UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40655 (f rev)**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF**
Dioderson AUGUSTIN	)	**DOCKETING**
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	

The record of trial in the above-styled case was returned to this court by the Military Appellate Records Branch (JAJM).

Accordingly, it is by the court on this 16th day of December, 2025,

ORDERED:

That the Record of Trial in the above-styled matter is referred to a Special Panel. The Special Panel in this matter shall be constituted as follows:

GRUEN, PATRICIA A., Colonel, Senior Appellate Military Judge
PERCLE DAYLE P., Lieutenant Colonel, Appellate Military Judge
MORGAN, CHRISTOPHER S., Colonel, Appellate Military Judge

Based on the procedural history of this case, the court is already in receipt of Appellant's brief, Government's answer, and Appellant's reply. The court will now continue its Article 66, Uniform Code of Military Justice, 10 U.S.C. § 866, review of Appellant's case.

FOR THE COURT

[redacted]

JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*,	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Panel 1
Senior Airman (E-4) **DIODERSON AUGUSTIN,** United States Air Force *Appellant*.	)	No. ACM 40655 9 October 2024

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **18 December 2024**. This case was docketed with this Court on 20 August 2024. From the date of docketing to the present date, 50 days have elapsed. On the date requested, 120 days will have elapsed.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested first enlargement of time.

Respectfully submitted,

[redacted]

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 9 October 2024.

Respectfully submitted,

[redacted]

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

15 October 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) DIODERSON AUGUSTIN, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME No. ACM 40655 Panel No. 1

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

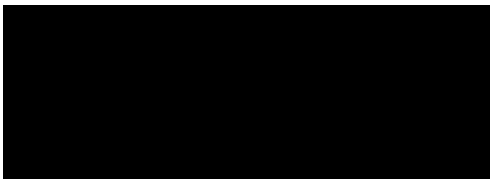
Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 15 October 2024.



JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40655**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Dioderson AUGUSTIN	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 1**

On 9 October 2024, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant's assignments of error. The Government opposed the motion.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure.

Accordingly, it is by the court on this 16th day of October, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **18 December 2024**.

Each request for an enlargement of time will be considered on its merits. Appellant's counsel is advised that any subsequent motions for enlargement of time shall include, in addition to matters required under this court's Rules of Practice and Procedure, statements as to: (1) whether Appellant was advised of Appellant's right to a timely appeal, (2) whether Appellant was provided an update of the status of counsel's progress on Appellant's case, (3) whether Appellant was advised of the request for an enlargement of time, and (4) whether Appellant agrees with the request for an enlargement of time.

FOR THE COURT

[redacted]

OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*,	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SECOND)**
v.	)	Before Panel 1
Senior Airman (E-4) **DIODERSON AUGUSTIN,** United States Air Force *Appellant*.	)	No. ACM 40655 9 December 2024

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his second enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 January 2025**. This case was docketed with this Court on 20 August 2024. From the date of docketing to the present date, 111 days have elapsed. On the date requested, 150 days will have elapsed.

On 6 December 2023 and 25-29 March 2024, R. at 1, 18, 1201, Appellant was tried by a general court-martial comprised of officer members. R. at 29. Contrary to his pleas, R. at 32, Appellant was found guilty of one charge and two specifications of sexual assault, in violation of Article 120, Uniform Code of Military Justice (UCMJ), and one charge and specification of indecent conduct, in violation of Article 134, UCMJ. R. at 1152. The military judge sentenced Appellant to a dishonorable discharge and confinement for 36 months. R. at 1200. The convening authority took no action with respect to the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action. Appellant is confined.

The ROT is eight volumes consisting of 10 prosecution exhibits, seven defense exhibit, appellate exhibits, and one court exhibit. The transcript is 1201 pages long.

GRANTED
10 DEC 2024

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has provided limited consent to disclose confidential communications, wherein:

(1) Appellant has been advised of his right to a timely appeal.

(2) Appellant has been advised of this request for enlargement of time.

(3) Appellant has been apprised of the status of undersigned counsel's progress on his case.

(4) Appellant has consented to this enlargement of time.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time for good cause shown.

Respectfully submitted,

[redacted]

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 9 December 2024.

Respectfully submitted,

[redacted]

TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

10 December 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) DIODERSON AUGUSTIN, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME No. ACM 40655 Panel No. 1

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

[redacted]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 10 December 2024.

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*,	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (THIRD)**
v.	)	Before Panel 1
Senior Airman (E-4) **DIODERSON AUGUSTIN,** United States Air Force *Appellant*.	)	No. ACM 40655 7 January 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his third enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **16 February 2025**. This case was docketed with this Court on 20 August 2024. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 6 December 2023 and 25-29 March 2024, R. at 1, 18, 1201, Appellant was tried by a general court-martial comprised of officer members. R. at 29. Contrary to his pleas, R. at 32, Appellant was found guilty of one charge and two specifications of sexual assault, in violation of Article 120, Uniform Code of Military Justice (UCMJ), and one charge and specification of indecent conduct, in violation of Article 134, UCMJ. R. at 1152. The military judge sentenced Appellant to a dishonorable discharge and confinement for 36 months. R. at 1200. The convening authority took no action with respect to the findings or sentence. Record of Trial (ROT), Vol. 1, ning Authority Decision on Action. Appellant is confined.

e ROT is eight volumes consisting of 10 prosecution exhibits, seven defense exhibit, 24 appellate exhibits, and one court exhibit. The transcript is 1,201 pages long.

GRANTED
15 JAN 2025

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has provided limited consent to disclose confidential communications, wherein:

(1) Appellant has been advised of his right to a timely appeal.

(2) Appellant has been advised of this request for enlargement of time.

(3) Appellant has been apprised of the status of undersigned counsel's progress on his case.

(4) Appellant has consented to this enlargement of time.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time for good cause shown.

Respectfully submitted,

[redacted]

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 7 January 2025.

Respectfully submitted,

[redacted]

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

10 January 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) DIODERSON AUGUSTIN, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME No. ACM 40655 Panel No. 1

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

[redacted]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 10 January 2025.

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*,	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FOURTH)**
v.	)	Before Panel 1
Senior Airman (E-4) **DIODERSON AUGUSTIN,** United States Air Force *Appellant*.	)	No. ACM 40655 7 February 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.3(m)(4) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his third enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **18 March 2025**. This case was docketed with this Court on 20 August 2024. From the date of docketing to the present date, 171 days have elapsed. On the date requested, 210 days will have elapsed.

On 6 December 2023 and 25-29 March 2024, R. at 1, 18, 1201, Appellant was tried by a general court-martial comprised of officer members. R. at 29. Contrary to his pleas, R. at 32, Appellant was found guilty of one charge and two specifications of sexual assault, in violation of Article 120, Uniform Code of Military Justice (UCMJ), and one charge and specification of indecent conduct, in violation of Article 134, UCMJ. R. at 1152. The military judge sentenced Appellant to a dishonorable discharge and confinement for 36 months. R. at 1200. The convening authority took no action with respect to the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action. Appellant is confined.

ROT is eight volumes consisting of 10 prosecution exhibits, seven defense exhibit, ppellate exhibits, and one court exhibit. The transcript is 1,201 pages long.

GRANTED
12 FEB 2025

Undersigned counsel is assigned 29 cases, 16 cases are pending initial AOEs before this Court. One case before the United States Supreme Court takes priority over this case: *United States v. Nestor*. The petition for writ of certiorari will be completed today, 7 February 2025. At present, no case before the Court of Appeals for the Armed Forces (CAAF) has priority over this case. Although, that is likely to change given the number of cases the undersigned counsel currently has on his docket which are pending decisions from this Court.

The following cases with this Court have priority over the instant case.

1) *United States v. Moreno*, ACM 40511 – The reply brief in this case is due on 12 February 2024. Undersigned counsel is presently drafting the reply.
2) *United States v. Barlow*, ACM 40552 – The record of trial is four volumes, consisting of six prosecution exhibits, nine defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 338 pages. Undersigned counsel has not begun a review of this case, but has filed a motion to review sealed materials, which this Court granted. This Court ordered that no additional enlargements would be granted, despite this case not being the highest priority in undersigned counsel's docket. Therefore, this case now takes priority over *United States v. Evangelista*.
3) *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages. Undersigned counsel has reviewed approximately 850 pages of this record and filed a motion to review sealed materials, which this Court granted. This appellant recently retained civilian counsel. Civilian counsel are in the process of obtaining the record of trial in this case.

4) *United States v. Tyson*, ACM 40612 – The record of trial is an electronic record consisting of 924 pages. There are four prosecution exhibits, four defense exhibits, and 11 appellate exhibits. The transcript is 92 pages. Undersigned counsel has not begun a review of this record.

