from the same drug lab who took no part in the actual testing. App. 8-9, 86-89, 91-93, 95-97, 100-02. These exhibits contained: (1) the chain of custody documents showing the receipt, movement, and processing of the specimen within the drug lab; (2) computer data from the drug lab’s initial urine test; and (3) computer data from the drug lab’s

confirmatory urine test. App. 26-41, 44-52, 56-69, 72-84.

Dr. Furman did not actually conduct that testing or handle those specimens. App. 9. Rather, his testimony consisted of simply interpreting the drug lab documents (which he referred to as the “litigation package[s]” that were “hand[ed] to me”) for the members (jurors). App. 9, 86, 88, 91, 96. His knowledge of various facts about the sample testing was based solely on reading specific pages of these litigation packages, which included the positive results that were the basis of Petitioner’s convictions. App. 86-111. The cover memoranda from those litigation packages that the trial judge excluded as testimonial hearsay also stated, “[a]ll positive results are verified by two independent forensic assays, an initial immunoassay test and confirmatory analysis.” App. 24, 43, 54, 71.

Despite the fact that he had no role in testing the specimens, throughout the course of his testimony Dr. Furman repeatedly testified that “*we* tested . . .;” “*we* ran a subsequent adjunct test;” and “it was further tested” App. 104-11 (emphasis added). His testimony described the lab procedures (he assumed) were followed based on the documents he reviewed (in which he took no part in creating), and he concluded that all of Petitioner’s samples tested positive for either methamphetamine or methamphetamine and THC. App. 9, 104-11. The prosecutor then used his testimony to argue in closing that: (1) the lab tests were performed on Petitioner’s urine; (2) there were no discrepancies; (3) the chain of custody was followed to a tee; (4) none of the samples were tampered with;

and (5) Petitioner used controlled substances. App. 112-16, 123.

Since the Defense was unable to cross-examine the lab analysts who actually conducted the tests, its case consisted of attacking the integrity of the chain of custody for the urine samples and the reliability of the test results. App. 117-23. The members proceeded to convict Petitioner of eight counts of wrongful use of a controlled substance.¹ App. 5.

On appeal, Petitioner asserted that Dr. Furman's testimony concerning the lab results he had no role in producing violated the Confrontation Clause in light of this Court's decision in *Smith v. Arizona*, 602 U.S. 779 (2024). App. 5, 10-18. However, the lower court found otherwise and held that, despite *Smith*, Dr. Furman's testimony was admissible. App. 14-16. Specifically, it found that "[a]fter independently reviewing each exhibit generally and the computer-generated data specifically, he concluded that [Petitioner]'s urine tested positive for methamphetamine or a combination of methamphetamine and THC." App. 15.

Petitioner presented this issue to the CAAF, but it summarily denied his petition. App. 1. This petition followed.

¹ The Commander of Navy Medicine Readiness and Training Command convened the special court-martial pursuant to 10 U.S.C. § 823(a)(1) and 10 U.S.C. § 802 conferred personal jurisdiction over members of a regular component of the armed forces.

REASONS FOR GRANTING THE PETITION

In *Crawford v. Washington*, 541 U.S. 36, 59 (2004), this Court held that the prosecution may not introduce “testimonial statements” made by an absent witness whom the defendant has been unable to previously cross-examine without violating the Confrontation Clause. That “prohibition applies in full to forensic evidence.” *Smith*, 602 U.S. at 783 (citing *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 307, 329 (2009)).

In *Smith v. Arizona*, this Court rejected its prior precedent in *Williams v. Illinois* that allowed surrogate expert opinion testimony about lab tests in which the expert did not observe or participate. *Smith*, 602 U.S. at 789, 792; *Williams*, 567 U.S. at 78. It further determined that such testimony violates the Confrontation Clause if: (1) the absent analyst’s statements are introduced for their truth; and (2) the statements conveyed are testimonial. *Smith*, 602 U.S. at 792-93, 800-01.

However, the *Smith* Court could not resolve whether the particular statements in that case were “testimonial” because the record was incomplete on this point and *Smith* did not present that question. *Id.* at 801. In Petitioner’s case, the record is complete, and he squarely asks this Court to address this issue head-on to once and for all resolve an issue that both “continues to confound courts, attorneys, and commentators,” *Franklin v. New York*, 145 S. Ct. 831 (2025) (Alito, J., concurring), and has resulted in a federal circuit split. Therefore, certiorari is warranted. See SUP. CT. R. 10(c).

A. This Court has described three varying standards on what constitutes a “testimonial statement,” but has yet to settle on which standard controls.

Regarding the definition of “testimonial statements,” this Court has “variously described” three formulations. *Smith*, 602 U.S. at 784-85. While this Court has settled on a “primary-purpose test,” “after years of toiling with that project, our cases have never quite settled on what the primary-purpose test *is*.” *Franklin*, 145 S. Ct. at 834-35 (Gorsuch, J., concurring) (emphasis in original).

First, in *Davis v. Washington*, 547 U.S. 813, 822 (2006), this Court held statements made during a police interrogation are testimonial when “the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.” *See also Bullcoming v. New Mexico*, 564 U.S. 647, 659 n.6 (2011) (quoting the same).

Second, in *Melendez-Diaz v. Massachusetts*, this Court held statements of a state drug lab analyst were testimonial because they were “made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.” *Melendez-Diaz*, 557 U.S. at 311 (quoting *Crawford*, 541 U.S. at 52).

Third, in *Michigan v. Bryant*, 562 U.S. 344, 358 (2011), this Court held statements are testimonial when they have the “primary purpose of creating an out-of-court substitute for trial testimony.”

Although these cases provide helpful guidance, they have yet to resolve which of those three

formulations of the primary-purpose test are controlling. This has caused significant confusion and resulted in a split involving the federal circuits and state high courts. *See Franklin*, 145 S. Ct. at 831; subsection C, *infra*. Thus, this case presents a clear opportunity to address this important Constitutional issue that it has yet to resolve, warranting review. *See* SUP. CT. R. 10(c).

B. Under any of the “primary purpose” formulations this Court established, the statements conveyed to the members by the surrogate lab expert in this case were testimonial.

Dr. Furman’s testimony to the members about the lab tests’ veracity and accuracy qualify as “testimonial” under each of this Court’s three “primary purpose” standards. First, there is no doubt that “the primary purpose” of the lab testing (and the results generated from it) was to “establish or prove” Petitioner’s past drug use so it could be used in a “later criminal prosecution.” *See Davis*, 547 U.S. at 822. Dr. Furman’s own testimony characterized the documents as “*litigation* package[s],” which “[t]he documentation services department pulls [] and hands them to me, or whoever the expert witness was at the time . . .” App. 87-88. There can be no doubt that the primary purpose for which these documents are produced is the anticipation of criminal litigation.

Second, there is also no question that assertions in the litigation packages about the lab tests that were done were made “under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.” *See Melendez-Diaz*, 557 U.S. at 311. Indeed, the

NDSL’s stated mission is to “deter[] *illegal* drug use through providing accurate and timely *forensic* drug testing.”² Its website says this is accomplished by “ensur[ing] that all procedures have been followed and that the results are scientifically valid and *legally defensible*[.]”³

Third, the Government’s case was predicated on assertions that forensic drug analysts, in fact, ran two lab tests on each urine sample, that those tests were performed correctly and without discrepancies, and that they came back positive for controlled substances. Thus, to convict Petitioner, the members had to believe the truth of those premises as contained in the litigation packages and as conveyed to them by Dr. Furman. Otherwise, Dr. Furman’s opinion testimony would have been irrelevant. *See Smith*, 602 U.S. at 780 (“And from the factfinder’s perspective, the jury cannot decide whether the expert’s opinion is credible without evaluating the truth of the factual assertions on which it is based. [] [T]hat is what raises the Confrontation Clause problem.”). In other words, the assertions the litigation packages memorialized

² NAVY AND MARINE CORPS FORCE HEALTH PROTECTION COMMAND > FIELD ACTIVITIES > NAVY DRUG SCREENING LAB GREAT LAKES, <https://www.med.navy.mil/Navy-and-Marine-Corps-Force-Health-Protection-Command/Field-Activities/Navy-Drug-Screening-Lab-Great-Lakes/> (last visited May 1, 2025) (emphasis added).

³ NAVY AND MARINE CORPS FORCE HEALTH PROTECTION COMMAND > FIELD ACTIVITIES > NAVY DRUG TESTING PROGRAM > OUR PROCESS, <https://www.med.navy.mil/Navy-and-Marine-Corps-Force-Health-Protection-Command/Field-Activities/Navy-Drug-Testing-Program/our-process/> (last visited May 1, 2025) (emphasis added).

served as “an out-of-court substitute for trial testimony.” *See Bryant*, 562 U.S. at 358.

At Petitioner’s trial, the judge excluded the cover memoranda for the litigation packages, which indicated that each of the urine samples at issue underwent an initial screening test and a subsequent confirmation test. That was because those statements were clearly testimonial hearsay.

So instead, the Government used Dr. Furman’s testimony to: (1) lay the foundation for the lab tests; (2) admit the lab tests’ “litigation package[s]” without any narrative about what was done in the lab that produced those reports; and (3) make him the “mouthpiece” for that information by opining about the lab tests’ results, accuracy, and veracity. *See Smith*, 602 U.S. at 800 (“Longoni thus effectively became Rast’s mouthpiece.”).

In the words of Justice Kagan: “If the Confrontation Clause prevents the State from getting its evidence in through the front door, then the State could sneak it in through the back. What a neat trick--but really, what a way to run a criminal justice system. No wonder five Justices reject it.” *Williams*, 567 U.S. at 133 (Kagan, J., dissenting).

But, while *Williams* may have permitted it, *Smith* squarely prohibits it. *Smith*, 602 U.S. at 789, 792; *Williams*, 567 U.S. at 78. That’s because the “surrogate testimony, . . . *could not convey* what the certifying analyst knew or observed about the particular test and testing process he employed. Nor could that testimony expose any lapses or lies on the certifying analyst’s part.” *Smith*, 602 U.S. at 786 (quoting *Bullcoming*, 564 U.S. at 661) (cleaned up)

(emphasis added). And as *Bullcoming* states, it is not raw, machine-generated data in a vacuum that creates a Confrontation Clause problem, but representations as to “*the validity of the analysis.*” *Bullcoming*, 564 U.S. at 660 (emphasis added).

Thus, Dr. Furman’s testimony that: (1) the lab tests were, in fact, conducted, (i.e., the tests’ veracity); and (2) that those lab tests were conducted correctly without discrepancies (i.e., the tests’ accuracy) was testimonial under this Court’s case law. And because none of the lab analysts who actually ran those tests were subject to cross-examination, the admission of this surrogate expert testimony violated the Confrontation Clause. This is because Petitioner “ha[d] no opportunity to challenge the veracity of the out-of-court assertions that are doing much of the work.” *See Smith*, 602 U.S. at 780.

C. Military courts—along with the First Circuit—have now joined in a split with the Fourth, Sixth, and Ninth Circuits, as well as five state supreme courts.

Between Petitioner’s trial and his appeal to the NMCCA, this Court decided *Smith*, which made clear that *Williams*’s “basis testimony” theory was “muddle,” which this Court “now reject[s].” *Smith*, 602 U.S. at 789, 792. By extension, this also abrogated the CAAF’s precedent in *United States v. Katso*, 74 M.J. 273, 282 (C.A.A.F. 2015), which held, “Experts may review and rely upon the work of others, including laboratory testing conducted by others, so long as they reach their own opinions in conformance with evidentiary rules regarding expert opinions. . . . This rule is not inconsistent with [*Williams v. Illinois.*]” (quotations omitted). *Smith* now abrogates this

because “[t]here is no meaningful distinction between disclosing an out-of-court statement’ to ‘*explain the basis* of an expert’s opinion’ and ‘disclosing that statement for its truth.’” *Smith*, 602 U.S. at 795 (quoting *Williams*, 567 U.S. at 106 (Thomas, J., concurring in judgment)) (emphasis added).

But the NMCCA saw things differently. It rejected Petitioner’s *Smith* challenge, holding Dr. Furman’s testimony was admissible because “[a]fter independently reviewing each exhibit generally and the computer-generated data specifically, he concluded that [Petitioner]’s urine tested positive for methamphetamine or a combination of methamphetamine and THC.” App. 15. The CAAF simply chose not to consider the matter. App. 1.

Petitioner’s appeal is now the fourth case in which the NMCCA declined to hold this type of surrogate lab expert testimony runs afoul of *Smith*.⁴ And it is the second in which the CAAF declined to review whether *Katso* is still good law in light of *Smith*. App. 1; *United States v. Dillenburg*, 86 M.J. 250 (C.A.A.F. 2025).

The highest tiers of military courts have effectively dug their heels into a position that directly conflicts with *Smith*, which in and of itself warrants review. See SUP. CT. R. 10(c). In so doing, they have insulated the Government from the right of defendants to directly challenge the evidence and witnesses against them by shielding the lab analysts who actually

⁴ App. 14-16; *United States v. Coleman*, No. 202400173, 2025 CCA LEXIS 487, at *6-7, *24-26 (N-M. Ct. Crim. App. Oct. 30, 2025); *United States v. Eneliko*, No. 202400058, 2025 CCA LEXIS 410, at *1 (N-M. Ct. Crim. App. Aug. 28, 2025); *United States v. Dillenburg*, 85 M.J. 599, 603, 609-10 (N-M. Ct. Crim. App. 2025).

conduct the tests from cross-examination. This is precisely the circumstance *Smith* was meant to guard against: “[N]o defendant would have a right to cross-examine the testing analyst about what she did and how she did it and whether her results should be trusted. In short, [the Government] wants to end run all we have held the Confrontation Clause to require. It cannot.” *See Smith*, 602 U.S. at 799.

The military courts have now joined the current federal circuit split on when a surrogate expert conveys testimonial statements under *Smith*. In *United States v. Seward*, the Fourth Circuit’s view of *Smith* is contrary to that of the lower court. It held *Smith* stands for the proposition that “a criminal defendant has ‘a right to cross-examine the testing analyst about what she did and how she did it and whether her results should be trusted’; the ability to cross-examine someone else is insufficient to avoid a Confrontation Clause problem.” *United States v. Seward*, 135 F.4th 161, 169 (4th Cir. 2025) (quoting *Smith*, 602 U.S. at 799).

There, the testifying DNA expert explained how familiar she was with the specific lab’s DNA testing procedures and quality assurances to ensure reliable results. *Id.* at 168. As *Seward* identified, “[n]ow comes the problem. . . . The DNA expert then discussed each DNA sample taken from the crime scene, testified that her ‘lab analyze[d]’ each swab (seemingly according to the procedures she had explained earlier), and provided her conclusions—all without having tested the samples herself.” *Id.* (alterations in original). “The obvious implication—indeed, the only way the testimony makes sense—is that the [] expert was representing that the non-testifying analyst who ran

the underlying tests in fact followed the procedures the [] expert had just described.” *Id.* This is precisely what occurred in Petitioner’s case.

