

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class DAVON L. HARRIS
United States Air Force**

ACM S30392

9 February 2005

Sentence adjudged 6 May 2003 by SPCM convened at Minot Air Force Base, North Dakota. Military Judge: Kurt D. Schuman (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 4 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott and Major Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Captain C. Taylor Smith.

Before

STONE, GENT, and SMITH
Appellate Military Judges

PER CURIAM:

We have considered the record of trial, the appellant's three assignments of error, and the government's answer thereto. As to Issue I, the government concedes the staff judge advocate testified during the appellant's court-martial on a contested issue that was not "clearly uncontroverted." *See* Rule for Courts-Martial (R.C.M.) 1106(b), Discussion. Consequently, we conclude he was disqualified from providing the staff judge advocate's recommendation and thus, we order new post-trial processing. As to Issue II, we further conclude that the action of the convening authority is incomplete in that it omits the words "are approved." *See* R.C.M. 1107(f)(4). Pursuant to R.C.M. 1107(g), we direct the convening authority to withdraw the original action and substitute a corrected one. Upon completion of post-trial processing and the correction of the action, Article 66,

UCMJ, 10 U.S.C. § 866, will apply, and this Court will consider the remaining assignment of error alleging improper use of immunized testimony.

OFFICIAL

ANGELA M. BRICE
Clerk of Court