Further, undersigned counsel anticipates an increasing workload. This is based on three things: (1) statutory changes to the law that permit clients to appeal any conviction regardless of punishment; (2) statutory changes to the law that permit clients to directly appeal to the United States Supreme Court regardless of the CAAF's review; and (3) recent Government action barring remote work by reservists. The last of these is particularly problematic because two things will happen as a result. First, reservists cannot work on cases they are assigned to unless and until they are on orders in a physical workspace. Second, due to the first concern, reservist dockets will be reassigned to active-duty counsel. This will increase undersigned counsel's case load and require reprioritization of cases in the days and weeks to come. Eliminating teleworking reservist support will push Appellant's case further on undersigned counsel's docket. Any delays associated with this should fall squarely with the Government, as it is the Government's actions—not that of Appellant or undersigned counsel—that will cause any delay.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has provided limited consent to disclose confidential communications, wherein:

(1) Appellant has been advised of his right to a timely appeal.

(2) Appellant has been advised of this request for enlargement of time.

(3) Appellant has been apprised of the status of undersigned counsel's progress on his case.

(4) Appellant has consented to this enlargement of time.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time for good cause shown.

Respectfully submitted,

[redacted]

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 7 February 2025.

Respectfully submitted,

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

11 February 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) DIODERSON AUGUSTIN, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME No. ACM 40655 Panel No. 1

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

[redacted]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 11 February 2025.

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*,	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIFTH)**
v.	)	Before Panel 1
Senior Airman (E-4) **DIODERSON AUGUSTIN,** United States Air Force *Appellant*.	)	No. ACM 40655 6 March 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.3(m)(4) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his fifth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 April 2025**. This case was docketed with this Court on 20 August 2024. From the date of docketing to the present date, 198 days have elapsed. On the date requested, 240 days will have elapsed.

On 6 December 2023 and 25-29 March 2024, R. at 1, 18, 1201, Appellant was tried by a general court-martial comprised of officer members. R. at 29. Contrary to his pleas, R. at 32, Appellant was found guilty of one charge and two specifications of sexual assault, in violation of Article 120, Uniform Code of Military Justice (UCMJ), and one charge and specification of indecent conduct, in violation of Article 134, UCMJ. R. at 1152. The military judge sentenced Appellant to a dishonorable discharge and confinement for 36 months. R. at 1200. The convening authority took no action with respect to the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action. Appellant is confined.

The ROT is eight volumes consisting of 10 prosecution exhibits, seven defense exhibit, appellate exhibits, and one court exhibit. The transcript is 1,201 pages long.

GRANTED
10 MAR 2025

Undersigned counsel is assigned 30 cases, 19 cases are pending initial AOEs before this Court. One case before the United States Supreme Court takes priority over this case: *United States v. Kelnhofer*. The petition for writ of certiorari is due in late May 2025. The petition must be prepared no later than 14 May 2025 to complete printing and file on time. Undersigned counsel has not yet begun work on this petition. Two cases before the Court of Appeals for the Armed Forces (CAAF)have priority over this case: (1) *United States v. Couty*; and (2) *United States v. Beyer*. Undersigned counsel has not yet begun work on these petitions.

In addition, the following cases with this Court have priority over the instant case.

1) *United States v. Barlow*, ACM 40552 – The record of trial is four volumes, consisting of six prosecution exhibits, nine defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 338 pages. Undersigned counsel has completed a review of the record and is presently conducting research and drafting of an AOE.
2) *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages. Undersigned counsel has reviewed the entire record and identified several errors. Civilian co-counsel has not yet completed a review of the record.
3) *United States v. Tyson*, ACM 40612 – The record of trial is an electronic record consisting of 924 pages. There are four prosecution exhibits, four defense exhibits, and 11 appellate exhibits. The transcript is 92 pages. Undersigned counsel has not begun a review of this record.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel

time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has provided limited consent to disclose confidential communications, wherein:

(1) Appellant has been advised of his right to a timely appeal.

(2) Appellant has been advised of this request for enlargement of time.

(3) Appellant has been apprised of the status of undersigned counsel's progress on his case.

(4) Appellant has consented to this enlargement of time.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time for good cause shown.

Respectfully submitted,

[redacted]

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 6 March 2025.

Respectfully submitted,

[redacted]

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

7 March 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4) **DIODERSON AUGUSTIN** United States Air Force, *Appellant.*	)	No. ACM 40655
	)	7 March 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time (Fifth) to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

KATE E. LEE, Maj, USAF
Appellate Government Counsel
Government Trial & Appellate Operations
1500 W. Perimeter Road, Suite 1190
Joint Base Andrews, MD
DSN: 612-4809

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 7 March 2025.

KATE E. LEE, Maj, USAF
Appellate Government Counsel
Government Trial & Appellate Operations
1500 W. Perimeter Road, Suite 1190
Joint Base Andrews, MD
DSN: 612-4809

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,* *v.* Senior Airman (E-4) **DIODERSON AUGUSTIN** United States Air Force, *Appellant.*	**NOTICE OF APPEARANCE** Before Panel 1 No. ACM 40655 Filed on: 14 March 2025

TO THE HONORABLE, THE JUDGES OF
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

COMES NOW, Frank J. Spinner, pursuant to Rule 12 of this Court's Rules of Practice and Procedure, and hereby files this written notice of appearance. In addition, counsel hereby informs this Court that:

(1) Business mailing address is: 1420 Golden Hills Road, Colorado Springs, CO 80919;

(2) Phone number is: 719-233-7192

(3) Business email is: lawspin@aol.com; and

(4) I am member of this Court's bar.

Respectfully submitted,

[redacted]

FRANK J. SPINNER
Attorney at Law
1420 Golden Hills Road
Colorado Springs, CO 80919
(719) 233-7192
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via electronic mail to the Court and served on the Government Trial and Appellate Operations Division on 14 March 2025.

[redacted]

TREVOR N. WARD, Major, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
E-Mail: trevor.ward.1@us.af.mil

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*,	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SIXTH)**
v.	)	Before Panel 1
Senior Airman (E-4) **DIODERSON AUGUSTIN,** United States Air Force *Appellant*.	)	No. ACM 40655 10 April 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.3(m)(4) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his sixth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 May 2025**. This case was docketed with this Court on 20 August 2024. From the date of docketing to the present date, 233 days have elapsed. On the date requested, 270 days will have elapsed.

On 6 December 2023 and 25-29 March 2024, R. at 1, 18, 1201, Appellant was tried by a general court-martial comprised of officer members. R. at 29. Contrary to his pleas, R. at 32, Appellant was found guilty of one charge and two specifications of sexual assault, in violation of Article 120, Uniform Code of Military Justice (UCMJ), and one charge and specification of indecent conduct, in violation of Article 134, UCMJ. R. at 1152. The military judge sentenced Appellant to a dishonorable discharge and confinement for 36 months. R. at 1200. The convening authority took no action with respect to the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action. Appellant is confined.

T is eight volumes consisting of 10 prosecution exhibits, seven defense exhibit, a e exhibits, and one court exhibit. The transcript is 1,201 pages long.

GRANTED
11 APR 2025

Undersigned counsel is assigned 30 cases, 18 cases are pending initial AOEs before this Court. One case before the United States Supreme Court takes priority over this case: *United States v. Kelnhofer*. The petition for writ of certiorari is due in late May 2025. The petition must be prepared no later than 14 May 2025 to complete printing and file on time. Undersigned counsel has not yet begun work on this petition. Four cases before the Court of Appeals for the Armed Forces (CAAF) have priority over this case: (1) *United States v. Washington*; (2) *United States v. Couty*; (3) *United States v. Beyer*; and (4) *United States v. Covitz*. For *Washington*, undersigned counsel is coordinating with civilian co-counsel and Government counsel to complete the joint appendix. For *Couty*, undersigned counsel has completed research and has nearly completed drafting of the supplement, likely to be filed next week. Work on the remaining petitions and supplements has not yet begun.

In addition, the following cases with this Court have priority over the instant case.

1) *United States v. Barlow*, ACM 40552 – The record of trial is four volumes, consisting of six prosecution exhibits, nine defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 338 pages. The Government's Answer is due on 15 May 2025 with any reply due on 22 May 2025.
2) *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages. Undersigned counsel has reviewed the entire record and identified several errors. Civilian co-counsel has not yet completed a review of the record.

Civilian co-counsel on this case, Mr. Frank Spinner, has completed a review of this record of trial. However, he also has several matters which take priority over drafting of an assignments of error brief:

1) *United States v. Sherman*, ACM 40486 – Currently preparing a draft brief.
2) *United States v. Sumpter*, NMCCA No. 202400329 – Currently preparing a draft brief for a post-*DuBay* hearing issue.
3) *United States v. Serjak*, ACM 40392 – Currently assisting with writ of habeas corpus and preparing for certification briefing before the CAAF.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has provided limited consent to disclose confidential communications, wherein:

(1) Appellant has been advised of his right to a timely appeal.