The Fourth Circuit held the surrogate DNA expert’s testimony implicated *Smith* and violated the Confrontation Clause:

[T]he government may not sidestep the Sixth Amendment problems created by having a witness testify to their opinions that are founded on a non-testifying analyst’s out-of-court statements by simply omitting any questions about the analyst’s work. ‘Approving that practice would make’ *Smith* and several other post-*Crawford* decisions ‘a dead letter, and allow for easy evasion of the Confrontation Clause.’

Id. (quoting *Smith*, 602 U.S. at 798).

In alignment with the Fourth Circuit, the Sixth Circuit held, “In *Smith*, the [Supreme] Court reasoned that the Clause’s protections apply when a substitute analyst offers ‘independent’ conclusions while conveying the substance of the underlying report.” *United States v. Thompson*, 119 F.4th 445, 455 (6th Cir. 2024). It decided, however, that the substitute expert’s testimony about an autopsy performed by an unavailable pathologist was “a close call” under *Smith* that it need not resolve due to a lack of prejudice. *Id.*

Consistent with the Fourth and Sixth Circuits, the Ninth Circuit held, “Under [*Smith*], it is unconstitutional for a testifying expert to base her conclusions solely on her review of another non-testifying analyst’s report.” *United States v. Koffie*,

No. 23-4199, 2026 U.S. App. LEXIS 10873, at *1-2 (9th Cir. Apr. 16, 2026). Both the Ninth Circuit, *and* the United States Government, agreed that a Confrontation Clause violation occurred under *Smith* when the district court “permitted [a surrogate expert] to testify about the contents of the government’s Pittsburgh controlled [drug] buy.” *Id.* at *2.

By contrast, the First Circuit appears to be aligned with the lower court in Petitioner’s case when it held no Confrontation Clause violation occurred on a habeas corpus claim. *Watson v. Edmark*, 118 F.4th 456, 461-62 (1st Cir. 2024). It found that the testifying lab expert was a competent witness to introduce the lab report even though he did not perform the toxicological blood testing at issue or supervise those who did. *Id.* at 458, 461-62. While that case presented a slightly different factual scenario in that the witness actually signed the lab report admitted as evidence at trial, which contained his own analysis and conclusions, *id.* at 462, the confrontation problem under *Smith* persisted. Specifically, the witness “reviewed the actual instrument data and made sure that the data were accurately entered into the [] computer” as part of writing his report. *Id.* at 461.

But the fact remains the witness’s analysis and conclusions in his report were entirely predicated on assuming a test that he did not perform was true and accurate—information he could not know. *See id.* at 458, 461-62. Despite acknowledging that this Court had recently abrogated *Williams* in *Smith*, the First Circuit still held no unreasonable application of clearly established federal law took place. *Id.* at 462.

Additionally, the five state supreme courts to apply *Smith* so far are aligned with the Fourth, Sixth, and Ninth Circuits. Notably, after this Court vacated a state judgment and remanded for further consideration in light of *Smith*, the Massachusetts Supreme Judicial Court held:

[I]n light of the Supreme Court’s decision in *Smith* an expert’s opinion based on an absent analyst’s test results that depends also on the truth of the analyst’s testimonial hearsay as to the processes and protocols she said she followed to obtain those results is precluded by the confrontation clause. Such expert opinion testimony, after *Smith*, is prohibited because *the relevant witness against the accused, in a constitutional sense, is the absent analyst*.

Gordon v. Massachusetts, 145 S. Ct. 412 (2024); *Commonwealth v. Gordon*, 496 Mass. 554, 575 (Mass. 2025). The supreme courts of Pennsylvania, Washington, Maine, and Georgia issued similar post-*Smith* opinions.⁵

⁵ See *Commonwealth v. Walker*, 350 A.3d 54, 88-89 (Pa. 2026) (vacating and remanding due to Confrontation Clause violation under *Smith* because substitute nurse examiner became “the nurse examiners’ ‘mouthpiece’ and essentially read from the rape kit reports”) (quoting *Smith*, 602 U.S. at 800); *State v. Hall-Haught*, 569 P.3d 315, 323 (Wash. 2025) (holding Confrontation Clause rights violated when lab report indicating THC in body was admitted into evidence without testimony from analyst who performed the testing, causing prejudicial error); *State v. Gleason*, 2025 ME 52, P19, P22, P24 (Me. 2025) (holding testimony from surrogate expert forensic toxicologist that relied on “a technical review of the data and the documentation in the

Thus, the military and the First Circuit are split with the Fourth, Sixth, and Ninth Circuits, along with five state supreme courts, on when *Smith* is implicated and what statements from a lab test are now testimonial post-*Smith*. This split amongst federal appellate and state courts of last resort on the same important Constitutional matter warrants plenary review. *See* SUP. CT. R. 10(a), (b).

D. The Question Presented is an important issue of Constitutional law that will have nationwide applicability to criminal trials.

As it stands, the law surrounding the “primary purpose” test “continues to confound courts, attorneys, and commentators.” *Franklin*, 145 S. Ct. 831 (Alito, J., concurring). Clarification of this standard will offer much-needed guidance in criminal prosecutions nationwide. Specifically, it will shed light on when criminal defendants have the right to confront and cross-examine lab analysts whenever forensic evidence tests are used against them at trial.

This guidance would apply not just for drug-related offenses, but, as the circuit split demonstrates, also for cases involving DNA evidence, toxicology screens, post-rape examinations, autopsies, and any

case, which included notes made by other lab employees concerning anomalies in the data and whether protocols had been followed” implicated *Smith* and remanded case for new trial to develop record on what statements were testimonial); *Watkins v. State*, 320 Ga. 862, 873 (Ga. 2025) (holding absent lab analyst, Sloan’s, “test results showed the substance was in fact cocaine . . . [and] Karpf’s testimony relating the factual assertions in Sloan’s report violated the Confrontation Clause under the United States Supreme Court’s decision in *Smith*”).

other test that can be conducted in a crime lab. Going forward, this could also include ballistics tests, trace evidence testing, forensic testing of documents, latent print examinations, and extraction and authentication of video or audio recordings or of digital data from computers or smart phones. *See, e.g.*, U.S. ARMY CRIMINAL INVESTIGATION LABORATORY, LABORATORY SERVICE INFORMATION, <https://www.cid.army.mil/Our-Capabilities/Army-Criminal-Investigation-Laboratory/> (last visited June 18, 2026); *United States v. Juhic*, 954 F.3d 1084, 1089 (8th Cir. 2020) (citing *Melendez-Diaz*, 557 U.S. at 310-11) (holding computer-generated reports identifying potential child pornography contained inadmissible hearsay).

Petitioner's case presents the opportunity for this Court to ensure prosecutors do not continue to find creative ways to evade the Confrontation Clause's protections and shield lab analysts from cross-examination, as was done in this case. In short, the Question Presented is an important question of federal law that this Court should settle. *See* SUP. CT. R. 10(c).

Moreover, this confrontation error "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *See United States v. Olano*, 507 U.S. 725, 736 (1993) (the standard for when plain error should be corrected) (alteration in original). Allowing this to stand shields the lab testers from cross-examination where the Government's key evidence is the validity of those tests that hinge on evidence involuntarily extracted from servicemembers. If the public knew that our nation's servicemembers are deprived of their constitutional

rights when they face court-martial, it would rightfully question the integrity of the military justice system. Surely, for those who have suffered in the theater of war—as Petitioner has—the right to confront the witnesses and actually challenge the evidence being used against them at trial should be protected.

E. This case is a clean vehicle to address the Question Presented.

The constitutional question Petitioner raises is cleanly preserved and presented to this Court. While there was no objection at trial to Dr. Furman’s testimony, the issue is not waived, as the lower acknowledged. App. 14. That is because this Court decided *Smith* during Petitioner’s direct appeal. *See* subsection C, *supra*.

Specifically, while it was once closed, the door has now been opened for Petitioner to assert his Confrontation Clause rights under *Smith*. *See United States v. Johnson*, 520 U.S. 461, 468 (1997) (“[W]here the law at the time of trial was settled and clearly contrary to the law at the time of appeal--it is enough that an error be ‘plain’ at the time of appellate consideration.”).

In addition, because of a recent change in the law, this Court can now review “Cases in which the Court of Appeals for the Armed Forces . . . refused to grant a petition for review.” 28 U.S.C. § 1259(3) (2024). Thus, the Question Presented is cleanly preserved for this Court’s review because Petitioner: (1) objected at trial to the drug lab statements on Confrontation Clause grounds to the extent he could under the law at that time; and (2) presented his *Smith*-based

Confrontation Clause challenge to the surrogate lab expert's testimony at every opportunity on direct appeal.

CONCLUSION

With Petitioner’s case, now five federal appeals courts—along with five state supreme courts—have struggled with applying the testimonial primary-purpose test to forensic lab tests post-*Smith*. And the results have been inconsistent. The Question Presented is therefore ripe for, and in need of, a clear answer from this Court. *See* SUP. CT. R. 10(a), (b), (c).

Therefore, Petitioner respectfully requests this Court grant this petition for a writ of certiorari.

July 10, 2026

Respectfully submitted.

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APPENDIX

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**Appendix A — Order of the United States Court
of Appeals for the Armed Forces
(April 16, 2026)**

**United States Court of Appeals
for the Armed Forces
Washington, D.C.**

United States, USCA Dkt. No. 26-0140/NA
 Appellee Crim.App. No. 202400217

v.

ORDER DENYING PETITION

Anthony M.
Clark,
 Appellant

On consideration of the petition for grant of review of the decision of the United States Navy-Marine Corps Court of Criminal Appeals, it is by the Court, this 16th day of April, 2026,

ORDERED:

That the petition is hereby denied.

For the Court,

/s/ Malcolm H. Squires, Jr.
 Clerk of the Court

App. 2

Appendix A

cc: The Judge Advocate General of the Navy
Appellate Defense Counsel (Bilter)
Appellate Government Counsel (Keller)

**Appendix B — Opinion of the United States
Navy-Marine Corps Court of Criminal Appeals
(December 30, 2025)**

*This opinion is subject to administrative
correction before final disposition.*

United States Navy-Marine Corps
Court of Criminal Appeals

Before
KISOR, GANNON, and FLINTOFT
Appellate Military Judges

UNITED STATES

Appellee

v.

Anthony M. CLARK

Hospital Corpsman Petty Officer First Class (E-
6), U.S. Navy
Appellant

No. 202400217

Decided: 30 December 2025

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Appeal from the United States Navy-Marine
Corps Trial Judiciary

Military Judge:
Ryan Stormer (arraignment)
Andrea K. Lockhart (trial)

Sentence adjudged 9 July 2022 by a special court-martial tried at Naval Base San Diego, California consisting of officer and enlisted members. Sentence in the Entry of Judgment: a reprimand, reduction to E-1, forfeiture of \$1,200.00 pay per month for 12 months.

For Appellant:
Lieutenant Raymond E. Bilter, JAGC, USN

For Appellee:
Major Mary Claire Finnen, USMC
Commander John T. Cole, JAGC, USN

Judge FLINTOFT delivered the opinion of the Court, in which SENIOR Judge KISOR and Judge GANNON joined.

This opinion does not serve as binding precedent, but may be cited as persuasive authority under NMCCA Rule of Appellate Procedure 30.2.

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FLINTOFT, Judge:

Contrary to his pleas, a panel of members convicted Appellant of eight specifications of wrongful use of a controlled substance and three specifications of larceny in violation of Uniform Code of Military Justice (UCMJ) Articles 112a and 121.¹

Appellant asserts three assignments of error (AOEs):

I. Did the Government violate the Confrontation Clause when it admitted evidence based on the testimony of the Government's surrogate drug lab expert;²

II. Did the military judge abuse her discretion when she admitted, over defense objection, urinalysis documents pursuant to Military Rule of Evidence (Mil. R. Evid.) 803(6);³ and

III. Did the military judge violate Appellant's constitutional right to a unanimous members panel guilty verdict.⁴

¹ 10 U.S.C. §§ 912a, 921.

² Appellant's requested relief under this AOE is to set aside the findings in Specifications 1 through 6 of Charge I and the sentence.

³ Appellant's requested relief under this AOE is to set aside the findings in Specifications 1 and 2 of Charge I and the sentence.

⁴ Appellant's requested relief under this AOE is to set aside all findings and the sentence. He raises this AOE pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). This

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Finding no prejudicial error, we affirm.

I. BACKGROUND

Appellant's convictions for the wrongful use of methamphetamine and tetrahydrocannabinol (THC) stemmed from five separate urinalysis tests while he was assigned to Navy Medicine Readiness and Training Command (NMRTS) San Diego.⁵

At trial, the Government presented the testimony of Ms. Bravo to establish the foundation for Prosecution Exhibits 8 and 11, the testing registers for two of Appellant's urinalyses.⁶ Ms. Bravo served as one of the assistant urinalysis program coordinators (AUPC) at NMRTC San Diego from October 2020 through January 2022. At that time, she was an active duty Second Class Petty Officer; however, she separated from the Navy in April 2022. At the time of her testimony in June 2022, Ms. Bravo had not performed duties as AUPC or as records custodian since January 2022.⁷

AOE is without merit. *See United States v. Anderson*, 83 M.J. 291 (C.A.A.F. 2023); *See also United States v. Matias*, 25 M.J. 356 (C.M.A. 1987).

⁵ Appellant was also found guilty of three specifications of Article 121, UCMJ.

⁶ Through Ms. Bravo's testimony, the Government also admitted Prosecution Exhibits 6, 9 and 10. These exhibits were the testing registers associated with the three other urinalysis tests in which Appellant's urine tested positive.

⁷ Ms. Bravo was classified as another qualified witness pursuant to Mil. R. Evid. 803(6)(D) since she was no longer in the Navy or serving as the AUPC or records custodian.

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During trial, Ms. Bravo testified that Prosecution Exhibit 11 was created on 3 January 2020 prior to her assuming duties as an AUPC, while Prosecution Exhibit 8 was created on 3 February 2021 during her tenure as an AUPC. She explained that, as an AUPC, she was responsible for maintaining and storing the command's urinalysis records, including testing registers and chain of custody documents, which were kept and prepared in the regular course of business of the command's urinalysis program pursuant to applicable urinalysis policies.⁸ She stated that testing registers are computer generated and are created and filled out on the day of testing. Additionally, she testified that that records for the current and previous month's tests were kept in a locked drawer within the urinalysis office.⁹

Regarding Prosecution Exhibits 8 and 11, Ms. Bravo testified that both would have been maintained and kept within the command's record-keeping system at the time of trial. She acknowledged that both records would have been maintained during her tenure as AUPC.¹⁰ She identified specific information contained on both exhibits, including command personnel, the date of the urinalysis, and the command's name at the top of both exhibits. Since both exhibits belonged to the command, were not dated for the current or previous month, and were less than three years old, she testified the exhibits would

⁸ R. at 768-71.

⁹ R. at 770.

¹⁰ R. at 773; R. at 781-82; R. at 784-85; R. at 792.

