

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

UNITED STATES)	No. ACM 40437
Appellee)	
)	
v.)	
)	ORDER
Dietrich A. SMITH)	
Staff Sergeant (E-5))	
U.S. Air Force)	
Appellant)	Panel 1

On 15 December 2022, a military judge sitting as a general court-martial at Minot Air Force Base, North Dakota, found Appellant guilty, consistent with his pleas, of one specification of wrongful possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934.

On 5 March 2024, Appellant submitted a Motion for Enlargement of Time (Tenth), requesting an enlargement for a period of 30 days, to end on 14 April 2024.

Also on 5 March 2024, Appellant submitted a Consent Motion to Examine Sealed Material, in which his defense counsel moved to examine Attachments 4 and 7 to Prosecution Exhibit 1 (Stipulation of Fact) and Appellate Exhibit XII in the record of trial. As defined by the Stipulation of Fact, Attachment 4 contained “*CONTRABAND* DCFL Images containing 3 Images, 1 GIF, 1 Video;” and Attachment 7 contained “*CONTRABAND* GreyKey extraction containing 13 Images, 1 Video.” Appellate Exhibit XII was described as “SEALED: **Contraband Images on Disc**, (1 Disc).” According to Appellant’s motion, “the[se] materials were available to the parties at trial.” The Government consented to both parties examining the sealed materials.

Upon review by the court, it was discovered that Attachment 7 to Prosecution Exhibit 1 is a blank disc. Consequently, the record of trial in Appellant’s case is to be returned to the Chief Trial Judge, Air Force Trial Judiciary, for correction under Rule for Courts-Martial (R.C.M.) 1112(d). As the record is being returned, Appellant’s Consent Motion to Examine Sealed Material is moot.

Accordingly, it is by the court on this 11th day of March, 2024.

ORDERED:

The record of trial in Appellant’s case is **REMANDED** to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the record; specifically to

account for the defective attachment, Attachment 7 to the Stipulation of Fact, and any other portion of the record that is determined to be missing or defective hereafter, after consulting with the parties. *See* Article 66(f)(3), UCMJ, 10 U.S.C. § 866(f)(3); R.C.M. 1112(d)(2)–(3). Thereafter, the record of trial will be returned to this court for completion of its appellate review under Article 66(d), UCMJ, 10 U.S.C. § 866(d) not later than **15 May 2024**.

Should the 15 May 2024 deadline not be met, the Chief Trial Judge, Air Force Trial Judiciary, or his designee, shall provide a memorandum for record not later than **16 May 2024** to the Government Trial and Appellate Operations Division (JAJG) to submit to this court as a motion to attach. *See* A.F. Ct. Crim. App. R. 23.3(b). Until the record of trial is returned to the court, a memorandum for record will be prepared every seven days thereafter.

It is further ordered:

Appellant’s Motion for Enlargement of Time (Tenth) is **MOOT**.

Appellant’s Consent Motion to Examine Sealed Material is also **MOOT**. Appellant may again file a motion to view sealed materials after the case has been redocketed with this court.



FOR THE COURT

A handwritten signature in blue ink that reads "Fleming E. Keefe".

FLEMING E. KEEFE, Capt, USAF
Deputy Clerk of the Court