(2) Appellant has been advised of this request for enlargement of time.

(3) Appellant has been apprised of the status of undersigned counsel's progress on his case.

(4) Appellant has consented to this enlargement of time.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time for good cause shown.

Respectfully submitted,

[redacted]

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 10 April 2025.

Respectfully submitted,

[redacted]

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4) **DIODERSON AUGUSTIN,** United States Air Force, *Appellant.*	)	No. ACM 40655
	)	11 April 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

[redacted]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 11 April 2025.

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*,	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME(SEVENTH)**
v.	)	Before Panel 1
Senior Airman (E-4) **DIODERSON AUGUSTIN,** United States Air Force, *Appellant*.	)	No. ACM 40655 9 May 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.3(m)(4) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his seventh enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **16 June 2025**. This case was docketed with this Court on 20 August 2024. From the date of docketing to the present date, 262 days have elapsed. On the date requested, 300 days will have elapsed.

On 6 December 2023 and 25-29 March 2024, R. at 1, 18, 1201, Appellant was tried by a general court-martial comprised of officer members. R. at 29. Contrary to his pleas, R. at 32, Appellant was found guilty of one charge and two specifications of sexual assault, in violation of Article 120, Uniform Code of Military Justice (UCMJ), and one charge and specification of indecent conduct, in violation of Article 134, UCMJ. R. at 1152. The military judge sentenced Appellant to a dishonorable discharge and confinement for 36 months. R. at 1200. The convening authority took no action with respect to the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action. Appellant is confined.

The ROT is eight volumes consisting of 10 prosecution exhibits, seven defense exhibit, appellate exhibits, and one court exhibit. The transcript is 1,201 pages long.

GRANTED
15 MAY 2025

Undersigned counsel is assigned 31 cases, 19 cases are pending initial AOEs before this Court. One case before the United States Supreme Court takes priority over this case: *United States v. Kelnhofer*. The petition for writ of certiorari is due in late May 2025. The petition must be prepared no later than 14 May 2025 to complete printing and file on time. Undersigned counsel has completed a draft which is currently under review. Three cases before the Court of Appeals for the Armed Forces (CAAF) have priority over this case: (1) *United States v. Washington*; (2) *United States v. Beyer*; and (3) *United States v. Covitz*. For *Washington*, the brief on behalf of appellant was filed Wednesday, 7 May 2025. For *Beyer*, a draft supplement brief has been drafted and is currently under review. Undersigned counsel has not begun work on *Covitz*.

In addition, the following cases with this Court have priority over the instant case.

1) *United States v. Barlow*, ACM 40552 – The record of trial is four volumes, consisting of six prosecution exhibits, nine defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 338 pages. The Government's Answer is due on 15 May 2025 with any reply due on 22 May 2025.
2) *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages. Undersigned counsel has reviewed the entire record and identified several errors. Civilian co-counsel has not yet completed a review of the record.

Civilian co-counsel on this case, Mr. Frank Spinner, has completed a review of this record of trial. However, he also has several matters which take priority over drafting of an assignments of error brief:

1) *United States v. B*aumgartner – Currently preparing a draft brief to the CAAF.
2) *United States v. Serjak* – Preparing a draft brief for certified issue at the CAAF.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has provided limited consent to disclose confidential communications, wherein:

(1) Appellant has been advised of his right to a timely appeal.

(2) Appellant has been advised of this request for enlargement of time.

(3) Appellant has been apprised of the status of undersigned counsel's progress on his case.

(4) Appellant has consented to this enlargement of time.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time for good cause shown.

Respectfully submitted,

[redacted]

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 9 May 2025.

Respectfully submitted,

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4) **DIODERSON AUGUSTIN,** United States Air Force, *Appellant.*	)	No. ACM 40655
	)	13 May 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

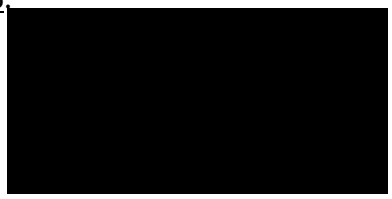
The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 300 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two thirds of the 18-month standard for this Court to issue a decision, which only leaves about 8 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's military counsel has not completed review of the record of trial at this late stage of the appellate process.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 13 May 2025.



JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*,	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (EIGHTH)**
v.	)	Before Panel 1
Senior Airman (E-4) **DIODERSON AUGUSTIN,** United States Air Force, *Appellant*.	)	No. ACM 40655 9 June 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.3(m)(4) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his eighth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **16 July 2025**. This case was docketed with this Court on 20 August 2024. From the date of docketing to the present date, 293 days have elapsed. On the date requested, 330 days will have elapsed.

On 6 December 2023 and 25-29 March 2024, R. at 1, 18, 1201, Appellant was tried by a general court-martial comprised of officer members. R. at 29. Contrary to his pleas, R. at 32, Appellant was found guilty of one charge and two specifications of sexual assault, in violation of Article 120, Uniform Code of Military Justice (UCMJ), and one charge and specification of indecent conduct, in violation of Article 134, UCMJ. R. at 1152. The military judge sentenced Appellant to a dishonorable discharge and confinement for 36 months. R. at 1200. The convening authority took no action with respect to the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action. Appellant is confined.

The ROT is eight volumes consisting of 10 prosecution exhibits, seven defense exhibit, a[illegible]te exhibits, and one court exhibit. The transcript is 1,201 pages long.

GRANTED
11 JUN 2025

Undersigned counsel is assigned 33 cases, 20 cases are pending initial AOEs before this Court. One case before the Court of Appeals for the Armed Forces (CAAF) has priority over this case: *United States v. Washington*. The reply brief is due on 27 June 2025.

In addition, the following case with this Court has priority over the instant case.

United States v. Evangelista, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages. The reply brief in this case is due on 14 July 2025.

Civilian co-counsel on this case, Mr. Frank Spinner, has completed a review of the record of trial. However, he also has been working several matters which take priority over drafting of an assignments of error brief:

1) *United States v. B*aumgartner – Since the last EOT, Mr. Spinner drafted and filed a supplement brief to the CAAF.
2) *United States v. Serjak* – Since the last EOT, Mr. Spinner has drafted and/or filed numerous briefs at the CAAF regarding a certified issue and a writ in the nature of habeas corpus.
3) *United States v. Sherman* – Since the last EOT, Mr. Spinner drafted a supplement brief to the CAAF.
4) *United States v. Turtu* – Mr. Spinner is presently working on an AOE brief in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has provided limited consent to disclose confidential communications, wherein:

(1) Appellant has been advised of his right to a timely appeal.

(2) Appellant has been advised of this request for enlargement of time.

(3) Appellant has been apprised of the status of undersigned counsel's progress on his case.

(4) Appellant has consented to this enlargement of time.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time for good cause shown.

Respectfully submitted,

[redacted]

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 9 June 2025.

Respectfully submitted,

[redacted]

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4) **DIODERSON AUGUSTIN,** United States Air Force, *Appellant.*	)	No. ACM 40655
	)	10 June 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 330 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two thirds of the 18-month standard for this Court to issue a decision, which only leaves about 7 months combined for the United States and this Court to perform their separate statutory responsibilities. Appellant's civilian counsel completed the review of the record of trial, but it appears that Appellant's military counsel has not completed review of the record at this late stage of the appellate process.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

JO USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 10 June 2025.

JO USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*,	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (NINTH)**
v.	)	Before Panel 1
Senior Airman (E-4) **DIODERSON AUGUSTIN,** United States Air Force, *Appellant*.	)	No. ACM 40655 9 July 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.3(m)(4) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his ninth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **15 August 2025**. This case was docketed with this Court on 20 August 2024. From the date of docketing to the present date, 323 days have elapsed. On the date requested, 360 days will have elapsed.

On 6 December 2023 and 25-29 March 2024, R. at 1, 18, 1201, Appellant was tried by a general court-martial comprised of officer members. R. at 29. Contrary to his pleas, R. at 32, Appellant was found guilty of one charge and two specifications of sexual assault, in violation of Article 120, Uniform Code of Military Justice (UCMJ), and one charge and specification of indecent conduct, in violation of Article 134, UCMJ. R. at 1152. The military judge sentenced Appellant to a dishonorable discharge and confinement for 36 months. R. at 1200. The convening authority took no action with respect to the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action. Appellant is confined.

ROT is eight volumes consisting of 10 prosecution exhibits, seven defense exhibit, late exhibits, and one court exhibit. The transcript is 1,201 pages long.

GRANTED

10 JULY 2025

Undersigned counsel is assigned 34 cases, 21 cases are pending initial AOEs before this Court. No case before any court takes priority over this case.