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have been kept in the binder, organized by month and year, and located in the urinalysis office.¹¹

The Government also called Dr. Foxtrot, a chemist employed at the Naval Drug Screening Laboratory (NDSL), who was recognized as an expert in the field of forensic chemistry without objection. Specifically, when the military judge asked Defense if they had any objection to Dr. Foxtrot being recognized as an expert, they responded, “[n]o, Your Honor.”¹² Through Dr. Foxtrot’s testimony, the Government established the necessary foundation and authenticated, as business records, all five drug laboratory reports associated with Appellant’s positive drug test results.¹³ These five reports were identified as Prosecution Exhibits 23 through 27. Each exhibit was prepared by the NDSL’s documentation services department, which retrieves the drug laboratory reports and provides them to the designated expert witness for comparison and verification, ensuring they are exact copies.¹⁴

The Government first sought to admit Prosecution Exhibit 27 into evidence. However, trial defense counsel objected to the admission of the two-page cover memorandum, arguing it constituted testimonial hearsay. The military judge sustained this objection and the cover memorandum was not

¹¹ R. at 770; R. at 782; R. at 784.

¹² R. at 924.

¹³ The urine samples in Pros. Ex. 23 and 24 were positive for methamphetamine while the urine samples in Pros. Ex. 25 through 27 were positive for both methamphetamine and THC.

¹⁴ R. at 964-65.

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admitted into evidence or published to the members. Similarly, the cover memoranda included in Prosecution Exhibits 23 through 26 were also removed and not presented to the members.¹⁵ The remainder of Prosecution Exhibits 23 through 27, consisting primarily of chain of custody documents and computer-generated testing results, were admitted into evidence after trial defense counsel did not object after being provided with the opportunity to do so by the military judge.¹⁶

Dr. Foxtrot then reviewed each exhibit and testified regarding the laboratory procedures and testing processes associated with each urine sample. He testified to the chain of custody and how the urine samples linked to each report belonged to Appellant. After reviewing the reports, Dr. Foxtrot concluded that all five of the urine samples provided by Appellant exceeded Department of Defense cutoff concentrations and tested positive for either methamphetamine or both methamphetamine and THC.

While Dr. Foxtrot stated he was not directly involved in testing the urine samples, he was listed on one of the chain of custody documents in Prosecution

¹⁵ Despite this, a redacted cover memorandum is included with each relevant prosecution exhibit in the Record of Trial.

¹⁶ Trial defense counsel also objected to pages three and four of Prosecution Exhibit 27 as cumulative with Prosecution Exhibit 16 for identification; however, the military judge overruled the objection since Prosecution Exhibit 16 had not yet been admitted into evidence.

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Exhibit 27, which Appellant does not include in his assigned error. We therefore focus only on Prosecution Exhibits 23 through 26 in this opinion.

II. DISCUSSION

A. The Government Did Not Violate the Confrontation Clause When it Admitted Evidence Based on the Testimony of Dr. Foxtrot.

1. Standard of Review

Waiver is an intentional relinquishment or abandonment of a known right.¹⁷ Whether waiver has occurred is a question of law this court reviews de novo.¹⁸ CAAF has stated, a valid “waiver leaves no error... to correct on appeal.”¹⁹ On the other hand, forfeiture is the failure to timely assert a right.²⁰ This Court reviews forfeited issues under a plain error standard.²¹ Plain error is a clear or obvious error that results in material prejudice to a substantial right.²² By its nature, the Confrontation Clause of the Sixth

¹⁷ *United States v. Davis*, 79 M.J. 329, 331 (C.A.A.F. 2020) (quoting *United States v. Gladue*, 67 M.J. 311, 313 (C.A.A.F. 2009)).

¹⁸ *Id.*

¹⁹ *United States v. Campos*, 67 M.J. 330, 332 (C.A.A.F. 2009).

²⁰ *Davis*, 79 M.J. at 331.

²¹ *Johnson v. United States*, 520 U.S. 461, 466-67 (1997).

²² *United States v. Dillenburg*, 85 M.J. 599, 608 (N-M. Ct. Crim. App. 2025) *rev. denied*, __M.J.__, No. 25-0174/NA, 2025 CAAF LEXIS 561 (C.A.A.F. July 17, 2025) (citing *United States v. McPherson*, 81 M.J. 372, 377 (C.A.A.F. 2021)).

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Amendment implicates a substantial right, and where plain and obvious error implicates a constitutional right, the Government bears the burden to show that it was harmless beyond a reasonable doubt.²³ In a urinalysis case, stamps, signatures, and other notations on the chain of custody documents and data review sheets, and results report summaries, are not plainly and obviously testimonial in the context of review for plain error.²⁴

An appellant receives the benefit of a change to the law that occurs between his trial and the time of his appeal.²⁵ This court-martial adjourned in July 2022. Almost two years later, in June 2024, the Supreme Court of the United States decided *Smith v. Arizona*.²⁶ In *Smith*, the Supreme Court held that “[a] state may not introduce the testimonial out-of-court statements of a forensic analyst at trial, unless she is unavailable and the defendant has had a prior chance to cross-examine her.”²⁷ The Supreme Court also held that the state may not

introduce those statements through a surrogate analyst who did not participate in their creation. And

²³ *Id.* (citing *United States v. Harcrow*, 66 M.J. 154, 160 (C.A.A.F. 2008)).

²⁴ *Id.* (citing *United States v. Sweeney*, 70 M.J. 296, 305 (C.A.A.F. 2011)).

²⁵ *United States v. Tovarchaves*, 78 M.J. 458, 462 (C.A.A.F. 2019) (citing *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987)); See *United States v. Mullins*, 69 M.J. 113, 116-17 (C.A.A.F. 2010).

²⁶ 602 U.S. 779 (2024).

²⁷ *Id.* at 802-03.

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nothing changes if the surrogate... presents the out-of-court statements as the basis for his expert opinion. Those statements, as we have explained, come into evidence for their truth—because only if true can they provide a reason to credit the substitute expert. So a defendant has the right to cross-examine the person who made them.²⁸

2. Analysis

a. Any Objection to Testimonial Hearsay in the Documents in Violation of *Crawford v. Washington* was Waived.

Appellant contends the admission of Prosecution Exhibits 23 through 26, based solely on the foundational testimony of a surrogate expert who did not perform any of the testing in the reports, violated his rights under the Confrontation Clause in light of the Supreme Court's decision in *Smith v. Arizona*.²⁹ We disagree.

In March 2025, this Court issued a published opinion, *United States v. Dillenburg*, the facts of which are remarkably similar to those in Appellant's case. As in *Dillenburg*, the Government in this case presented the testimony of an expert from the NDSL who was not involved in the testing of Appellant's

²⁸ *Id.* at 803 (citations omitted).

²⁹ Appellant's Brief at 8.

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urine samples. During trial, Dr. Foxtrot was recognized as an expert without objection, and he authenticated Prosecution Exhibits 23 through 26, four of the five drug laboratory reports associated with Appellant's positive urine samples, as business records.

In contrast to the documentary exhibits in *Dillenburg*, however, the first two pages of each exhibit in this case included a cover memorandum signed by someone other than Dr. Foxtrot. Trial defense counsel objected to the cover memorandum that accompanied each exhibit as testimonial hearsay. The military judge sustained the objection and admitted the remainder of each exhibit without objection.³⁰

Despite *Crawford v. Washington*³¹ and *United States v. Tearman*³², Appellant waived any *Crawford* violation under the Confrontation Clause for any testimonial hearsay contained in the drug laboratory reports when trial defense counsel declined to make an objection after being asked by the military judge.³³ Thus, any testimonial hearsay objections that may have been present when Prosecution Exhibits 23 through 26 were admitted were waived.

³⁰ *But see* fn15.

³¹ 541 U.S. 36 (2004).

³² 72 M.J. 54 (C.A.A.F. 2013).

³³ *See generally Dillenburg*, 85 M.J. at 609.

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b. Dr. Foxtrot's Testimony Was Not Testimonial Hearsay

Next, we examine whether Dr. Foxtrot's foundational testimony violated the Confrontation Clause in light of *Smith v. Arizona*. Since *Smith* had not been decided at the time of Appellant's trial, defense counsel's failure to object to this testimony does not constitute waiver, but is instead treated as a forfeiture, which we review under a plain error standard.³⁴

In *Smith*, the Supreme Court acknowledged that a surrogate expert from the same drug laboratory who did not perform the testing may still testify based on personal knowledge about how the drug laboratory functions and its standards, practices, and procedures used to conduct tests.³⁵ Appellant, however, seems to argue that *Smith* limits an expert's ability to do just that.

³⁴ See *Harcrow*, 66 M.J. at 158.

³⁵ See *Smith*, 602 U.S. at 799 (“The [Confrontation] Clause still allows forensic experts... to play a useful role in criminal trials. Because [the surrogate expert] worked in the same lab... he could testify from personal knowledge about how that lab typically functioned—the standards, practices, and procedures it used to test seized substances, as well as the way it maintained chains of custody.... Or had [the surrogate expert] not been familiar with... [the] lab, he could have testified in general terms about forensic guidelines and techniques—perhaps explaining what it means for a lab to be accredited and what requirements accreditation imposes.”) (citations omitted).

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In this case, Dr. Foxtrot testified regarding the NDSL's internal controls, standards, practices, and procedures applicable to the testing of Appellant's urine samples, specifically relating to Prosecution Exhibits 23 through 26. He also testified about the chain of custody and confirmed that Appellant's urine samples associated with these exhibits were properly linked to the tests conducted. After independently reviewing each exhibit generally and the computer-generated data specifically, he concluded that Appellant's urine tested positive for methamphetamine or a combination of methamphetamine and THC.³⁶

Additionally, to the extent Appellant argues that the holding in *Smith* also overturns a well-established line of precedent from our superior court that followed *Crawford* regarding what constitutes testimonial hearsay in forensic laboratory reports, this Court finds those arguments unconvincing. The holding in *Smith* did not address whether the underlying statements were testimonial.³⁷ Our superior court has held, "[i]t is well-settled that under both the Confrontation Clause and the rules of evidence, machine-generated data and printouts are not

³⁶ R. at 993-1001. There is no indication in the record that Dr. Foxtrot relied on the cover memoranda to form the basis of his independent conclusions. Absent from the cross-examination were questions that may have shed light on this question including: (1) What did you do to prepare for your testimony today? (2) What documents did you review? Just as this Court refused to do in *Dillenburg*, we will not speculate further on this issue.

³⁷ See *Smith*, 602 U.S. at 803.

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statements and thus not hearsay—machines are not declarants—and such data is therefore not ‘testimonial.’”³⁸ Additionally, as this Court articulated in *Dillenburg*, in a urinalysis case, stamps, signatures, and other notations on the chain of custody documents and data review sheets, and results report summaries were not testimonial, and, therefore, it is not plain error.³⁹ Although Appellant disputes this aspect of *Dillenburg*, which constitutes binding precedent, the Court finds Appellant’s argument to be without merit.⁴⁰

c. Any Error Here Was Harmless Beyond a Reasonable Doubt.

To the extent that any other portions of Dr. Foxtrot’s testimony may have conveyed testimonial hearsay from the exhibits, any such error was not plain or obvious and did not materially prejudice a substantial right, and, regardless, would have been harmless beyond a reasonable doubt.⁴¹

In the context of erroneous admission of testimonial hearsay, this Court focuses on whether

³⁸ *United States v. Blazier*, 69 M.J. 218, 224 (C.A.A.F. 2010).

³⁹ *Dillenburg*, 85 M.J. at 608 (citing *Sweeney*, 70 M.J. at 305).

⁴⁰ *See Matias*, 25 M.J. 356.

⁴¹ We review this question de novo. *United States v. Savala*, 70 M.J. 70 (C.A.A.F. 2011) (citations omitted). Stamps, signatures, and other notations on the chain of custody documents and data review sheets, and results reports summaries, are not plainly and obviously testimonial in the context of review for plain error. *See Sweeney*, 70 M.J. at 305.

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there is a reasonable possibility that the evidence might have contributed to the conviction.⁴² In other words, this Court must be convinced that the testimonial hearsay was unimportant in light of the other evidence.⁴³ To resolve this question, the CAAF adopted a balancing test considering factors such as: (1) the importance of the uncontroverted testimony in the prosecution's case; (2) whether the evidence was cumulative; (3) the existence of corroborating evidence; (4) the extent of confrontation permitted; and (5) the strength of the prosecution's case.⁴⁴ We consider the "entire record" which includes evidence presented by the Defense.⁴⁵

As this Court reasoned in *Dillenburg*, the admission into evidence of Prosecution Exhibits 23 through 26 without objection heavily tilts the balance of these factors in favor of the Government.⁴⁶ Additionally, Dr. Foxtrot's testimony describing the laboratory's testing processes and procedures was not hearsay, and his testimony regarding the testing and chain of custody would have been largely cumulative with the exhibits already admitted without objection. Furthermore, the Government's case was overwhelmingly strong, and any potential significance of uncontroverted testimony would be low, especially it

⁴² See *Tearman*, 72 M.J. at 62 (citations and internal quotations marks omitted).

⁴³ *Id.* (citing *United States v. Gardinier*, 67 M.J. 304, 306 (C.A.A.F. 2009)).

⁴⁴ *Id.* (citing *Sweeney*, 70 M.J. at 306).

⁴⁵ See *id.*

⁴⁶ See *Dillenburg*, 85 M.J. at 610.

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was corroborated by other witnesses and the drug laboratory reports themselves. As also highlighted by the Government, Appellant was not limited in his cross-examination of Dr. Foxtrot; consequently, even if some portion(s) of his testimony were uncontroverted testimonial hearsay, the Government has met its burden to show that it or they would be harmless beyond a reasonable doubt.

B. The Military Judge Did Not Abuse Her Discretion When She Admitted Urinalysis Documents Pursuant to Mil. R. Evid. 803(6).

1. Standard of Review

Appellate courts review a military judge's decision to admit evidence over defense objection for an abuse of discretion.⁴⁷ An abuse of discretion occurs when a military judge's findings or fact are clearly erroneous, or if the military judge's decision is influenced by an erroneous view of the law.⁴⁸

Mil. R. Evid. 803(6), also known colloquially as the business record exception, allows for the admission of records of a regularly conducted activity as an exception to the rule against hearsay. The proponent of the evidence must satisfy four elements:

⁴⁷ *United States v. Frost*, 79 M.J. 104, 109 (C.A.A.F. 2019) (internal citations omitted).

⁴⁸ *Id.*

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“(A) the record was made at or near the time by—someone with knowledge; (B) *the record was kept in the course of a regularly conducted activity of a uniformed service...*; (C) making the record was a regular practice of that activity; (D) all these conditions are shown by the testimony of the custodian or another qualified witness....”⁴⁹

2. Analysis

Appellant contends the military judge erred when, over defense objection as to foundation, she admitted into evidence Prosecution Exhibits 8 and 11, two computer-generated urinalysis testing registers associated with Appellant’s urine sample.⁵⁰ Appellant does not dispute the authenticity of either exhibit and concedes that all foundational criteria under Mil. R. Evid. 803(6) were met, except Mil. R. Evid. 803(6)(B). Specifically, Appellant contends that Ms. Bravo lacked sufficient personal knowledge to confirm that these exhibits were actually kept in the command’s record-keeping system. This argument is without merit.

Ms. Bravo, who served as a command AUPC and urinalysis records custodian from October 2020 to January 2022, demonstrated that she thoroughly

⁴⁹ Mil. R. Evid. 803(6) (emphasis added).

⁵⁰ Trial defense counsel also objected based on authenticity, but that objection is not within the scope of the AOE.

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understood the command's record-keeping process.⁵¹ Although she was no longer on active duty nor was she the records custodian at the time of trial, her testimony detailed the command's record-keeping system and process used in maintaining the records. She explained that the testing registers were created and collected on the day of each urinalysis, and she described the procedures and timelines associated with their storage. Ms. Bravo testified that it was a routine practice for the AUPCs, who were also the record custodians, to maintain and store these testing registers, including both Prosecution Exhibits 8 and 11, in accordance with urinalysis policy guidance.⁵²

Furthermore, when examining the exhibits, Ms. Bravo identified them as belonging to the command based on the names of command personnel on the documents as well as from the command markings at the top of the page.⁵³ Ms. Bravo testified the command's standard practice was to keep these documents in a binder for three years in the regular course of business. Based on the date of both exhibits, she testified that both would have been stored in a binder located in the urinalysis office, and she confirmed that these records would have been

⁵¹ Despite not having been the AUPC or records custodian at the time of trial, Ms. Bravo had been an AUPC who served as the records custodian just a few months prior. Thus, she testified not as the current custodian, but as another qualified witness pursuant to Mil. R. Evid. 803(6)(D).

⁵² R. at 768-71.

⁵³ R. at 784; R. at 791-92.

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maintained during her tenure as the AUPC and records custodian.

In *United States v. Garces*, the CAAF addressed the level of knowledge required for a witness to establish the proper foundation under Mil. R. Evid. 803(6).⁵⁴ The CAAF noted that the military rule “is identical to the corresponding Federal Rule.”⁵⁵ This similarity was true then and remains true today.⁵⁶ In *Garces*, the CAAF, relying in part on the federal case law, rejected the more stringent common law “intimate familiarity” standard.⁵⁷ Since *Garces*, this Court, as well as the CAAF have held that, in the case of a business record, a witness need only be generally familiar with the entity’s record-keeping system.⁵⁸ As long as the witness is generally familiar with how the records are created and can testify from personal knowledge that the records are regularly received, kept, and relied upon in the normal course of business, that is sufficient under Mil. R. Evid. 803(6).

Therefore, this Court is fully satisfied that Ms. Bravo possessed sufficient knowledge to lay the foundation for the admission of Prosecution Exhibits

⁵⁴ 32 M.J. 345 (C.M.A. 1991).

⁵⁵ *Id.* at 347.

⁵⁶ See generally *Kim v. JP Morgan Chase Bank N.A. (In re Kim)*, 809 F. App’x 527, 540 (10th Cir. 2020) (citing *Wallace Motor Sales, Inc. v. Am. Motors Sales Corp.*, 780 F.2d 1049, 1061 (1st Cir. 1985) (“A qualified witness is simply one who can explain and be cross-examined concerning the manner in which the records are made and kept.”) (internal citations removed).

⁵⁷ *Garces*, 32 M.J. at 347.

⁵⁸ *Id.* at 347 (internal citations omitted).

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8 and 11 under Mil. R. Evid. 803(6). We find no abuse of discretion in the military judge's ruling admitting these exhibits.

III. CONCLUSION

After careful consideration of the record and briefs of appellate counsel, we have determined that the findings and sentence are correct in law and fact and that no error materially prejudicial to Appellant's substantial rights occurred.⁵⁹

The findings and sentence are **AFFIRMED**.

[Seal of the U.S. Navy-
Marine Corps Court of
Criminal Appeals]

FOR THE COURT:
/s/
REGINA D. DIMAGGIO
Chief Commissioner
By Direction

⁵⁹ Articles 59 & 66, UCMJ.

**Appendix C — Excerpts from Prosecution
Exhibit 23, A Lab Test Report**

DEPARTMENT OF THE NAVY
NAVY DRUG SCREENING LABORATORY
2500 RODGERS STREET BUILDING 5501
GREAT LAKES ILLINOIS 60088-2952

IN REPLY REFER TO
5355
Ser SS/1325
29 Dec 2021

From: Commanding Officer, Navy Drug Screening
Laboratory, Great Lakes

To: [REDACTED]

Subj: TEST RESULTS, EXPERT WITNESS AND
BOTTLE REQUEST FOR URINE SPECIMEN
ASSIGNED BY LABORATORY ACCESSION
NUMBER 02000748063

Ref: (a) [REDACTED]
(b) SECNAVINST 5211.5E

Encl: (1) Laboratory Document Package; copy of
(2) Original Urinalysis Specimen Bottle

1. In response to reference (a), enclosures (1) and (2)
are provided. In accordance with reference (b), the
Privacy Act, sensitive information not essential to

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the evaluation of the specimen of interest has been redacted to prevent misuse.

2. Specimens that screened positive were not confirmed for drug(s) that corresponded to a prescription found in the Electronic Prescription Records System (ePRS).
3. A positive drug test indicates a drug or drug metabolite has been identified and quantified in a urine specimen at or above the DOD cut-off level. All positive results are verified by two independent forensic assays, an initial immunoassay test and confirmatory analysis. Positive results exceeding the DOD cut-off level and the maximum range of the confirmation test also have a >LOL (Limit of Linearity) annotation.
4. The enclosed documents have been reviewed and certified by a certified forensic scientist as true and exact copies of documents generated in the normal course of laboratory operations for the specimen listed herein.
5. All Laboratory documentation is maintained on the premises for a period of five years. This specimen has been retained in frozen storage and is scheduled for disposal on 27 December 2022. Requests for extended retention must be submitted in writing 30 days prior to the disposal date.

[REDACTED]

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/s/

R.W. ROMBERG

By direction

Appendix C

Great Lakes Drug Screening Laboratory
Immunoassay Testing Report
Report Date: 12-FEB-20 10:18:02

Batch Number: A2000748 Analyzer Number: 01
User: IIJ Page: 1 Test Date/Time: 12-FEB-20
09:55:40

Time	LAN	A-FEN	AMP-A	DMETH
08:24			REDACTED	
08:24			REDACTED	
08:24			REDACTED	
08:25			REDACTED	
08:25			REDACTED	
08:25			REDACTED	
08:25			REDACTED	
08:25			REDACTED	
08:26			REDACTED	
08:26			REDACTED	
08:26			REDACTED	
09:55			REDACTED	
09:55			REDACTED	
09:55			REDACTED	
09:55			REDACTED	
09:55			REDACTED	
09:56			REDACTED	
09:56	G2000748063	1	885	305
09:56			REDACTED	
09:56			REDACTED	

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INTRALABORATORY CHAIN OF CUSTODY
IMMUNOASSAY

Batch Number: [BARCODE]	FTDTL IMS VER 2.0
P2002121	Date: 12-FEB-20
Drug: PULL ALL	

SPECIMAN RACK

1 REDACTED
2 REDACTED
3 REDACTED
4 REDACTED
5 REDACTED
6 REDACTED
7 REDACTED
8 REDACTED
9 REDACTED
10 REDACTED
11 REDACTED
12 G2000748063
13 REDACTED
14 REDACTED
15 REDACTED
16 REDACTED
17 REDACTED
18 REDACTED
19 REDACTED
20 REDACTED
21 REDACTED
22 REDACTED
23 REDACTED

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24 REDACTED

Sample Bottle Chain of Custody

Date	Released By	Received By	Purpose
FEB 12 2020	SECURED STORAGE	Kirby Kropp	Sequester Presumptive Positives
FEB 12 2020	Kirby Kropp	SECURED STORAGE	Awaiting Processing
FEB 12 2020	SECURED STORAGE	Lyle Dellota	Verified Presumptive Positives Pulled
FEB 12 2020	Lyle Dellota	SECURED STORAGE	Awaiting Processing
28 FEB 2020	Secured Storage	Dawn Craig	See attachment
28 FEB 2020	Dawn Craig	secured storage	Awaiting processing

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BOTTLE CHAIN OF CUSTODY

DATE RELEASED BY		RECEIVED BY	PURPOSE
FE B 13 202 0	PRESUMPT IVE POSITIVE ROOM	KENNETH WOLLSCHE ID	POURED CONFIRMAT ION ALIQUOTS
FE B 13 202 0	KENNETH WOLLSCHE ID	PRESUMPT IVE POSITIVE ROOM	SECURED STORAGE
FE B 18 202 0	PRESUMPT IVE POSITIVE POURING ROOM	KRISTIN FLENTYE	REVERIFY LAN(S)
FE B 18 202 0	KRISTIN FLENTYE	TEMP. FROZEN STORAGE	AWAITING PROCESSIN G

ISTD PIPETTE ID
[BARCODES]

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NAVDRUGLABGLAKESLOP

NAVY DRUG SCREENING LABORATORY,
 GREAT LAKES, IL
 Confirmation Combined Batch Chain of Custody
 Document

[BARCODE]
 C2000145

Drug: AMP

BATCH NUMBER: _____

Date	Released By	Received By	Purpose
Feb 13 2020	PRESUMPTIVE POSTIVE STORAGE	KENNETH WOLLSCEID	POURED CONFIRMATION ALIQUOTS
Feb 13 2020	KENNETH WOLLSCHEID	PRESUMPTIVE POSITIVE STORAGE	AWAITING PROCESSING (STORAGE)
Feb 13 2020	PREUSMPTIVE POSITIVE STORAGE	Andrew Guenther	INITIAL TESTING VERIFICATION
Feb 13 2020	Andrew Guenther	PREUSMPTIVE POSITIVE STORAGE	AWAITING PROCESSING (STORAGE)
Feb 13 2020	PREUSMPTIVE	Yesenia Lee	LIMS VERIFICATION

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14 202 0	POSITIVE STORAGE		ON AND TRANSFER TO CONFIRMAT ION TECHNICIAN
FE B 14 202 0	Yesenia Lee	Patricia Johnson	Pipetting Excess Urine Disposed
FE B 14 202 0	Patricia Johnson	PPM	EXTRACTIO NS
FE B 14 202 0	PPM	Patricia Johnson	Processing
FE B 14 202 0	Patricia Johnson	Aileen Alegre	ALS Set-Up
FE B 14 202 0	Aileen Alegre	Autosampler	To Be Injected
FE B	Autosampler	Sara Ellis	Verification

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14 202 0			
FE B 14 202 0	Sara Ellis	Autosampler	To Be Injected
TIP Count: NB 2-14-20			

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NAVDRUGLABGLAKESLOP

Date	Released By	Received By	Purpose
FEB 18 2020	Autosampler	Patricia Johnson	Technical Review
FEB 18 2020	Patricia Johnson	Secured Storage	Awaiting Disposal

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NDSLGL

Batch Summary Report

Inst ID: CS1302
Batch ID: C2000145
Data path: D:\MassHunter\GCMS\1\data
 \C2000145\
Acq Meth: MTPASIM.M

Vial	DataFile	Sample Name	ID
19	14191521.d	G2000748063	SP

Compound

DAMP 2302.32

On Column Amt > LOL

DMETH 15833.75

On Column Amt > LOL Drug Q1 Failure Drug Q2
Failure Drug Manual Integration Drug Asymmetry
Failure

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Great Lakes Drug Screening Laboratory

CONFIRMATION
INTRALABORATORY
CHAIN OF CUSTODY

DRUG DATE BATCH# TYPE
DAMPS 18-FEB-20 C2000162 CONFIRM
[BARCODE]

	SPECIM N NUMBER	COMME NTS		SPECIM EN NUMBE R	COMME NTS
1	REDACT ED	1:100	1 0	REDACTED	HOLD
2	G2000748 8063	1:100	1 1	REDACTED	DISCAR D
3	REDACT ED	1:5	1 2	REDACTED	
4	REDACT ED	DISCAR D	1 3	REDACTED	HOLD
5	REDACT ED	DISCAR D	1 4	REDACTED	DISCAR D
6	REDACT ED	HOLD	1 5	REDACTED	
7	REDACT ED	DISCAR D	1 6	REDACTED	DISCAR D
8	REDACT ED	DISCAR D	1 7	REDACTED	DISCAR D
9	REDACT ED	DISCAR D	1 8	REDACTED	DISCAR D

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BOTTLE CHAIN OF CUSTODY

DATE RELEASED BY	RECEIVED BY	PURPOSE
FE B 19 202 0	PRESUMPT IVE POSITIVE ROOM	Andrew Guenther
POURED CONFIRMAT ION ALIQUOTS		
FE B 19 202 0	Andrew Guenther	PRESUMPT IVE POSITIVE ROOM
SECURED STORAGE		
FE B 25 202 0	PPR	PAUL BORDER
REVERIFY LAN(S)		
FE B 25 202 0	PAUL BORDER	TEMP. FROZEN STORAGE
AWAITING PROCESSIN G		

ISTD PIPETTE I
[BARCODES]

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NAVDRUGLABGLAKESLOP

NAVY DRUG SCREENING LABORATORY,
 GREAT LAKES, IL
 Confirmation Combined Batch Chain of Custody
 Document

[BARCODE]
 C2000162

DRUG: AMP

BATCH NUMBER:_____

Date	Released By	Received By	Purpose
FEB 19 2020	PRESUMPTIVE POSITIVE STORAGE	Andrew Guenther	POURED CONFIRMATION ALIQUOTS
FEB 19 2020	Andrew Guenther	PRESUMPTIVE POSITIVE STORAGE	AWAITING PROCESSING (STORAGE)
FEB 19 2020	PRESUMPTIVE POSITIVE STORAGE	Victoria N. Heifferon	INITIAL TESTING VERIFICATION
FEB 19 2020	Victoria N. Heifferon	PRESUMPTIVE POSITIVE STORAGE	AWAITING PROCESSING (STORAGE)
FEB 20 2020	PRESUMPTIVE	Ruba Saleh	LIMS VERIFICATION AND

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	POSITIVE STORAGE		TRANSFE R TO CONFIRM ATION TECHNICI AN
FEB 20 2020	Ruba Saleh	Sara Ellis	Pipetting Excess Urine Disposed
FEB 20 2020	Sara Ellis	PPM	EXTRACTI ONS
FEB 20 2020	PPM	Sara Ellis	Processing
FEB 20 2020	Sara Ellis	TurboVap	Processing
FEB 20 2020	TurboVap	Sara Ellis	Processing
FEB 20 2020	Sara Ellis	Secured Storage	TO BE INJECTED
FEB 21 2020	Secured Storage	[SIGNATU RE]	ALS Set- Up
TIP Count: MZ 2-20-20			

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NAVDRUGLABGLAKESLOP

Date	Released By	Received By	Purpose
FEB 21 2020	SIGNATURE	Autosampler	To Be Injected
FEB 21 2020	Autosampler	Sara Ellis	Verification
FEB 21 2020	Sara Ellis	Autosampler	To Be Injected
FEB 21 2020	Autosampler	Aileen Alegre	Technical Review
FEB 21 2020	Aileen Alegre	Secured Storage	Awaiting Disposal

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NDSLGL

Batch Summary Report

Inst ID: CS1302

Batch ID: C2000162

Data path: D:\MassHunter\GCMS\1\DATA\
C2000162\

Acq Meth: MTPASIM.M

Vial	DataFile	Sample Name	ID
7	21085026.d	G2000748063	SP

Compound

DAMP 130.42

DMETH 1132.01

On Column Amt > LOL

**Appendix D — Excerpts from Prosecution
Exhibit 24, A Lab Test Report**

DEPARTMENT OF THE NAVY
NAVY DRUG SCREENING LABORATORY
2500 RODGERS STREET BUILDING 5501
GREAT LAKES ILLINOIS 60088-2952

IN REPLY REFER TO
5355
Ser SS/0012
4 Jan 2022

From: Commanding Officer, Navy Drug Screening
Laboratory, Great Lakes

To: [REDACTED]

Subj: TEST RESULTS, EXPERT WITNESS AND
BOTTLE REQUEST FOR URINE SPECIMEN
ASSIGNED BY LABORATORY ACCESSION
NUMBER G2100544084

Ref: (a) [REDACTED]
(b) SECNAVINST 5211.5E

Encl: (1) Laboratory Document Package; copy of
(2) Original Urinalysis Specimen Bottle

1. In response to reference (a), enclosures (1) and (2) are provided. In accordance with reference (b), the Privacy Act, sensitive information not essential to the evaluation of the specimen of interest has been redacted to prevent misuse.