Civilian co-counsel on this case, Mr. Frank Spinner, and undersigned counsel has completed a review of the record of trial and identified several potential errors. Undersigned counsel has also begun research on several of the identified errors. Mr. Spinner—lead counsel on this case—has been in a Board of Inquiry (BOI) this week and anticipates being in that BOI for the remainder of this week and all of next week. Further, Mr. Spinner has been diligently working other matters, to include filing a supplement brief in *United States v. Sherman*.

Additional time is needed for counsel to coordinate on the identified errors, complete research, and draft an opening brief. This likely can be completed by the anticipated 15 August 2025 deadline.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has provided limited consent to disclose confidential communications, wherein:

(1) Appellant has been advised of his right to a timely appeal.

(2) Appellant has been advised of this request for enlargement of time.

(3) Appellant has been apprised of the status of undersigned counsel's progress on his case.

(4) Appellant has consented to this enlargement of time.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested enlargement of time for good cause shown.

Respectfully submitted,

[redacted]

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 9 July 2025.

Respectfully submitted,

[redacted]

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4) **DIODERSON AUGUSTIN,** United States Air Force, *Appellant.*	)	No. ACM 40655
	)	10 July 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 360 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two thirds of the 18-month standard for this Court to issue a decision, which only leaves about 6 months combined for the United States and this Court to perform their separate statutory responsibilities. Appellant's civilian counsel completed the review of the record of trial, but it appears that Appellant's military counsel has not completed review of the record at this late stage of the appellate process.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 10 July 2025.

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*,	)	**BRIEF ON BEHALF OF APPELLANT**
v.	)	Before Panel 1
Senior Airman (E-4) **DIODERSON AUGUSTIN** United States Air Force *Appellant*.	)	No. ACM 40655 15 August 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Assignments of Error

I

WHETHER THE FINDINGS OF GUILTY OF SPECIFICATIONS 4 AND 5 OF THE CHARGE AND THE SPECIFICATION OF THE ADDITIONAL CHARGE ARE FACTUALLY INSUFFICIENT.

II

WHETHER THE CONVENING AUTHORITY IMPERMISSIBLY CONSIDERED THE GENDER OF POTENTIAL COURT MEMBERS WHEN DETAILING COURT MEMBERS TO THIS COURT-MARTIAL.

Statement of the Case

On 29 March 2024, at a general court-martial consisting of officer members convened at Tyndall Air Force Base, Florida, SrA Dioderson Augustin was found guilty, contrary to his pleas, of one charge and two specifications of sexual assault, in violation Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920; and one charge and one specification of indecent conduct, in violation of Article 134, UCMJ, 10 U.S.C. § 934.[1] He was acquitted of three other

[1] Unless otherwise noted, all references to the UCMJ, the Rules for Courts-Martial (R.C.M.), and the Military Rules of Evidence (Mil. R. Evid.) are to the *Manual for Courts-Martial*, *United States* (2019 ed.) [2019 *MCM*].

specifications brought under Article 120, UCMJ. (R. at 1152, Entry of Judgment [EOJ]). The military judge sentenced SrA Augustin to confinement for 36 months, and a dishonorable discharge. *Id.*; R. at 1200. The convening authority took no action with respect to findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action.

Statement of the Facts

1. SrA Augustin testified—he did not sexually assault A1C R.Y. or engage in indecent conduct because their sexual activity in his home was consensual.

In late 2022, SrA Augustin and A1C R.Y. were stationed at Tyndall Air Force Base, FL, but did not appear to be assigned to the same unit. R. at 903. They met on base at the BX in December 2022 and began texting and conversing by phone regularly. R. at 654-60, 904-06. After weeks of courting, SrA Augustin felt comfortable enough with her that he decided to invite her to stay overnight at his home on 2 January 2023, after the holidays. She agreed, so he picked her up around 2300 because she could not drive. R. at 661-62, 664. His intent was for the visit to be social, to just hang out together and that he would cook some food from Haiti, where he grew up. R. at 897, 911, 926, 936. He knew from their conversations that she was from Africa and had only recently moved to the United States and joined the Air Force. R. at 650.

SrA Augustin was very tired when he picked her up because of his travels over the holidays. R. at 912. He had gone to visit family in Maryland and Fort Lauderdale, Florida. R. at 906. After having been on the road for a long day of travel, he was tired and wanted to sleep. R. at 910-11, 926-27, 961. Before going to bed, he played some video games while she played music on her phone and tried to engage him in conversation. R. at 919-20. A little later he showed her where the guest room was located and where she could sleep. R. at 921. He then took a shower. R. at 924. He came out and found her in her pajamas at which time they entered her guest room after having a conversation with sexual overtones. R. at 928. They began kissing and eventually engaged in

acts of sexual intimacy, all of a consensual nature and after she voluntarily removed her clothes. R. at 928-31.

SrA Augustin then went to his master bedroom and was trying to sleep given how tired he was from all the travel. Apparently, she followed him to his bedroom to continue consensual sexual activity. This occurred between 1300 and 0100 the next morning. R. at 933-34.

Early the next morning, after waking up, A1C R.Y. went to take a shower. Around that time SrA Augustin woke up, heard her taking a shower, and then later talking on the phone. R. at 935-36. SrA Augustin decided to play video games; during this, his phone rang. R. at 936, 939. A1C R.Y. picked up the phone, saw a heart emoji next to the name, and inquired about who was calling him. SrA Augustin brushed off her question without fully answering her by telling her it was just a friend. R. at 939.

SrA Augustin described that A1C R.Y.'s behavior and demeanor suddenly changed after the phone call from his friend. R. at 940. She expressed a desire to return to the base; he respected her request and drove her back. He testified, "She seemed really mad." R. at 940-41, 945-47, 963-64.

2. A1C R.Y. testified that SrA Augustin sexually assaulted her and engaged in indecent conduct.

A1C R.Y.'s testimony aligns with SrA Augustin's in many parts: how they met, how their relationship developed over a brief period of time, and how she voluntarily went to his home knowing she would spend the night. The major discrepancy is in her claim that in the middle of the night at his home he sexually assaulted her in a very physical, intimidating, and overpowering manner. She essentially testified that she did not consent to any sexual acts with him. R. at 670-720.

3. The SANE physical examination was not consistent with A1C R.Y.'s description of what happened and was consistent with SrA Augustin's description.

As will be more fully developed in the argument below, the nurse examiner reported findings that were inconsistent with A1C R.Y.'s claims of a very physical assault in which she physically resisted. The findings were more consistent with SrA Augustin's testimony that the encounter was consensual.

Argument

I

THE FINDINGS OF GUILTY OF SPECIFICATIONS 4 AND 5 OF THE CHARGE AND THE SPECIFICATION OF THE ADDITIONAL CHARGE ARE FACTUALLY INSUFFICIENT.

Standard of Review

This Court reviews issues of factual and legal sufficiency de novo. Article 66(d), U.C.M.J., 10 U.S.C. § 866(d); *United States v. McAlhaney*, 83 M.J. 164, 399 (C.A.A.F. 2023).

Law and Analysis

The test for factual sufficiency is "whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, the members of [this Court] are themselves convinced of appellant's guilt beyond a reasonable doubt." *United States v. Rosario*, 76 M.J. 114, 117 (C.A.A.F. 2017) (quoting *United States v. Oliver*, 70 M.J. 64, 68 (C.A.A.F. 2011)). For offenses occurring after 1 January 2021, the UCMJ specifies this Court "may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof." Article 66(d)(1)(B)(i), UCMJ, 10 U.S.C. § 866(d)(1)(B)(i) (*Manual for Courts-Martial, United States* (2024 ed.) (2024 *MCM*)). If "the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court

may dismiss, set aside, or modify the finding."[2] Article 66(d)(1)(B)(iii), UCMJ; 10 U.S.C. § 866(d)(1)(B)(iii) (2024 *MCM*). Thus, to set aside a conviction for factual insufficiency, the Court "must be clearly convinced that the weight of the evidence does not support the conviction beyond a reasonable doubt." *Csiti*, 2024 CCA LEXIS 160, at *23.

1. Specifications 4 and 5 of the Charge and the Specification of the Additional Charge are factually insufficient due to the contradictions of, and inconsistent statements made by, A1C R.Y.

At the outset, it appears A1C R.Y.'s testimony contradicts her previous statements to law enforcement. For example, she did not tell the Air Force Office of Special Investigations (OSI) about any activity in SrA Augustin's master bedroom even though she described such activity happening there. R. at 780-81. Had she told the OSI agents that something occurred in the master bedroom, they no doubt would have collected the bed sheets as a minimum for forensic examination and testing just as they collected bedding from the guest room. R. at 808, 810. However, without this evidence, the trier of fact is left guessing which version of A1C R.Y.'s story is true.