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2. Specimens that screened positive were not confirmed for drug(s) that corresponded to a prescription found in the Electronic Prescription Records System (ePRS).
3. A positive drug test indicates a drug or drug metabolite has been identified and quantified in a urine specimen at or above the DOD cut-off level. All positive results are verified by two independent forensic assays, an initial immunoassay test and confirmatory analysis.
4. The enclosed documents have been reviewed and certified by a certified forensic scientist as true and exact copies of documents generated in the normal course of laboratory operations for the specimen listed herein.
5. All Laboratory documentation is maintained on the premises for a period of five years. This specimen has been retained in frozen storage and is scheduled for disposal on 3 August 2022. Requests for extended retention must be submitted in writing 30 days prior to the disposal date.

[REDACTED]

/s/

R.W. ROMBERG

By direction

Appendix D

Great Lakes Drug Screening Laboratory
Immunoassay Testing Report
Report Date: 10-FEB-21 17:08:06

Batch Number: A2100544 Analyzer Number: 03
User: NAS Page: 1 Test Date/Time: 10-FEB-21
17:03:08

Time	LAN	AMP-A	DMETH
10:14	REDACTED		
10:14	REDACTED		
10:16	REDACTED		
10:16	REDACTED		
10:16	REDACTED		
10:16	REDACTED		
10:16	REDACTED		
17:03	REDACTED		
17:03	REDACTED		
17:03	REDACTED		
17:03	REDACTED		
17:03	G2100544084	1 150	180
17:03	REDACTED		
17:03	REDACTED		
17:04	REDACTED		
17:04	REDACTED		

Appendix D

INTRALABORATORY CHAIN OF CUSTODY
IMMUNOASSEY

Batch Number: [BARCODE]	FTDTL IMS VER 2.0
P2102111	Date: 11-FEB-21
Drug: PULL ALL	

SPECIMEN RACK

1	REDACTED
2	REDACTED
3	REDACTED
4	REDACTED
5	G2100544084
6	REDACTED
7	REDACTED
8	REDACTED
9	REDACTED
10	REDACTED
11	REDACTED
12	REDACTED
13	REDACTED
14	REDACTED
15	REDACTED
16	REDACTED
17	REDACTED
18	REDACTED
19	REDACTED
20	REDACTED
21	REDACTED
22	REDACTED
23	REDACTED

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24 REDACTED

Sample Bottle Chain of Custody

Date	Released By	Received By	Purpose
FEB 11 2021	SECURED STORAGE	Lindsay Whitlow	Sequester Presumptive Positives
FEB 11 2021	Lindsay Whitlow	SECURED STORAGE	Awaiting Processing
FEB 11 2021	SECURED STORAGE	Cassandra Larkin	Verified Presumptive Positives Pulled
FEB 11 2021	Cassandra Larkin	SECURED STORAGE	Awaiting Processing

Appendix D

Great Lakes Drug Screening Laboratory

CONFIRMATION
INTRALABORATORY
CHAIN OF CUSTODY

DRUG DATE BATCH# TYPE
DAMPS 19-FEB-21 C2100115 CONFIRM
 [BARCODE]

	SPECIM EN NUMBE R	COMME NTS		SPECIM EN NUMBE R	COMME NTS
1	G210054 4084		1 0	REDAC TED	Discard
2	REDACT ED	1:5	1 1	REDAC TED	Discard
3	REDACT ED	1:5	1 2	REDAC TED	Hold
4	REDACT ED	1:5	1 3	REDAC TED	Discard
5	REDACT ED	1:5	1 4	REDAC TED	Discard
6	REDACT ED	Discard	1 5	REDAC TED	Discard
7	REDACT ED		1 6	REDAC TED	1:5
8	REDACT ED		1 7	REDAC TED	Discard
9	REDACT ED	Discard	1 8	REDAC TED	Hold

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BOTTLE CHAIN OF CUSTODY

DATE	RELEASED BY	RECEIVED BY	PURPOSE
FE B 22 202 1	PRESUMPT IVE POSITIVE ROOM	HEATHER DAUJOTAS	POURED CONFIRMAT ION ALIQUOTS
FE B 22 202 1	HEATHER DAUJOTAS	PRESUMPT IVE POSITIVE ROOM	SECURED STORAGE
MA R 01 202 1	PRESUMPT IVE POSITIVE ROOM	M. CHRISTENS EN	REVERIFY LAN(S)
MA R 01 202 1	M. CHRISTENS EN	Temp. Frozen Storage	AWAITING PROCESSIN G

ISTD PIPETTE ID
[BARCODES]

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NAVDRUGLABGLAKESLOP

[BARCODE]

C2100115

NAVY DRUG SCREENING LABORATORY,
GREAT LAKES, ILConfirmation Combined Batch Chain of Custody
Document

Drug: AMPS

BATCH NUMBER: _____

Date	Released By	Received By	Purpose
FEB 22 2021	PRESUMPT IVE POSITIVE STORAGE	Heather Daujotas	POURED CONFIRMA TION ALIQUOTS
FEB 22 2021	Heather Daujotas	PRESUMPT IVE POSITIVE STORAGE	AWAITING PROCESSIN G (STORAGE)
FEB 22 2021	PRESUMPT IVE POSITIVE STORAGE	Kimbalee Anderson	INITIAL TESTING VERIFICATI ON
FEB 22 2021	Kimbalee Anderson	PRESUMPT IVE POSITIVE STORAGE	AWAITING PROCESSIN G (STORAGE)
FEB 22 2021	PRESUMPT IVE POSITIVE STORAGE	Lindsay Whitlow	LIMS VERIFICATI ON AND TRANSFER TO CONFIRMA TION

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			TECHNICIAN
FEB 22 2021	Lindsay Whitlow	Aileen Alegre	Pipetting Excess Urine Disposed
FEB 22 2021	Aileen Alegre	PPM	EXTRACTOR
FEB 22 2021	PPM	AILEEN ALEGRE	Processing
FEB 22 2021	AILEEN ALEGRE	SIGNATURE	ALS Set-Up
FEB 22 2021	SIGNATURE	Autosampler	To Be Injected
FEB 22 2021	Autosampler	Aileen Alegre	Verification
FEB 22 2021	Aileen Alegre	Autosampler	To Be Injected
TIP Count: /s/ 2-22-21			

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NAVDRUGLABGLAKESLOP

Date	Released By	Received By	Purpose
FEB 23 2021	Autosampler	Byron Olson	Technical Review
FEB 23 2021	Byron Olson	Secured Storage	Awaiting Disposal

Appendix D

NDSLGL

Final Results

Batch Summary Report

Inst ID: CS1302
Batch ID: C2100115
Data path: D:\MassHunter\GCMS\1\data
\C2100115\
Acq Meth: MTPASIM.M

Vial	DataFile	Sample Name	ID
6	22200756.d	G2100544084	SP

Compound
DAMP 28.90
DMETH 694.26

6	22202805.d	G2100544084	SP
---	------------	-------------	----

Compound
DAMP 30.69
DMETH 700.81

**Appendix E — Excerpts from Prosecution
Exhibit 25, A Lab Test Report**

DEPARTMENT OF THE NAVY
NAVY DRUG SCREENING LABORATORY
2500 RODGERS STREET BUILDING 5501
GREAT LAKES ILLINOIS 60088-2952

IN REPLY REFER TO
5355
Ser SS/0921
30 Sep 2021

From: Commanding Officer, Navy Drug Screening
Laboratory, Great Lakes
To: [REDACTED]

Subj: TEST RESULTS FOR URINE SPECIMEN
ASSIGNED BY LABORATORY ACCESSION
NUMBER G2102597031

Ref: (a) NAVDRUGLAB GREAT LAKES IL ltr
5355 Ser SS/0770 of 26 Aug 21
(b) [REDACTED]
(c) SECNAVINST 5211.5E

Encl: (1) Laboratory Document Package; copy of

1. Reference (a) was submitted in accordance with
reference (b). Enclosure (1) is forwarded as an
additional documentation for reference (b). In
accordance with reference (c), the Privacy Act,
sensitive information not essential to the evaluation

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of the specimen of interest has been redacted to prevent misuse.

2. Specimens that screened positive were not confirmed for drug(s) that corresponded to a prescription found in the Electronic Prescription Records System (ePRS).

3. A positive drug test indicates a drug or drug metabolite has been identified and quantified in a urine specimen at or above the DOD cutoff level. All positive results are verified by two independent forensic assays, an initial immunoassay test and confirmatory analysis. Positive results exceeding the DOD cutoff level and the maximum range of the confirmation test also have a >LOL (limit of linearity) annotation.

4. The enclosed documents have been reviewed and certified by a forensic scientist as true and exact copies of documents generated in the normal course of laboratory operations for the specimen listed herein.

5. All Laboratory documentation is maintained on the premises for a period of five years. This specimen has been retained in frozen storage and is scheduled for disposal on 23 August 2022. Requests for extended retention must be submitted in writing 30 days prior to the disposal date.

[REDACTED]

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Appendix E

/s/

P.J. KOIN

By direction

Appendix E

Great Lakes Drug Screening Laboratory
Adjunct Screening Report
Report Date: 30-JUN-21 13:00:51

Batch Number: A2102597 Analyzer Number: 03
User: VNH Page: 1 Test Date/Time: 30-JUN-21
12:56:43

Time	LAN	AMP-A	DMETH
07:47	REDACTED		
07:47	REDACTED		
07:50	REDACTED		
07:50	REDACTED		
07:50	REDACTED		
07:50	REDACTED		
07:50	REDACTED		
12:56	REDACTED		
12:56	REDACTED		
12:56	REDACTED		
12:56	REDACTED		
12:56	G2102597031 1 501		344
12:58	REDACTED		
12:58	REDACTED		
12:58	REDACTED		
12:58	REDACTED		

Appendix E

INTRALABORATORY CHAIN OF CUSTODY
IMMUNOASSAY

Batch Number: [BARCODE]	FTDTL IMS VER 2.0
P2106303	Date: 30-JUN-21
Drug: PULL ALL	

SPECIMEN RACK

1 REDACTED
2 G2102597031
3 REDACTED
4 REDACTED
5 REDACTED
6 REDACTED
7 REDACTED
8 REDACTED
9 REDACTED
10 REDACTED
11 REDACTED
12 REDACTED
13 REDACTED
14 REDACTED
15 REDACTED
16 REDACTED
17 REDACTED
18 REDACTED
19 REDACTED
20 REDACTED
21 REDACTED
22 REDACTED
23 REDACTED

Appendix E

24 REDACTED

Sample Bottle Chain of Custody

Date	Released By	Received By	Purpose
JUN 30 2021	SECURED STORAGE	Marcia Lightfoot	Sequester Presumptive Positives
JUN 30 2021	Marcia Lightfoot	SECURED STORAGE	Awaiting Processing
JUN 30 2021	SECURED STORAGE	Keyera Waters	Verified Presumptive Positives Pulled
JUN 30 2021	Keyera Waters	SECURED STORAGE	Awaiting Processing

Appendix E

Great Lakes Drug Screening Laboratory

CONFIRMATION
 INTRALABORATORY
 CHAIN OF CUSTODY

DRUG	DATE	BATCH#	TYPE
THC	30-JUN-21	C2100483	CONFIRM
		[BARCODE]	

BOTTLE CHAIN OF CUSTODY

DATE RELEASED	RECEIVED	PURPOSE
BY	BY	

JU L 01 202 1	PRESUMPT IVE POSITIVE ROOM	KIRBY KROPP	POURED CONFIRMAT ION ALIQUOTS
JU L 01 202 1	KIRBY KROPP	PRESUMPT IVE POSITIVE ROOM	SECURED STORAGE
JU L 07 202 1	PRESUMPT IVE POSITIVE POURING ROOM	BRIAN JONES	REVERIFY LAN(S)
JU L 07 202 1	BRIAN JONES	TEMP FROZEN STORAGE	AWAITING PROCESSIN G

Appendix E

NAVDRUGLABGLAKESLOP

NAVY DRUG SCREENING LABORATORY,
 GREAT LAKES IL
 Confirmation Combined Batch Chain of Custody
 Document

[BARCODE]
 C2100483

DRUG: THC

BATCH NUMBER:

Date	Released By	Received By	Purpose
JUL 01 2021	PREUSMPT IVE POSITIVE STORAGE	KIRBY KROPP	POURED CONFIRMA TION ALIQUOTS
JUL 01 2021	KIRBY KROPP	PRESUMPT IVE POSITIVE STORAGE	AWAITING PROCESSI NG (STORAGE)
JUL 01 2021	PREUSMPT IVE POSITIVE STORAGE	KEYERA WATERS	INITIAL TESTING VERIFICAT ION
JUL 01 2021	KEYERA WATERS	PREUSMPT IVE POSITIVE STORAGE	AWAITING PROCESSI NG (STORAGE)
JUL 01 2021	PREUSMPT IVE POSITIVE STORAGE	KIRBY KROPP	LIMS VERIFICAT ION AND TRANSFER TO CONFIRMA TION

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			TECHNICIAN
JUL 01 2021	KIRBY KROPP	AILEEN ALEGRE	PIPETTING EXCESS URINE DISPOSED
JUL 01 2021	AILEEN ALEGRE	PPM	EXTRACTIONS
JUL 01 2021	PPM	AILEEN ALEGRE	Processing
JUL 01 2021	AILEEN ALEGRE	SECURED STORAGE	TO BE INJECTED
JUL 06 2021	SECURED STORAGE	MARK ZEZULAK	ALS Set-Up
JUL 06 2021	MARK ZEZULAK	Autosampler	To Be Injected
JUL 06 2021	Autosampler	Nicholas Beno	Verification
TIP Count: [Signature] 7-1-21			

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NAVDRUGLABGLAKESLOP

Date	Released By	Received By	Purpose
JUL 06 2021	Nicholas Beno	Autosampler	To Be Injected
JUL 07 2021	Autosampler	Byron Olson	Technical Review Barcode(s) Verified
JUL 07 2021	Byron Olson	Secured Storage	Awaiting Disposal

Appendix E

NDSL GREAT LAKES

Batch Summary Report

Inst ID: CS1402
Batch ID: C2199483
Data path: D:\MassHunter\GCMS\1\
DATA\C2100483
Acq Meth: TTHCSIM3.M

Vial	DataFile	Sample Name	ID
10	06102407.d	G2102597031	SP

Compound
THC 2071.76
On Column Amt > LOL

CONFIRMATION INTRALABORATORY CHAIN OF CUSTODY

	SPECIM EN NUMBE R	COMME NTS		SPECIM EN NUMBE R	COMME NTS
1	REDACT ED	Discard	10	REDACT TED	
2	REDACT ED	Discard	11	REDACT TED	Hold
3	REDACT ED	Discard	12	REDACT TED	Discard
4	REDACT ED	Discard	13	REDACT TED	
5	REDACT ED		14	REDACT TED	
6	REDACT ED		15	REDACT TED	Discard
7	G210259 7031	1:5	16	REDACT TED	Hold
8	REDACT ED	Discard	17	REDACT TED	Discard
9	REDACT ED		18	REDACT TED	

Appendix E

BOTTLE CHAIN OF CUSTODY

DATE	RELEASED BY	RECEIVED BY	PURPOSE
JUL 02 2021	PRESUMP TIVE POSITIVE ROOM	KimbaLee Anderson	POURED CONFIRMAT ION ALIQUOTS
JUL 02 2021	KimbaLee Anderson	PRESUMPT IVE POSITIVE ROOM	SECURED STORAGE
JUL 08 2021	Presumpti ve Positive Pouring Room	M. CHRISTENS EN	REVERIFY LAN(S)
JUL 08 2021	M. CHRISTE NSEN	Temp. Frozen Storage	Awaiting Processing Storage

ISTD PIPETTE ID
[BARCODES]

Appendix E

NAVDRUGLABGLAKESLOP

NAVY DRUG SCREENING LABORATORY,
 GREAT LAKES, IL
 Confirmation Combined Batch Chain of Custody
 Document

[BARCODE]
 C2100485

DRUG: AMPS

BATCH NUMBER: _____

Date	Released By	Received By	Purpose
JUL 02 2021	PRESUMPTIVE POSITIVE STORAGE	Kimbalee Anderson	POURED CONFIRMATION ALIQUOTS
JUL 02 2021	Kimbalee Anderson	PRESUMPTIVE POSITIVE STORAGE	AWAITING PROCESSING (STORAGE)
JUL 02 2021	PRESUMPTIVE POSITIVE STORAGE	KEYERA WATERS	INITIAL TESTING VERIFICATION
JUL 02 2021	KEYERA WATERS	PRESUMPTIVE POSITIVE STORAGE	AWAITING PROCESSING (STORAGE)
JUL 06 2021	PRESUMPTIVE POSITIVE STORAGE	Francis Verceles	LIMS VERIFICATION AND TRANSFER TO CONFIRMATION

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			ON TECHNICIAN
JUL 06 2021	Francis Verceles	Mark Sells	Pipetting Excess Urine Disposed
JUL 06 2021	Mark Sells	PPM	Extractions
JUL 06 2021	PPM	Mark Sells	PROCESSING
JUL 06 2021	Mark Sells	Mark Zezulak	ALS Set-Up
JUL 06 2021	Mark Zezulak	Autosampl er	To Be Injected
JUL 06 2021	Autosample r	Mark Sells	Verification
JUL 06 2021	Mark Sells	Autosampl er	To Be Injected
TIP Count: EQ 7/6/21			

Appendix E

NAVDRUGLABGLAKESLOP

Date	Released By	Received By	Purpose
JUL 07 2021	Autosampler	Mark Sells	Technical Review
JUL 07 2021	Mark Sells	Secured Storage	Awaiting Disposal

Appendix E

Batch Summary Report

Inst ID: CS1301
Batch ID: C2100485
Data path: D:\MassHunter\GCMS\1\
DATA\C2100485\
Acq Meth: MTPASIM.M

Vial	DataFile	Sample Name	ID
12	06173221.d	G2102597031	SP

Compound
DAMP 147.60
DMETH 1067.43
On Column Amt > LOL

**Appendix F — Excerpts from Prosecution
Exhibit 26, A Lab Test Report**

DEPARTMENT OF THE NAVY
NAVY DRUG SCREENING LABORATORY
2500 RODGERS STREET BUILDING 5501
GREAT LAKES ILLINOIS 60088-2952

IN REPLY REFER TO
5355
Ser SS/0013
4 Jan 2022

From: Commanding Officer, Navy Drug Screening
Laboratory, Great Lakes
To: [REDACTED]

Subj: TEST RESULTS, EXPERT WITNESS AND
BOTTLE REQUEST FOR URINE SPECIMEN
ASSIGNED BY LABORATORY ACCESSION
NUMBER G2104330137

Ref: (a) [REDACTED]
(b) SECNAVINST 5211.5E

Encl: (1) Laboratory Document Package; copy of
(2) Original Urinalysis Specimen Bottle

1. In response to reference (a), enclosures (1) and (2) are provided. In accordance with reference (b), the Privacy Act, sensitive information not essential to the evaluation of the specimen of interest has been redacted to prevent misuse.

Appendix F

2. Specimens that screened positive were not confirmed for drug(s) that corresponded to a prescription found in the Electronic Prescription Records System (ePRS).
3. A positive drug test indicates a drug or drug metabolite has been identified and quantified in a urine specimen at or above the DOD cut-off level. All positive results are verified by two independent forensic assays, an initial immunoassay test and confirmatory analysis. Positive results exceeding the DOD cut-off level and the maximum range of the confirmation test also have a >LOL (Limit of Linearity) annotation.
4. The enclosed documents have been reviewed and certified by a certified forensic scientist as true and exact copies of documents generated in the normal course of laboratory operations for the specimen listed herein.
5. All Laboratory documentation is maintained on the premises for a period of five years. This specimen has been retained in frozen storage and is scheduled for disposal on 29 December 2022. Requests for extended retention must be submitted in writing 30 days prior to the disposal date.

[REDACTED]

/s/

R.W. ROMBERG

By direction

Appendix F

Great Lakes Drug Screening Laboratory
Adjunct Screening Report
Report Date: 13-OCT-21 12:41:48

Batch Number: A2104330 Analyzer Number: 02

User: NAS Page: 1 Test Date/Time: 13-OCT-21
12:39:21

Time	LAN	A-FEN	AMP-A	DMETH
12:39	REDACTED			
12:39	REDACTED			
12:39	REDACTED			
12:39	REDACTED			
12:39	REDACTED			
12:39	REDACTED			
12:39	REDACTED			
12:39	REDACTED			
12:39	REDACTED			
12:39	REDACTED			
12:39	G2104330137	1	825	395
12:40	REDACTED			
12:40	REDACTED			
12:40	REDACTED			
12:40	REDACTED			
12:40	REDACTED			

Appendix F

INTRALABORATORY CHAIN OF CUSTODY
IMMUNOASSAY

Batch Number: [BARCODE] FTDTL IMS VER 2.0
 P2110132 Date: 13-OCT-21
Drug: PULL ALL

SPECIMEN RACK

- 1 G2104330137
- 2 REDACTED
- 3 REDACTED
- 4 REDACTED
- 5 REDACTED
- 6 REDACTED
- 7 REDACTED

Sample Bottle Chain of Custody

Date	Released By	Received By	Purpose
OCT 13 2021	SECURED STORAGE	Cassandra Larkin	Sequester Presumptive Positives
OCT 13 2021	Cassandra Larkin	SECURED STORAGE	Awaiting Processing
OCT 13 2021	SECURED STORAGE	Chris Hubbs	Verified Presumptive Positives Pulled
OCT 13 2021	Chris Hubbs	SECURED STORAGE	Awaiting Processing

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Appendix F

BOTTLE CHAIN OF CUSTODY

DATE	RELEASED BY	RECEIVED BY	PURPOSE
OCT 15 2021	PRESUMP TIVE POSITIVE ROOM	Marcia Lightfoot	POURED CONFIRMAT ION ALIQUOTS
OCT 15 2021	Marcia Lightfoot	PRESUMPT IVE POSITIVE ROOM	SECURED STORAGE
OCT 20 2021	Presumpti ve Positive Pouring Room	Ashley Truex, M.S.	REVERIFY LAN(S)
OCT 20 2021	Ashley Truex, M.S.	Temp. Frozen Storage	Awaiting Processing Storage

ISTD PIPETTE ID
[BARCODES]

Appendix F

NAVDRUGLABGLAKESLOP

NAVY DRUG SCREENING LABORATORY,
 GREAT LAKES, IL
 Confirmation Combined Batch Chain of Custody
 Document

[BARCODE]
 C2100830

DRUG: AMPS

BATCH NUMBER:

Date	Released By	Received By	Purpose
OCT 15 2021	PRESUMPTIVE POSITIVE STORAGE	Marcia Lightfoot	POURED CONFIRMATION ALIQUOTS
OCT 15 2021	Marcia Lightfoot	PRESUMPTIVE POSITIVE STORAGE	AWAITING PROCESSING (STORAGE)
OCT 15 2021	PRESUMPTIVE POSITIVE STORAGE	Chris Hubbs	INITIAL TESTING VERIFICATION
OCT 15 2021	Chris Hubbs	PRESUMPTIVE POSITIVE STORAGE	AWAITING PROCESSING (STORAGE)
OCT 18 2021	PRESUMPTIVE POSITIVE STORAGE	Heather Daujotas	LIMS VERIFICATION AND TRANSFER TO CONFIRMAT

Appendix F

			ION TECHNICIA N
OCT 18 2021	Heather Daujotas	Mark Sells	Pipetting Excess urine Disposed
OCT 18 2021	Mark Sells	PPM	Extractions
OCT 18 2021	PPM	Mark Sells	PROCESSIN G
OCT 18 2021	Mark Sells	Mark Zezulak	ALS Set-Up
OCT 18 2021	Mark Zezulak	Autosampler	To Be Injected
OCT 18 2021	Autosample r	Mark Sells	Verification
OCT 18 2021	Mark Sells	Autosampler	To Be Injected
TIP Count: MZ 10-18-21			

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NAVDRUGLABGLAKESLOP

Date	Released By	Received By	Purpose
OCT 19 2021	Autosampler	Mark Zezulak	Technical Review
OCT 19 2021	Mark Zezulak	Secured Storage	Awaiting Disposal

Appendix F

NDSLGL

Batch Summary Report

Inst ID: CS1301
Batch ID: C2100830
Data path: D:\MassHunter\GCMS\1\
data\C2100830\
Acq Meth: MTPASIM.M

Vial	DataFile	Sample Name	ID
14	18180358.d	G2104330137	SP

Compound

DAMP 693.82 5.0

DMETH 3383.93

On Column Amt > LOL

Appendix F

Great Lakes Drug Screening Laboratory

CONFIRMATION
INTRALABORATORY
CHAIN OF CUSTODY

DRUG	DATE	BATCH#	TYPE
LTHC	14-OCT-21	C2100822	CONFIRM
		[BARCODE]	

BOTTLE CHAIN OF CUSTODY

DATE	RELEASED BY	RECEIVED BY	PURPOSE
------	----------------	----------------	---------

OCT 14 2021	PRESUMPTIVE POSITIVE ROOM	Michelle Leong	POURED CONFIRMATION ALUQUOTS
OCT 14 2021	Michelle Leong	PRESUMPTIVE POSITIVE E ROOM	SECURED STORAGE
OCT 18 2021	Presumptive Positive Pouring Room	M. CHRISTENSEN	REVERIFY LAN(S)
OCT 18 2021	M. CHRISTENSEN	Temp. Frozen Storage	Awaiting Processing Storage

ISTD PIPETTE ID
[BARCODES]

Appendix F

NAVDRUGLABGLAKESLOP

NAVY DRUG SCREENING LABORATORY,
 GREAT LAKES, IL
 Confirmation Combined Batch Chain of Custody
 Document

[BARCODE]
 C2100822

DRUG: THC

BATCH NUMBER:

Date	Released By	Received By	Purpose
OCT 14 2021	PRESUMPTIVE POSITIVE STORAGE	Michelle Leong	POURED CONFIRMATION ALIQUOTS
OCT 14 2021	Michelle Leong	PRESUMPTIVE POSITIVE STORAGE	AWAITING PROCESSING (STORAGE)
OCT 14 2021	PRESUMPTIVE POSITIVE STORAGE	Edward Arimas	INITIAL TESTING VERIFICATION
OCT 14 2021	Edward Arimas	PRESUMPTIVE POSITIVE STORAGE	AWAITING PROCESSING (STORAGE)
OCT 14 2021	PRESUMPTIVE POSITIVE STORAGE	Chris Hubbs	LIMS VERIFICATION AND TRANSFER TO CONFIRMAT

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			ION TECHNICIA N
OCT 14 2021	Chris Hubbs	Aileen Alegre	Pipetting Excess urine Disposed
OCT 14 2021	Aileen Alegre	Secured Storage	Awaiting Processing
OCT 15 2021	Secured Storage	Mark Zezulak	Processing
OCT 15 2021	Mark Zezulak	Hamilton 3	Spiking
OCT 15 2021	Hamilton 3	Mark Zezulak	Hydrolysis
OCT 15 2021	Mark Zezulak	Hamilton 3	Extractions
OCT 15 2021	Hamilton 3	Mark Zezulak	Processing
TIP Count: [SIGNATURE]10-14-21			

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NAVDRUGLABGLAKESLOP

Date	Released By	Received By	Purpose
OCT 15 2021	Mark Zezulak	Secured Storage	To Be Injected
OCT 15 2021	Secured Storage	Mark Sells	ALS Set-Up
OCT 15 2021	Mark Sells	LC/MS/MS 1505	To Be Injected
OCT 15 2021	LC/MS/MS 1505	Byron Olson	Verification
OCT 15 2021	Byron Olson	LC/MS/MS 1505	To Be Injected
OCT 18 2021	LC/MS/MS 1505	Christopher L Powell	Technical Review
OCT 18 2021	Christopher L Powell	Secured Storage	Awaiting Disposal

*Appendix F*Batch Summary Report: C2100822

Acq Method	D:\MASSHUNTER\ METHODS\THC.M
Quant DA Method	D:\MASSHUNTER\ METHODS\THC.DA.M
Autotune file	Autotune_20211005_091209
Checktune file	Checktune_20211015_100845
Instrument	LC1505
Cal Sample	D:\MASSHUNTER\Data\ C2100822\10151122-002.d

Batch Summary Table

Location	Data Folder	Sample Name
P1-C3	10151122-012.d	G2104221137
Compnd		
THC8	3.01	
THC9	476.62	

**Appendix G — Excerpts from
The Trial Transcript**

TC [Trial Counsel (Prosecutor)]: Your Honor, at this time, the government moves Prosecution Exhibit 27 for identification into evidence and asks for the words "for identification" be stricken.