Moreover, when reviewing A1C R.Y.'s testimony against SrA Augustin's testimony, both under oath, there are numerous contradictions that cannot be resolved because they cannot be objectively corroborated. *Contrast* R. at 910-34 (describing multiple consensual sexual encounters, to include ones initiated by A1C R.Y.), *with* R. at 670-720 (describing allegedly nonconsensual encounters initiated by SrA Augustin). Most importantly, SrA Augustin's account demonstrates that all sexual activity that occurred between him and A1C R.Y. was consensual. R.

[2] This standard does not require an appellant to show a total lack of evidence supporting an element, which would be redundant with legal sufficiency review. *United States v. Csiti*, No. ACM 40386, 2024 CCA LEXIS 160, at *17-18 (A.F. Ct. Crim. App. Apr. 29, 2024), *aff'd*, __ M.J. __, 2025 CAAF LEXIS 349 (C.A.A.F. 2025). There is no rebuttable presumption of guilt when assessing factual sufficiency. *United States v. Harvey*, 85 M.J. 127, 131-32 (C.A.A.F. 2024).

at 910-34. In fact, A1C R.Y., not SrA Augustin, initiated much of the sexual encounter. *Id.* This directly contradicts A1C R.Y.'s testimony to the contrary.

A1C R.Y. is not a credible witness. There are a number of inconsistencies in her testimony, not only between her story and the testimony of SrA Augustin, but between her testimony and her prior statements to law enforcement. A1C R.Y.'s testimony was also inconsistent with the statement she provided to the sexual assault nurse examiner. A1C R.Y. told the nurse examiner SrA Augustin did not penetrate her vulva with his finger but testified in court that he did. R. at 838-39, 842. Taken together, these inconsistencies show that the Government could not prove its case beyond a reasonable doubt because A1C R.Y. was an unreliable witness. This is especially so since the Government relied almost solely on A1C R.Y.'s testimony to prove its case.

2. Specifications 4 and 5 of the Charge and the Specification of the Additional Charge are factually insufficient due to A1C R.Y.'s motive to misrepresent.

On top of her inconsistencies, A1C R.Y. also held a motive to misrepresent what happened. A1C R.Y. and SrA Augustin talked for weeks over text and phone calls. R. at 656-60; *see generally* Pros. Ex. 2. The content of much of this communication was romantic in nature. Pros. Ex. 2. After weeks of courting—and after SrA Augustin was out of town for the holidays, R. at 660-61—they finally were able to hang out in person. R. at 662-63. During this initial hang-out session, the two engaged in consensual sexual intercourse. R. at 910-34. The next day, SrA Augustin received a call from a number which had a heart next to the name. R. at 938-39. A1C R.Y. saw this phone call and became visibly upset. R. at 940-41, 945-47, 963-64. Shortly thereafter, she requested that SrA Augustin bring her home, which he did. R. at 940.

It is clear from this interaction that A1C R.Y. was upset about this phone call, believing that SrA Augustin had a girlfriend. Understandably, A1C R.Y. felt used, betrayed, and led on for weeks. Upon seeing the call and confronting SrA Augustin, A1C R.Y. immediately asked to go

home. A1C R.Y.'s request was made despite spending much of the day at SrA Augustin's home, including taking a phone call from her family. R. at 936. Had A1C R.Y. wanted to go home earlier—as one would suspect for someone who was just violently sexually assaulted multiple times—she easily could have. R. at 936-37 (describing A1C R.Y. being on her phone much of the day). Clearly, SrA Augustin was willing to take her home at any time too, as evidenced by his immediate compliance with her request. Further, she clearly had no problem asking to be taken home, as she later did. Though, she only asked to go home after seeing the phone call from SrA Augustin's "friend." Moreover, even if she was worried that SrA Augustin would not honor her request to take her home, she clearly had access to her mobile device to ask friends and family for help, to order a ride share service, or to call the police. She did none of this.

Instead, A1C R.Y. waited until she saw a call from a number which had a heart next to her name. Unsatisfied with SrA Augustin's response that it was "just a friend," it is only then that A1C R.Y. requested to be taken home. This clearly shows a motive to fabricate, as she was angry with SrA Augustin. It also damages her credibility, as A1C R.Y. had ample opportunity to leave SrA Augustin's home prior to this moment. Altogether, this motive and the evidence surrounding it, shows how the Government did not prove its case beyond a reasonable doubt.

3. ***Specifications 4 and 5 of the Charge and the Specification of the Additional Charge are factually insufficient due to the findings in the SANE report.***

To make matters worse for the Government, the nurse examiner, after a thorough examination of A1C R.Y.'s body, found no evidence of trauma consistent with what A1C R.Y. described as a very physical sexual assault and the claim that she fought back. R. at 836-38. No evidence of a physical struggle was found in the form of bruising, fingernail scrapes, or scratches. *Id.* For all the reasons stated above, Specifications 4 and 5 of the Charge and the Specification of

the Additional Charge are not legally and factually sufficient; therefore this Court should not affirm the findings of guilty of them, the Charge, and the Additional Charge.

II

THE CONVENING AUTHORITY IMPERMISSIBLY CONSIDERED THE GENDER OF POTENTIAL COURT MEMBERS WHEN DETAILING COURT MEMBERS TO THIS COURT-MARTIAL.

Additional Facts

After the initial challenges for cause, the court-martial lacked a quorum. R. at 376-77. Thereafter, the Government sought additional members from the convening authority. R. at 377. The special court-martial convening authority (SPCMCA) sent a list of proposed members to the general court-martial convening authority (GCMCA). R. at 388. That list included only one woman. R. at 388. The GCMCA ultimately selected each member on the list provided except the one woman. R. at 388; *compare* ROT Vol. 1, *Special Order A-23*, Mar. 26, 2025 (showing only one female member, Lieutenant Colonel K.P.), *with* ROT Vol. 1, *Special Order A-21*, Mar. 19, 2024 (showing the same female member on an earlier order). There is no evidence in the record indicating a gender-neutral reason for either the SPCMCA's decision to include only one woman, or the GCMCA's decision to select all members except the one woman.

Standard of Review

Where no objection is made at trial, court-martial composition issues are reviewed for plain error. *United States v. King*, 83 M.J. 115, 120-21 (C.A.A.F. 2023), *cert. denied*, 144 S. Ct. 190 (2023). Under plain error review, an appellant bears the burden to demonstrate that: "(1) there is error; (2) the error is clear or obvious; and (3) the error materially prejudiced a substantial right." *United States v. Patterson*, No. ACM 40426, 2024 CCA LEXIS 399, at *15 (A.F. Ct. Crim. App. Sep. 27, 2024) (quoting *United States v. Robinson*, 77 M.J. 294, 299 (C.A.A.F. 2018)).

"[W]henever an accused makes a prima facie showing that race played a role in the panel selection process at his court-martial, a presumption will arise that the panel was not properly constituted." *United States v. Jeter*, 84 M.J. 68, 70 (C.A.A.F. 2023). The Government may then seek to rebut that presumption. *Id*. If the Government cannot rebut the presumption, automatic reversal is warranted. *Id*. at 74; s*ee Weaver v. Massachusetts*, 582 U.S. 286, 301 (2017) (granting "automatic relief to defendants who prevailed on claims alleging race . . . discrimination in the selection of the petit jury"); *Batson v. Kentucky*, 476 U.S. 79, 100 (1986) ("If the trial court decides that the facts establish, prima facie, purposeful discrimination and the prosecutor does not come forward with a neutral explanation for his action, our precedents require that petitioner's conviction be reversed."); *cf. Johnson v. United States*, 520 U.S. 461, 466 (1997) (citing Supreme Court precedent for the proposition that cases *not* governed by Federal Rule of Criminal Procedure Rule 52(b) are "structural errors" without a prejudice analysis).

Law and Analysis

"The Equal Protection Clause . . . forbids the States to strike [B]lack veniremen on the assumption that they will be biased in a particular case simply because the defendant is [B]lack." *Batson*, 476 U.S. at 97. This statement is no less true in the military justice system. *Jeter*, 84 M.J. at 73. In extending *Batson* to panel member selection, the Court of Appeals for the Armed Forces (CAAF) unequivocally articulated, "It is impermissible to exclude or intentionally include prospective members based on their race." *Id.* Just as in the civilian context, a convening authority may not draw up a members panel pursuant to the neutral criteria of Article 25, UCMJ, only to have discriminated at other stages of the process." *Id*. at 74.

While *Jeter* did not consider the question of using gender as a basis for juror fitness, the Supreme Court acknowledged that *Batson* applies to gender. *J.E.B. v. Ala. ex rel. T.B.*, 511 U.S.

127, 129 (1994) ("We hold that gender, like race, is an unconstitutional proxy for juror competence and impartiality.") As with race, "intentional discrimination on the basis of gender by state actors violates the Equal Protection Clause." *Id*. Gender, like race, cannot be considered for court member selection. "The exclusion of even one juror for impermissible reasons harms that juror and undermines public confidence in the fairness of the system." *Id*. at 142 n.13. *Jeter* unequivocally states that "race shall not be a criterion in the selection of court-martial members," and its reasoning indicates the same must be true of gender. 84 M.J. at 73. This Court seemed to agree in at least one previous case. *Patterson*, 2024 CCA LEXIS 399, at *20-21 ("[A]lthough the Government is correct that *Jeter* specifically addressed racial discrimination, we assume . . . the same rationale applies to the selection or exclusion of members based on gender.").

Because *Jeter* appears to apply to gender as well as race, that framework should be used to assess the error. "[W]henever an accused makes a prima facie showing that race played a role in the panel selection process at his court-martial, a presumption will arise that the panel was not properly constituted." *Id.* at 70.

In this case, Appellant has made such a prima facie showing. The record contains information that both the SPCMCA and GCMCA used gender in creating the venire. R. at 376-77. The fact that the SPCMCA included only one woman for the GCMCA to consider—and that the GCMCA selected all male members but excluded the female member—supports a prima facie case that gender was used to constitute the panel. The record is silent as to any gender-neutral reason for these selections. And, therefore, the burden shifts to the Government to rebut the presumption. If it cannot, then reversal is required. *Jeter*, 84 M.J. at 74.

WHEREFORE, SrA Augustin respectfully requests that this Honorable Court set aside and dismiss Specifications 4 and 5 of the Charge, the Specification of the Additional Charge, the Charge, and the Additional Charge, and set aside the sentence.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 15 August 2025.

Respectfully submitted,

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Panel No. 1
Senior Airman (E-4) **DIODERSON AUGUSTIN** United States Air Force *Appellant.*	)	No. ACM 40655 7 September 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.3(m)(5), the United States respectfully requests a 14-day enlargement of time to respond in the above captioned case. This is the United States' first request for an enlargement of time. This case was docketed with the Court on 20 August 2024. Appellant's ninth enlargement of time was granted on 10 July 2025, and Appellant filed his brief with this Court on 15 August 2025. As of the date of this request, 384 days have elapsed. The United States' response in this case is currently due on 15 September 2025. If this enlargement of time is granted, the United States' response will be due on 29 September 2025, and 406 days will have elapsed since docketing.

There is good cause for the enlargement of time in this case. The undersigned is newly assigned appellate counsel and arrived on station on 31 July 2025. From 2-7 August 2025, the undersigned counsel participated in motions practice in his former capacity as a Victims' Counsel in United States v. DiFalco, a general court-martial proceeding at Nellis Air Force Base, Nevada. On 19 August 25, the undersigned counsel attended a mandatory newcomer's briefing r 316th Wing at Andrews Air Force Base. From 25-28 August, the undersigned c ended a mandatory JAJG appellate newcomer's training. From 29 August 2025

GRANTED
10 SEP 2025

to 1 September 2025, JAJG was closed for Labor Day. Undersigned counsel is currently out of the JAJG office representing the named victim in United States v. DiFalco, which is scheduled to take place from 8-19 September 2025. The undersigned counsel also previously filed a brief before this court on 3 September 2025 in United States v Jackson, No. ACM S32780.

The trial transcript in this case is 1,207 pages, and Appellant has raised two assignments of error in a 12-page brief. The undersigned counsel respectfully requests additional time to review the record, answer both assignments of error, and seek supervisory review. No other JAJG attorney will be able to file a brief sooner as all other appellate government counsel are currently assigned extensive briefs, some before the Court of Appeal for the Armed Forces (CAAF). JAJG has approximately 17 cases with pending briefs before this Court and 4 cases with pending briefs before CAAF.

WHEREFORE, the United States respectfully requests this Honorable Court grant this motion for an enlargement of time.

[redacted]
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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 7 September 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (SECOND)**
v.	)	Before Panel No. 1
Senior Airman (E-4) **DIODERSON AUGUSTIN** United States Air Force *Appellant.*	)	No. ACM 40655 22 September 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.3(m)(5), the United States respectfully requests a 7-day enlargement of time to respond in the above captioned case. This is the United States' second request for an enlargement of time. This case was docketed with the Court on 20 August 2024. Appellant's ninth enlargement of time was granted on 10 July 2025, and Appellant filed his brief with this Court on 15 August 2025. As of the date of this request, 399 days have elapsed. The United States' response in this case is currently due on 29 September 2025. If this enlargement of time is granted, the United States' response will be due on 6 October 2025, and 421 days will have elapsed since docketing.

There is good cause for the enlargement of time in this case. The undersigned is newly assigned appellate counsel and arrived on station on 31 July 2025. From 2-7 August 2025, the undersigned counsel participated in motions practice in his former capacity as a Victims' Counsel in United States v. DiFalco, a general court-martial proceeding at Nellis Air Force Base, Nevada. On 19 August 25, the undersigned counsel attended a mandatory newcomer's briefing required by the 316th Wing at Joint Base Andrews. From 25-28 August, the undersigned also attended a mandatory JAJG appellate newcomer's training. From 29 August 2025

GRANTED
25 SEP 2025

to 1 September 2025, JAJG was closed for Labor Day. Undersigned counsel is currently out of the JAJG office representing the named victim in United States v. DiFalco, which was originally scheduled to take place from 8-19 September 2025. United States v. DiFalco is now scheduled to potentially conclude no earlier than 24 September 2025. The undersigned is scheduled to travel back to Joint Base Andrews on 25 September 2025. Upon arrival back to Joint Base Andrews, the undersigned will be required to attend mandatory training at the 12th Annual Joint Appellate Advocacy Training at Fort Leslie J. McNair on 26 September 2025. The undersigned counsel also previously filed a brief before this court on 3 September 2025 in United States v Jackson, No. ACM S32780.

The trial transcript in this case is 1,207 pages, and Appellant has raised two assignments of error in a 12-page brief. The undersigned counsel respectfully requests additional time to review the record, answer both assignments of error, and seek supervisory review. No other JAJG attorney will be able to file a brief sooner as all other appellate government counsel are currently assigned extensive briefs, some before the Court of Appeal for the Armed Forces (CAAF). JAJG has approximately 17 cases with pending briefs before this Court and 4 cases with pending briefs before CAAF.

WHEREFORE, the United States respectfully requests this Honorable Court grant this motion for an enlargement of time.

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 22 September 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	ANSWER TO ASSIGNMENTS OF ERROR
v.	)	Before Panel No. 1
Senior Airman (E-4) **DIODERSON AUGUSTIN** United States Air Force *Appellant.*	)	No. ACM 40655 6 October 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

ISSUES PRESENTED

I.

WHETHER THE FINDINGS OF GUILTY OF SPECIFICATIONS 4 AND 5 OF THE CHARGE AND THE SPECIFICATION OF THE ADDITIONAL CHARGE ARE FACTUALLY INSUFFICIENT.

II.

WHETHER THE CONVENING AUTHORITY IMPERMISSIBLY CONSIDERED THE GENDER OF POTENTIAL COURT MEMBERS WHEN DETAILING COURT MEMBERS TO THIS COURT-MARTIAL.

STATEMENT OF CASE

The United States generally agrees with Appellant's statement of the case.

STATEMENT OF FACTS

RY's Military Enlistment

RY, a native Kenyan, from a family of five, won the green card lottery and immigrated to the United States alone. (R. at 650-651.) RY was 23 years old. (R. at 652.) After being in the United States for two years, RY joined the United States Air Force to show her appreciation for the food provided by USAID to her community when she was in Kenya (R. at 651.) Upon arriving in the United States, RY experienced culture shock (R. at 652.)

RY met Appellant in the BX while volunteering during the Christmas holiday wrapping gifts at Tyndall Air Force Base, Florida. (R. at 652.) While wrapping a gift for Appellant, Appellant shared that he had a friend from Kenya that he would connect RY with, so she and Appellant exchanged numbers (R. at 655.) Appellant never introduced RY to his Kenyan friend. While exchanging text messages, RY advised Appellant that she had no friends and never ventured off Tyndall Air Force Base. (R. at 656.)

For the first three days, Appellant texted RY casually. (R. at 659.) However, the text conversations from Appellant eventually became flirty. (Id.) After Appellant returned from a trip from Maryland, the parties agreed to meet up. (R. at 661.) Prior to agreeing to meet with Appellant, RY established boundaries. (Id.) RY asked Appellant, "what are we [going to] be doing." (R. at 662.) Appellant told RY they were "going [to] be chilling, watching video games, [and] watching movies." (Id.) RY told Appellant going to someone's house late at night to "simply see them" is outside of her culture; however, she felt comfortable because Appellant was an Air Force member. (Id.) While RY expressed hesitation at going to Appellant's house, she stated,

"he's in the military, he should be a good person . . . "I don't have a reason to doubt him." (Id.) Before RY agreed to go to Appellant's house, he assured her that he had two bathrooms, two bedrooms and that she could stay in the guest room. (R. at 662; R. at 801.)