MJ [Military Judge]: Defense, any objection?

DC [Defense Counsel]: Yes, Your Honor.

We're going to object to the first document--the form letter as testimonial hearsay since this was a document generated by Mr. Warnberg, who is not here testifying today.

* * *

MJ: Okay. Government?

TC: May I have a moment, Your Honor?

MJ: You may.

TC: Your Honor, with regard to the first two pages, the form letter. This is prepared in the regular course of business of the lab as testified to.

* * *

MJ: Okay. Defense, your objection to page one and two is sustained. It is hearsay. That's out.

* * *

Appendix G

CHRISTOPHER FURMAN, a civilian, was called as a witness for the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the trial counsel:

* * *

TC: Showing Prosecution Exhibit for identification 26 to defense and handing that exhibit to the witness.

Q. Doctor Furman, can you just take a look at that package?

A. [Did as directed.] Okay.

Q. Doctor Furman, do you recognize those documents?

A. Yes.

Q. Can you tell me what they are?

A. Litigation package, data package, whatever you want to call it for LAN 2104330137.

Q. Who prepares those documents?

A. The documentation services department.

Appendix G

Q. And do those individuals in the lab personnel have a duty to keep and compile the information that goes into that document?

A. Yes, they do.

Q. Is this litigation package prepared in the regular course of business----

A. Yes, it is.

Q. ----of the drug screening lab?

A. Yes, it is.

Q. And are the documents in Prosecution Exhibit 26 for identification standard to include in litigation packages?

A. Yes.

Q. Are these documents that are in that package kept pursuant to and in accordance with relevant instructions?

A. Yes.

Q. Did you pull the documents in Prosecution Exhibit 26 for identification from where the drug screening lab records are usually kept?

A. I did not pull them specifically. The documentation services department pulls them and

Appendix G

hands them to me, or whoever the expert witness was at the time, and just compares them against the--that they're--that they're exact copies of the true originals.

Q. So, the documents were pulled for you?

A. Yes.

Q. From the lab where you work?

A. Yes.

TC: Your Honor, at this time, the government moves for Prosecution Exhibit 26 for identification into evidence and asks for the words "for identification" be stricken.

MJ: Defense, any objections?

DC: No, objection, Your Honor.

But just to clarify, it is only pages 3 of 62--3 through 62.

MJ: Page--Prosecution Exhibit 26 for identification pages 3 through 62. That is what you're offering, correct?

TC: Yes, Your Honor.

MJ: Yes.

DC: No, objection, Your Honor.

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MJ: There being no objection, Prosecution Exhibit 26 for identification which is a document that is starting marked on page 3 ending on page 62, is accepted into evidence, and the words "for identification" are removed.

TC: Your Honor, request to publish Prosecution Exhibit 26 to the members.

MJ: You may.

TC: I'm actually showing to defense first.

[Prosecution Exhibit 26 was published to the members.]

Q. So, Doctor Furman, is this package of information similar to the last package that we just discussed?

A. Yes, similar.

Q. Is the testing process done by the lab the same for all samples that follow in the same drug category?

A. Yes, they do.

Q. If I could direct your attention to page, the first page actually, page 3. Can you tell me what this document is?

Appendix G

A. This is the 2624 form that accompanied the specimen.

* * *

Q. And how do you know this? I'm sorry, block 4. With regard to page--the next page, page 4, can you describe the chain of custody received by the lab?

A. Yes. We received it on--authorized carrier--received on the 8th. We opened it on the 13th. You see that on line number 8 there. And then, it was touched by Marshall Lightfoot who signed it and then went on for further processing.

Q. And then we have gone over in the last package several of these documents, several of the custody documents. If you could turn to page 13. Can you tell me what that is?

A. This is the discrepancy form of the--that we use in our process. If there's any discrepancies or anything out of the ordinary, they're noted here.

Q. And do any of these discrepancies pertain to the accused's sample?

A. No.

Q. And how do you know that?

Appendix G

A. Well, it says at the top does not pertain to the respective LAN of the one we're talking about in question, G2104330137.

Q. Do you know any other discrepancy documentation in this particular package?

A. None that I see.

Q. No other discrepancies?

A. No.

* * *

MJ: And just to be clear for the record, Prosecution Exhibit 25 is a 57-page document beginning on page 3. Page 3 to 59.

Q. Doctor Furman, have you had an opportunity to review the Prosecution Exhibit?

A. Yes.

Q. Do you recognize those documents?

A. Yes.

Q. What are they?

A. These are--the litigation package for LAN number G2102597031.

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Q. And who prepares the litigation package?

A. The documentation services department does.

Q. Do those individuals and lab personnel have a duty to keep and compile the information that's contained in that document?

A. They do.

Q. Are the litigation packages prepared in the regular course of business at the drug screening lab?

A. Yes, they are.

Q. And are the documents that you looked at in Prosecution Exhibit 25 for identification standard documents to include in a litigation package?

A. Yes.

Q. Are the documents in Prosecution Exhibit 25 for identification prepared and kept pursuant to and in accordance with relevant instructions?

A. Yes, they are.

Q. And was this document, Prosecution Exhibit 25 for identification, pulled from the records at the lab?

A. Yes, they were.

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TC: Your Honor, at this time, the government moves for Prosecution Exhibit 25 for identification into evidence and asks that the words “for identification” be stricken.

MJ: Defense, any objections?

DC: No, Your Honor.

MJ: There being no objection, Prosecution Exhibit 25 for identification is accepted into evidence, and the words “for identification” will be removed.

TC: Your Honor, permission to publish the exhibit to the members?

MJ: You may.

TC: Showing defense counsel.

* * *

Q. And if you could please turn to page 25--oh, sorry, page 12. Can you tell me what that is?

A. It's the discrepancy documentation form.

Q. And do any of those discrepancies pertain to the accused's sample?

A. No.

Q. And how do you know?

Appendix G

A. If we go to page 3, the form is in the bar code in the upper right-hand corner ends in 7B2 or just B2, let's look at it, and then on the form, we go back to page 12, there's no B2 indicated on that page.

Q. And if you could turn to page 14. There are some notes on this confirmation data review page. Can you tell me whether any of those notes pertain to the accused's sample?

A. No, they do not.

Q. Do you see any other discrepancy documentation in this litigation package?

A. No, I don't see anything else.

Q. There's one more confirmation data review on page 32, and there are a few notes.

A. Yes.

Q. Can you tell me whether any of those notes pertain to the accused's sample?

A. No.

Q. Your Honor, permission to approach the witness with Prosecution Exhibit 19 for identification.

MJ: You may. 19? Yes.

Appendix G

TC: Showing to defense counsel and handing to the witness.

Q. Mr. Furman, do you recognize what I just handed you?

A. Yes, this is the original bottle containing the servicemember's urine that we analyzed.

Q. How do you know[?]

A. The LAN is on here; G2102597031.

* * *

TC: Your Honor, permission to retrieve from the court reporter what has been previously marked as Prosecution Exhibit 23 for identification?

MJ: You may.

TC: Showing to defense and handing to the witness.

Q. Doctor Furman, can you take a look at those documents?

A. [Did as directed.]

Q. Do you recognize those documents?

A. Yes.

Appendix G

Q. What are they?

A. This is the--this is the litigation package for the LAN G2000748063.

Q. Who prepares those documents?

A. Documentation services does.

Q. And where is the information that goes into that litigation package come from?

A. From records generated at the laboratory.

Q. Do laboratory personnel have a duty to keep and compile the information contained in that document?

A. Yes, they do.

Q. Are litigation packages prepared in the regular course of business of the laboratory?

A. Yes, they are.

Q. Are the documents contained in Prosecution Exhibit 23 for identification standard documents to include in litigation packages?

A. Yes.

Appendix G

Q. Are the documents in Prosecution Exhibit 23 for identification prepared and kept pursuant to and in accordance with relevant instructions?

A. Yes, they are.

Q. Were these documents pulled from the records at the lab?

A. Yes.

TC: Your Honor, at this time government moves Prosecution Exhibit 23 into evidence and asks for the words "for identification" be stricken.

MJ: Defense, any objection?

DC: No objection, just to clarify pages 3 through 75, Your Honor.

MJ: Prosecution Exhibit 23 for identification is a 73-page document beginning on page 3 and ending on page 75.

DC: No objection.

MJ: There being no objection, Prosecution Exhibit 23 for identification is accepted into evidence, and the words "for identification" are removed.

* * *

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Q. And I want to direct your attention, specifically, to page 13. Can you tell me what this is?

A. Yes, it's a document—I'm sorry, it's a discrepancy documentation form.

Q. Does this discrepancy pertain to the accused's sample?

A. No, it does not.

Q. How do you know?

A. There's a note indicated at the top by the--by an expert witness.

Q. And if you could turn to the next page? Can you explain what this is?

A. This is just a general MFR. The--general MFR by an accessioner, Don Craig.

Q. Does it pertain to the accused's sample?

A. It does not.

Q. And how do you know?

A. The LAN is not indicated on the page.

Q. And can you describe what page 15 is?

Appendix G

A. This is just a general MFR.

Q. And does this MFR pertain to the accused's sample?

A. No, it does not.

Q. How do you know?

A. Reading the general description, the laboratory was undertaking a new adjunct kit for fentanyl, and we were performing operations concerning that.

Q. Can you turn to page 16? And can you tell me what that is? What those notes are?

A. The confirmation data review page. Under confirmation review, there is a notation made that we had rex the LAN in question G2000748063 for d-methamphetamine.

Q. Can you explain what that means?

A. What this means here is that when we initially ran it in this batch, C2000145, the q-ratio failed, and it's just an indicator—the indicating peak purity, and it failed because the concentration was so high, and the confirmation review chemist, Pat Johnson, determined that a dilution was in order and the batch was re-extracted in a separate batch.

* * *

Appendix G

Q. Then backing up to—actually, do you see any other discrepancy documentation in this package?

A. Not that I've seen, no.

* * *

TC: Permission to retrieve from the court reporter Prosecution Exhibit 24 for Identification?

MJ: You may.

TC: Showing to defense and handing to the witness.

Q. If you could please take a look at that package, Doctor Furman.

A. Yes.

Q. Doctor Furman, do you recognize those documents?

A. Yes, I do.

Q. What are they?

A. They're the documents that we generate at the laboratory for positive samples.

Q. And who prepares those documents?

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A. Documentation services department does.

Q. Where does the information that goes into that package come from?

A. From our laboratory.

Q. Do laboratory personnel have a duty to keep and compile information that's contained in the documents?

A. They do.

Q. Is this package prepared in the regular course of business with the drug screening lab?

A. It was.

Q. Are the documents in Prosecution Exhibit 24 for identification standard documents to include in a litigation package?

A. Yes, they are.

Q. Are the documents in Prosecution Exhibit 24 for identification prepared and kept pursuant to and in accordance with relevant instructions?

A. Yes, they are.

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Q. And were the documents contained in Prosecution Exhibit 24 for identification were pulled from where the lab keeps records?

A. Yes.

TC: Your Honor, at this time, the government moves for Prosecution Exhibit 24 for identification in evidence and asks for the words “for identification” be stricken.

MJ: Defense, any objections?

DC: No, objection. Just for clarification, it's document number, pages 3 through 41.

* * *

MJ: Okay. So, Prosecution Exhibit 24 for identification is a 39-page document beginning on page 3, ending on page 41.

* * *

MJ: There being no objection, Prosecution Exhibit 24 for identification is accepted into evidence, and the words “for identification” will be removed.

* * *

Q. And turning to the next page, can you discuss the chain of custody of those documents?

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A. Oh, yes. We received the specimen on the 9th from an authorized carrier, and we opened it the same day. So, the 9th--February 9, 2021, Sandra Larkin was the accessioning chemist that touched it--touched the sample and put it in secured storage.

Q. Now, I'd like to turn your attention, specifically, to page 12. Can you tell me what this is?

A. Twelve is another discrepancy documentation form.

Q. Does this form pertain to the accused's sample?

A. No, it does not.

Q. And how do you know?

A. With the notation made at the top by the expert witness that reviewed this packet.

Q. And if you could turn to page 14. Can you tell me what this page is?

A. It is the confirmation data review page that corresponded to the analysis for amphetamine and methamphetamine.

Q. And is the--are any of the notes on this page applicable to the accused's sample?

A. Nothing is applicable, no.

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Q. And if you could turn to page 41. What does this last line on page 41 indicate?

A. It indicates that the bottle was--that the original bottle was shipped to the command.

* * *

TC: Handing Prosecution Exhibit 26 to the witness.

Q. What tests were performed on this urine sample with the LAN ending 3--or 0137?

A. Yes, we tested by the initial amino assay screen.

Q. What were the results of the initial screen?

A. The results of the amino assay screen--it was designated as presumptively positive for amphetamine and THC 8 or 9.

Q. And after that initial screening, what other testing was performed?

A. We ran a subsequent adjunct test for amphetamine, and that was presumptively positive for amphetamine and methamphetamine.

Q. Was any other additional testing performed on--with regard to the methamphetamine?

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A. Yes, we ran GCMS in the confirmation department.

Q. And what were the results of that?

A. So, on page 21, we see that for the LAN ending in 0137, it was positive for 3,469 nanograms per mil for amphetamine and 16,919 nanograms per mil of methamphetamine.

Q. And are these levels for methamphetamine above the DoD cut-off?

A. Yes.

Q. What other testing was done with regard to the THC?

A. The--it was run by, from what I can tell, LCMS. I have to find the page, sorry. So, on page 59, we see again the LAN ending in 0137, it was positive for THC 9.

Q. Can you tell at what level it was positive?

A. Yes, I'm sorry, 1,993 nanograms per mil.

Q. And is this above the DoD cut-off?

A. Yes, it is.

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TC: Permission to retrieve the exhibit from the witness?

MJ: You may.

TC: Handing back to the court reporter.

MJ: Prosecution Exhibit 26.

TC: Your Honor, permission to retrieve Prosecution Exhibit 25 from the court reporter?

MJ: You may.

TC: Handing Prosecution Exhibit 25 to the witness.

Q. Looking at Prosecution Exhibit 25, what testing was performed on this urine sample?

A. The original amino assay screen?

Q. What were the results of the original amino assay screen?

A. It was presumptively positive for THC and amphetamines.

Q. And what additional testing was performed with regard to the presumptive positive for amphetamines?

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A. Ah, yes, it was further tested by our adjunct tests for amino assay, and it was presumptively positive for amphetamine and methamphetamine.