On 2 January 2023, Appellant picked up RY. (R. at 912.) RY brought an overnight bag. (Id.) This was the first time RY ventured from Tyndall Air Force Base since her arrival on station four months prior. (R. at 664.) RY did not have a car and only recently acquired a learner's permit to learn how to drive. (R. at 664-665; R. at 796.) During the ride to Appellant's house, Appellant began caressing the hair on the back of her neck and shoulder. (R. at 663.) RY told Appellant to stop and that he was making her uncomfortable and nervous. (Id.) Appellant denied touching RY in the car. (R. at 913.)

Once they arrived at Appellant's house, RY attempted to engage Appellant in conversation, but Appellant chose to play video games instead. (R. at 666.) After being ignored, RY requested to go to the guest room to sleep. While showing RY to the guest room, Appellant grabbed RY in a manner which made her nervous and she told him to stop. (R. at 667.) During his testimony, Appellant stated RY told him she was previously exercising, and she requested that he "crack her back." (R. at 925.) Appellant said "And I did – I did do it – I did do it," but she appeared unsatisfied. (Id.) Appellant testified that RY appeared unhappy after his actions. (R. at 926.)

Master Bedroom Altercation

As RY began walking back to the guest room in the hallway, Appellant asked RY, "can you please spend the night in my bed?" (R. at 670.) After RY declined, Appellant grabbed her arm and began pulling her towards his room. (R. at 670-671.) After RY attempted to resist, Appellant lifted and carried her to his bed. (Id.) Appellant then threw her on his bed. (Id.) RY told Appellant, "this is not what I was expecting." (R. at 672.) According to RY, Appellant remarked, "I wasn't

[going to] tell you that we are [going to] do this and this, I was just waiting to see for the mood." (Id.) RY responded, "I don't [want to] do this with you," and "[this is] not what I thought [] hanging out [was]." (Id.)

While in the master bedroom, Appellant laid on top of RY and attempted to spread her legs. (R. at 671-672.) While resisting, RY told Appellant, "I don't want to do anything [] with you." (R. at 672.) RY testified that [her] voice was getting higher and higher because [she felt] like . . . [Appellant] wanted something from [her], but in a forceful way." (R. at 672.) According to RY, she was "persistent" and "loud and clear." (R. at 673.) After Appellants attempts were unsuccessful, RY left and went to the guest room. (R. at 673-674.) Appellant did not address this altercation in the master bedroom, only that according to him, RY entered and exited his bed at some point, without any conversation (R. at 932-934.) Appellant did not confirm any sexual activity in the master bedroom (Id.)

Appellant Enters RY's Guest Room

Three minutes later, Appellant came to RY's guest room and attempted to cuddle but was rejected. (R. at 675.) RY told Appellant, "I don't want anything to do with cuddles. I don't want you to be on my bed." (Id.) RY told Appellant, "this was [] the agreement. You didn't tell me you were [going to] cuddle me. You didn't tell me you were [going to] be on my bed." (R. at 675.) According to RY, Appellant said, "you ladies usually pretend like you don't want something, but in [a] real sense, you want it." (R. at 676; R. at 678.)

RY reminded Appellant, culturally, "[she] comes from a different place." (R. at 676.) Appellant then told RY to "shut up," she's "talking too much," and attempted to silence her by placing his fingertips over her mouth. (R. at 675-676.)

Despite resisting, Appellant managed to successfully remove RY's clothing. (R. at 677.) Appellant got between RY's leg and used one hand to prevent her from closing her legs while using his other hand to pin her arm down. (R. at 679; R. at 682.) Appellant attempted to lick RY's vagina, but she told him to stop. (R. at 677; R. at 681-683.) RY indicated Appellant attempted to arouse her, but she was not in the mood, and she again told him to stop (R. at 677; R. at 678.) After Appellant attempted to insert his fingers in her vagina, RY said, "stop, don't do this to me," and "it hurts, don't do it." (R. at 676; R. at 686-687.) RY continued to resist and told Appellant to stop multiple times as he restrained her arm. (R. at 680.)

Appellant Penetrated RY's Mouth (Charge: Specification 4)

According to RY, after unsuccessfully attempting to open her legs, Appellant said, "you don't [want] to cooperate, then maybe the other option is it should [go] somewhere else." (R. at 684; R. at 688.) RY clarified that "it" referred to Appellant's penis. (R. at 684.) RY then asked Appellant, "where is it going?" (Id.) Appellant then came to her chest, held her head tight with both of his hands, and "thrust into [her] mouth." (R. at 685.) RY indicated that she could not shake her head, and she unsuccessfully attempted to pull his hands from her head. (R. at 685; R. at 688.) Appellant thrust his penis into her mouth for one minute. (Id.)

To stop Appellant from penetrating her mouth, RY pretended to vomit. (R. at 688-689.) According to RY, "I had to do [a] [loud gagging sound] – that's what I had to do, like produce that sound as if I'm throwing up for him to stop." (R. at 689.) Appellant stopped and then followed RY into the bathroom to confirm whether she was going to vomit. (R. at 688-690.) While in the bathroom, RY washed her face and gargled water after Appellant confronted her about lying about having to vomit. (R. at 691-692.) RY walked back into the room angry and stated, "this wasn't the agreement," "this is not fair," "[w]hy are you doing this to me," and "what have I done for you

to do this to me?" (R. at 692.) With a raised voice RY told Appellant, "you didn't tell me [] you guys in the States, whenever you say hanging out, this [is] what you mean." (R. at 692.) Appellant then left the guest room and went to his room. (R. at 693.)

A Few Hours Later

After Appellant went to his room, RY had difficulty sleeping because she was worried Appellant would come back. (R. at 694.) RY indicated the lock was malfunctioning on the door, so she was unable to lock the door and outside of the bed and closet, there was nothing sufficient to act as barrier to prevent Appellant from returning (R. at 694-695.) While she had her phone with her, RY indicated that she did not call anyone after Appellant's sexual assault because she only had two contacts in her phone—her non-local, host family residing in Illinois and her direct supervisor, BH. (R. at 695-696.) On the same morning of the initial sexual assault, RY woke up at approximately 0800 and went to Appellant's room to remind him that he promised to take her back to the base. (R. at 700.) Fearing that he would not take her back to base and because she was afraid, RY approached Appellant in a polite manner. (Id.) Shortly thereafter, Appellant finally agreed to take RY back to base, so she went back to the guest room and took a shower." (R. at 701.)

Appellant Penetrated RY's Vulva (Charge: Specification 5)

After taking a shower in the bathroom located in the hallway, RY returned to the guest room. (R. at 703.). While she was drying off, Appellant entered the guest room and RY immediately wrapped the towel around herself to cover up. (R. at 74.) Appellant said, "you think you are [] gonna leave my house just like that" and then pushed RY onto the bed. (R. at 704-705.) RY attempted to resist but Appellant succeeded in removing her towel. (R. at 706.) RY indicated that she was unable to put up much resistance because her pelvis was tired from resisting Appellant

a few hours prior when Appellant attempted to forcefully spread her legs in the master bedroom. (R. at 707.)

RY continued to resist while Appellant attempted to penetrate her, and she testified, "he was trying to penetrate me, but still I was fighting." (R. at 707-708.) Appellant then forcefully repositioned her body and pinned her arms down while positioning her legs on his shoulders. (R. at 708-710.) RY told Appellant, "stop," "it is not fair," "you don't have to do this to me," and "stop, don't do this." (R. at 710-711.) Appellant continued to penetrate RY. (R. at 711.) When describing the force used by Appellant, RY indicated that she was unable to fight back. (R. at 711-712.) RY testified that she continued to tell Appellant to stop while he was penetrating her, but Appellant remarked, "it's so good." (R. at 712; R. at 716.) RY told Appellant to stop multiple times, to no avail (R. at 720.)

Appellant Ejaculated on Her Chest (Additional Charge)

Appellant then ejaculated on RY's chest and after ejaculating on her chest, Appellant threw a towel for her to clean herself. (R. at 716-719.) Shortly thereafter, while RY was crying, Appellant left and went to his room. (R. at 719.) RY finally convinced Appellant to drive her back to the base and when she arrived, she told Appellant, "I will never text you. I will never call you. And I'm gonna block your number." (R. at 732.)