Q. Can you tell at what level it was positive for methamphetamine?

A. Not from the amino assay screen.

Q. Was there any additional testing done?

A. Yes, there was, I'm sorry. In the confirmation lab, it was here. Look at, see page 37. It was 738 nanograms per mill of amphetamine and 5,337 of methamphetamine.

Q. And is the methamphetamine level above the DoD cut-off?

A. Yes.

Q. Was there any additional testing done with regard to the THC?

A. Yes.

Q. What additional testing was done?

A. This was by GCMS, and let's see the number here is for THC is, it was 2,071.

Q. And is that level above the DoD cut-off?

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A. Yes.

TC: Your Honor, permission to retrieve that exhibit?

MJ: Yes, you may.

TC: Retrieving Prosecution Exhibit 25 from the witness and returning to the court reporter. Permission to retrieve Prosecution Exhibit 23 from the court reporter?

MJ: You may.

TC: Handing Prosecution Exhibit 23 to the witness.

Q. Doctor Furman, can you tell me what testing was done with regard to this urine sample?

A. Yes, the amino assay screen.

Q. And were the results of the amino assay screen?

A. It was presumptively positive for amphetamines.

Q. And what additional testing was done after the presumptive positive for amphetamines?

A. We ran an adjunct in the amino assay screen and again for the LAN ending in 8063, if I wasn't

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clear, it was presumptively positive for amphetamine and methamphetamine.

Q. Was there any additional testing done?

A. Yes, the GCMS on the sample.

Q. And can you tell from this additional testing at what level he tested--that this sample tested positive for methamphetamine?

A. For, again, ending in 8063, the LAN, it was 13,042 nanograms per mil of amphetamine and 113,201 nanograms per mil for methamphetamine.

Q. And is that level of methamphetamine above the DoD cut-off?

A. Yes.

TC: Permission to retrieve the exhibit from the witness.

MJ: You may.

TC: Returning Prosecution Exhibit 23 to the court reporter. Permission to retrieve Prosecution Exhibit 24 from the court reporter.

MJ: You may.

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TC: Handing Prosecution Exhibit 24 to the witness.

Q. Doctor Furman, can you tell me what testing was done with regard to this sample?

A. For the LAN ending in 4084?

Q. Yes.

A. Yes, we see that it was presumptively positive for amphetamines.

Q. And what additional testing was performed after that initial positive?

A. Again, we ran the adjunct tests on the same sample, and it was confirmed for amphetamine and methamphetamine.

Q. Was there any additional testing performed?

A. Yes, we ran that again by our confirmation tests.

Q. And what were the results of the confirmation tests?

A. Let me find the page. Then for the amphetamine, it was 28 nanograms per mil.

Q. And for the methamphetamine?

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A. Methamphetamine was 694 nanograms per mil.

Q. And is this number above the DoD cut-off?

A. Yes.

Appendix H — Excerpts from Closing and Rebuttal Arguments

[Excerpted Prosecution Closing Argument]

* * *

TC: Specification 2, these are essentially the same elements, but now we are dealing with February 3rd, 2021. So what evidence do you have to support this particular specification?

First, you have Prosecution Exhibit 8, which is the urinalysis testing register, which shows the accused signing that he provided this sample on this date as part of a random urinalysis.

You also have Prosecution Exhibit 18, the urine bottle. Again, this is the bottle that was actually used on that date to provide the sample. You can go ahead, take a look at the label. The service member's initials, the DoDID number. This was the bottle that was sent to the lab.

And then, you have the drug lab report from when it was received at the lab and the accused's urine was tested. And this is Prosecution Exhibit 24. Within here, you have the chain-of-custody document showing how the bottle got to the lab. You have the actual tests that the sample went through, again, through which it repeatedly tested positive for methamphetamine; that initial screening, a secondary screening, and confirmation testing.

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And additionally, you have testimony that you heard from Dr. Furman that this particular sample was tested at the drug screening lab and tested positive for methamphetamine at a level above the DoD cutoff. Dr. Furman explained to you that the discrepancy documentation that's in this litigation pack—that's in this packet of documents does not pertain to the accused's sample, and that this particular urine sample tested positive for methamphetamine at a level of 694 nanograms per milliliter, about seven times higher than the DoD cutoff.

* * *

So, June 17th, that was the testimony with regard to what happened on that date. What do you have to bring back with you in the deliberation room?

You have Prosecution Exhibit 6, which is the urinalysis testing register for this date. This shows that this particular urinalysis, through which the accused provided a sample, this is a legal--this is a legal urinalysis. He was the only person whose name is on that sheet; this is not a random urinalysis.

You have Prosecution Exhibit 19, which again, is the actual urine bottle that was used on that date that was sent with the urine in it to the lab for testing. You have Prosecution Exhibit 25, which is the drug lab report which, again, shows the chain of custody, how it got from the urinalysis department to the lab for

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testing, how it was tested at the lab, and all of the screenings that it underwent, through which it tested positive for both methamphetamine and THC.

And finally, you have the testimony that you heard from Dr. Furman, that this particular urine sample tested positive for both methamphetamine and THC at levels above the DoD cutoffs. Dr. Furman explained the discrepancy documentation in this package does not pertain to the accused's sample, and that this particular urine sample tested positive for methamphetamine at a level of 5,337 nanograms per milliliter, more than 50 times higher than the DoD cutoff; and that it tested positive for THC at a level of 2071 nanograms per milliliter, which is over 100 times higher than the DoD cutoff.

Specifications 5 and 6. This is a similar scenario. The reason these are lumped together here is because this is one urine sample that tested positive for two substances. So, Specifications 5 and 6 charge use of methamphetamine and THC on or about September 20th, 2021. What evidence do you have to support these particular specifications?

You have Prosecution Exhibit 9, which is the urinalysis testing register for this sample, which again, shows that this was not a random urinalysis. He was the only one to provide on this particular date. You have Prosecution Exhibit 20, which is the bottle that was used on that date when the accused provided.

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You also have Prosecution Exhibit 26, which is the drug lab report with regard to this specific sample. This shows, again, the chain-of-custody documents. So, you can see how the bottle made it to the lab, and all of the testing reports, which show both sets of tests that this sample underwent, confirming that it tested positive for both THC through one set of tests, and methamphetamine through another.

And finally, you have the testimony of Dr. Furman that this sample tested positive at the Navy Drug Screening Lab for both methamphetamine and THC at levels above the DoD cutoff. Dr. Furman explained that the discrepancy documentation you see in that packet of documents does not pertain to the accused's sample, and that the urine sample, this particular urine sample, tested positive for methamphetamine at a level of 16,919 nanograms per milliliter, more than 150 times higher than the DoD cutoff; and that the urine sample tested positive for THC at a level of 1,993, nanograms per milliliter, which is about 100 times higher than the DoD cutoff.

Specifications 7 and 8. Again, this is a similar scenario. There are two specifications regarding this because it's the same urine sample. It's one urine sample that tested positive for two substances.

With regard to this sample, you have Prosecution Exhibit 10, which is the urinalysis testing register. Again, this shows that the accused provided a sample

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on this date and that this particular urinalysis was a legal code urinalysis, not random.

Prosecution Exhibit 21, which is the actual bottle used by the accused on that date. You have the drug lab report, which again, shows how the sample made it from Balboa urinalysis to the lab for testing, and then all of the tests that the sample underwent, through which it repeatedly tested positive for both methamphetamine and THC. So, this includes the presumptive immunoassay screening, the secondary immunoassay screenings, and the confirmation test.

And finally, you have the testimony of Dr. Furman that the sample tested positive for both methamphetamine and THC at levels above the DoD cut off. Dr. Furman explained that the discrepancy documentation in this particular prosecution exhibit does not pertain to the accused's sample, and that this urine sample tested positive for methamphetamine at a level 12,119 nanograms per milliliter, more than 120 times higher than the DoD cut off; and that the same sample tested positive for THC at a level of 867 nanograms per milliliter, about 50 times higher than the DoD cut off.

* * *

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[Excerpted Defense Closing Argument]

* * *

DC: Now let's go to Charge I, Specifications 1 through 8, the final grouping of the charges. And I want to start with another BLUF, and this BLUF is gonna come from witness testimony, Chief Tercenio. Now, here's a portion of the direct examination I conducted with Chief Tercenio.

"Is having a proper chain of custody important in the urinalysis program?"

"Yes."

"Why?"

"So that specimen bottles are not being tampered."

"Why does it--why is it important bottles are not tampered with and destroyed?"

"So, we can get the collection to the lab. The most important part is to make sure that nobody else is handling the bottles, except persons who collected and stored it in the box."

So, you heard a lot of testimony about the hospital's urinalysis program, how it was broken, how everyone had to be fired, how it had to be rebuilt from the ground up. You heard testimony from all of the UPC and the assistant urinalysis program coordinators that all members of the urinalysis

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program team had access to the office at any time. All members had access to samples. All members had access to the NDSP standalone at any time.

Now, I wanna take you back to Ms. Burr's testimony previously. Previously RS2 Burr; she is now a civilian. And Ms. Burr testified that there were things she would observe taking place in the program that she knew was not right. She knew they shouldn't be doing these things.

But her testimony was also that, "But that was the way we were taught. It was common practice." So, they did it anyway.

So, let's go to some of the common practices that Ms. Burr testified about. AUPCs served as observers for others on the urinalysis. They would process urine samples of others on the urinalysis team. Sometimes, there would be times where an AUPC would maintain custody of their own samples.

Chain-of-custody forms were not printed on some instances until days after sample--until the day samples were shipped. Meaning, they didn't have the chain-of-custody form when the samples were taken. But when the sample was shipped, that was when the first line in the chain of custody was gonna begin.

Now, another issue that Ms. Burr testified about was there are times where a sample--well, she testified that samples would go out immediately. But,

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members, you have evidence that's not the case. You have evidence specific to HMI Clark, that is not the case.

But before we go into that, let's reorient about how the UPC office is set up. There's an office that all members have access to. And then, when samples are taken, if the sample isn't shipped out immediately, it's placed in a filing cabinet, in the UPC office that all members have access to.

So, let's go back to the timing of some of these shipments. So, this is Prosecution Exhibit 25, page 4. This is a chain-of-custody form for a 17 June 2021 sample. So, I want to pull out the date the sample was collected and the date the sample was shipped. The sample wasn't shipped until the 23rd of June; that it's 6 days later. So, this sample was collected and was placed in that filing cabinet, which we heard testimony from all the witnesses, all members of the team had access to, for these six days that the sample sat in the filing cabinet.

This isn't the only example as it relates to of HMI Clark. On the 20th of February--of September 2020, a sample was collected. It wasn't until the 27th of September that that sample was finally mailed and shipped out. So, where was this sample during these 7 days? In the filing cabinet. In the UPC office where all the UPCs and AUPCs had access to it.

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Why does this matter? Why does how chain of custody, why does the practices in place, why does-- why do these things matter? We get to a prime example, RS2 Lotoft, who was a former AUPC at the command from 2019 to 2021. Now, there was quite a bit of testimony about this, but in November 2021, Chief Tercenio learned that RS2 Lotoft had not provided a urinalysis sample--a urinalysis since 2019. So, he went in to do some investigating, and he found out that, for some reason, RS2 Lotoft, was made unavailable in the standalone computer, which all members of the urinalysis team have access to.

But Chief Tercenio thought it was odd because members are only marked unavailable if they have provided more than one sample during a fiscal year, but he hadn't provided once his 2019. So, why would he be made unavailable?

Chief didn't have the answers to these, so he just marked him "available." And as the random process works, a few days later, Chief testified that on 16 November, RS2 Lotoft was up on a random analysis. He provided the sample on 16 November. That sample was not shipped out on 16 November. So, where was that sample stored? In the filing cabinet in the UPC's office that all members have access to.

The morning of 17 November, the AUPCs come in and try to begin the process of shipping out the samples from the previous day. A sample is missing: RS2 Lotoft's sample is missing. The sample was never

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found. An investigation into RS2, Chief testified that RS2 Lotoft was accusing the members of trying to set him. As a result, all members who were still actively attached to Navy Medicine Readiness Training Command were fired. They were relieved of their duties, and the command had to rebuild this urinalysis program.

So, let's go back to our BLUF. Why is chain of custody important? You have a prime example of why the chain of custody processing used in this process are important. And you have evidence that the command's urinalysis program were not following these processes, and so much so, that they had to restart the program.

Particularly, why is this important as it relates to RS2 Lotoft? He's not on trial here. It's important because RS2 Lotoft was a part of the collection the samples the government now attribute to HMI Clark for not one, not two, but three collections. And while it's three collections, these three collections account for five specifications.

The government's case, in part, relies on you believing and trusting that RS2 Lotoft did his job, that the urinalysis program did their job, that they did things right. But you have sufficient evidence that is not the case.

Now, if this is the first time some questionable observations were found as it relates to the urinalysis

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program, maybe you could say, “No harm, no foul.” But MAI McFadden testified. And MAI McFadden testified, while she was not conducting an investigation into the urinalysis program, her investigation did involve interviewing the former UPC, and she did come to a conclusion regarding some of the practices of the urinalysis program.

MAI McFadden testified, in January 2021, she observed instances in which the urinalysis program was not complying with the command urinalysis program instruction. She testified that she interviewed Chief Hinks, who was the UPC at the time. This is the same Chief Hinks that Chief Tercenio testified, he completed turnover with. The chief, same Chief Hinks that Chief Tercenio testified, “I did change the program that I got from Chief Hinks.” As a result of these observations by MAI McFadden, she recommended an inspector general review of the urinalysis program.

Now, I wanna go back one last time to one of the military judge’s other instructions she provided to you. And this is one she actually provided again, as we have been in this process of closing arguments: The burden is on the prosecution to prove each and every element, of each offense, beyond a reasonable doubt. Proof of one offense carries with it no inference that the accused is guilty of any other offense. So, this means each offense must stand on its own.

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It's not our job to prove that this program was broken, that there are broken planks everywhere, that the chain of custody can't be trusted. We have no burden. It is the government's job. It is the job of the United States of America to provide you evidence which can be trusted, evidence which can be relied upon, evidence that meets the highest burden we have in these proceedings: evidence beyond a reasonable doubt.

* * *

[Excerpted Prosecution Rebuttal Argument]

* * *

TC: You will not find any evidence of tampering with the accused's sample bottles, just like the AUPCs didn't find any evidence of tampering with the bottles because, if they had, they wouldn't have shipped it off to the lab for testing. And, furthermore, even if the sample had somehow made it to the lab, you heard from Dr. Furman that the intake personnel at the lab also look for evidence of tampering with the bottles. And that, if they had found any evidence of tampering, that would have been noted in the lab report that you have as prosecution exhibits in the discrepancy documentation. Dr. Furman walked you through the discrepancy documentation in all of those packages, and none of the documentation notes that there was anything wrong with the accused's sample, noticed by any lab personnel when they were received.