After the Sexual Assault

Shortly thereafter, RY contacted her supervisor, BH, to advise she would not be coming into work. (R. at 797.) Alarmed, BH went to check on RY in her dorm room and noticed she seemed depressed and sad. (R. at 797.) RY disclosed the sexual assault to BH. (R. at 797-798.) Specifically, RY told BH that Appellant "forced her onto the bed, then [] held her down, had sex with her, and then [] kind of just got up." (R. at 798.) After RY disclosed Appellant's sexual

assault, BH assisted RY with retrieving her archived text messages from T-Mobile. (R. at 801.) On 5 January 2023, two days after the sexual assaults, a SANE was performed.

A forensic biologist for the United States Army Criminal Investigation Laboratory (USACIL), confirmed "there was male DNA on [the] vaginal swabs and external genitalia, just not necessarily semen." (R. at 865.) The forensic biologist confirmed that on the external genitalia, "[the] mixed F2 DNA profile is at least one quintillion times more likely if it had originated from [RY] and [Appellant], than if it had originated from [RY] and an unknown individual."[1] (R. at 869; Pros. Ex. 6.) The forensic biologist also confirmed that Appellant's semen was found on the towel taken from the guest room. (R. at 874-880; Pros. Ex. 6.) In describing the semen profile taken from the towel, the forensic biologist indicated, the "F1 DNA profile is at least one quintillion times more likely if it originated from Augustin, [RY] and an unknown individual, then if it originated from Augustin and two unknown individuals." (R. at 880; Pros. Ex. 6.)

Appellant's Testimony

Appellant testified at trial and denied penetrating RY's vulva, without consent. (R. at 896-974: R. at 987-988.) On 2 January, 2023, Appellant picked RY up from Tyndall; however, he stated he felt gross from traveling, was tired, and after playing a video game for a few minutes, decided to walk RY up to the guest room. (R. at 921.) Appellant testified he showered after declining RY's invitation to join him in the shower. (R. at 921; R. at 924.) According to Appellant, the parties begin engaging in sexual conversations in the hallway and then moved to

[1] The forensic biologist confirmed that one quintillion is the highest result the laboratory will report. (R. at 869; Pros. Ex. 6.)

the guest room after a few seconds, where RY undressed herself,[2] and they engaged in consensual sex. (R. at 927-930.)

According to Appellant, during intercourse, Appellant was in the plank position for 5-10 minutes while RY was maneuvering his penis using an "upside down movement." (R. at 930; R. at 960-962.) According to Appellant, RY put Appellant's penis inside of her, but he did not penetrate her deeply. (R. at 931-932.) When asked to clarify, Appellant indicated his penis touched the exterior of RY's vagina. (R. at 932.) When asked by trial defense counsel whether the sexual activity was "more of a rubbing than penetration," Appellant applied in the affirmative (Id.) Appellant gave conflicting testimony on whether he ejaculated or how much he ejaculated. (R. at 962-963; R. at 968-972.) According to Appellant, RY wanted to continue engaging in sexual activities, so she followed him back to the master bedroom, but he ignored her because he was too tired. (R. at 934.)

Appellant testified he woke up between 1100 and 1200 on 3 January 2023, brushed his teeth, washed his face, went downstairs to eat, and then played video games. (Id.) According to Appellant, after taking a shower upstairs, RY came downstairs, they shared food together, and then she spoke to her family on the porch in his backyard and then upstairs in his office. According to Appellant, RY then connected her phone to his speakers, played music, and asked Appellant to dance. (R. at 937.) Appellant testified that he declined, so RY sat on the couch close to him while he was playing a video game. (R. at 938.) According to Appellant, his phone, situated between him and RY, lit up and it was his ex-girlfriend calling. Appellant testified that RY picked up the phone and handed it to him, but he declined to take the call in her

[2] Appellant indicated he did not undress himself, but the rest of his statement is unclear due to his language barrier.

presence. (R. at 938-939.) Appellant testified that RY gave him the silent treatment as he took her home on 3 January 2023. (R. at 945-946.) After taking her back to her dorm, Appellant confirmed that RY said, "please don't call me or text me anymore." (R. at 946.)

ARGUMENT

I.

APPELLANT'S CONVICTIONS FOR SPECIFICATIONS 4 AND 5 OF THE CHARGE AND THE SPECIFICATION OF THE ADDITIONAL CHARGE ARE FACTUALLY SUFFICIENT.

Additional Facts

Specification 4 of Charge I, in violation of Article 120, UCMJ, as provided on the charge sheet, reads as follows:

> In that SENIOR AIRMAN DIODERSON AUGUSTIN, United States Air Force, 325th Logistics Readiness Squadron, Tyndall Air Force Base, Florida, did within the State of Florida, between on or about 2 January 2023 and on or about 3 January 2023, commit a sexual act upon Airman First Class [RY], by penetrating her mouth with his penis, without her consent.

Specification 5 of Charge I, in violation of Article 120, UCMJ, as provided on the charge sheet, reads as follows:

> In that SENIOR AIRMAN DIODERSON AUGUSTIN, United States Air Force, 325th Logistics Readiness Squadron, Tyndall Air Force Base, Florida, did within the State of Florida, between on or about 2 January 2023 and on or about 3 January 2023, commit a sexual act upon Airman First Class [RY], by penetrating her vulva with his penis, without her consent.

Specification of Additional Charge, in violation of Article 134, UCMJ, as provided on the charge sheet, reads as follows:

> In that SENIOR AIRMAN DIODERSON AUGUSTIN, United States Air Force, 325th Logistics Readiness Squadron, Tyndall Air Force Base, Florida, did, within the State of Florida, between on or about 2 January 2023 and on or about 3 January 2023, commit indecent conduct, to wit: ejaculated on Airman First Class [RY]'s

> chest without her consent, and that said conduct was to the prejudice of good order and discipline.

(*Charge Sheet*, ROT, Vol. 1.)

Standard of Review

This Court reviews factual and legal sufficiency de novo. United States v. McAlhaney, 83 M.J. 164, 166 (C.A.A.F. 2023).

Factual sufficiency is reviewed using the following standard for every finding of guilty for an offense occurring on or after 1 January 2021[3]:

> (i) In an appeal of a finding of guilty under subsection (b), the Court may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.
>
> (ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—
>
> > (I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and
> >
> > (II) appropriate deference to findings of fact entered into the record by the military judge.
>
> (iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

10 U.S.C. § 866(d)(1)(B).

[3] National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, Section 542(b), 134 Stat. 3611-12.

Law & Analysis

An Appellant must demonstrate (1) an assignment of error and (2) a specific deficiency of proof before this Court may conduct a factual sufficiency review. 10 U.S.C. § 866(d)(1)(B); United States v. Harvey, 85 M.J. 127, 130 (C.A.A.F. 2024). "This power is subject, in part, to Article 66(d)(1)(B)(ii)(I), UCMJ, which requires 'appropriate deference' to the fact that the trial court saw and heard the witnesses and other evidence." Id. When weighing evidence and determining controverted questions of fact, "appropriate deference" will "depend on the nature of the evidence at issue." Id.[4]

A. The weight of the evidence establishes that Appellant penetrated RY's mouth and vulva without consent.

In his brief Appellant argues that the evidence presented for Specifications 4 and 5 is factually insufficient, because the victim failed to tell OSI about "activity" in the master bedroom and as a result, OSI failed to take bedding from the master bedroom. (App. Br. at 5.) According to Appellant, "without this evidence, the trier of fact is left guessing which version of [RY's] story is true." (App. Br. at 5.) Contrary to Appellant's assertion, OSI more than likely would not have taken any bedding from the master bedroom anyway because neither party testified that any "sexual activity" took place within the master bedroom. RY testified that after resisting Appellant's attempts to pull her towards his room, Appellant lifted and carried her to his bed. (R. at 670-671; R. at 780-781.) In referring to the "activity" in the master bedroom, Appellant provides record cites for RY's testimony that Appellant threw her onto the bed. (App. Br. at 5.) RY also testified that when she was in the master bedroom, Appellant also laid on top of her and

[4] "For example, a CCA might determine that the appropriate deference required for a court-martial's assessment of the testimony of a fact witness, whose credibility was at issue, is high because the CCA judges could not see the witness testify. In contrast, when the CCA can assess documents, videos, and other objective evidence just as well as the court-martial, the CCA might determine that the appropriate deference required is low." Harvey, 85 M.J. at 131.

attempted to spread her legs. (R. at 671-672.) But this "activity" was much less egregious than the charged conduct. Based on the facts, it is unremarkable that RY failed to mention that "activity," whether sexual or otherwise, occurred in the master bedroom, and this omission from her statement to OSI is not a deficiency in proof.

Even if RY told OSI about the "activity" in the master bedroom and OSI collected evidence from the master bedroom as a result, it is unlikely that anything probative of the charged acts would have been discovered. Additional testing would not have disclosed evidence of any sexual act, and even if the evidence indicated that RY was in the master bedroom, this fact would provide no clarity about whether the charged acts in the *guest* bedroom occurred. RY testified that Appellant penetrated her mouth and vulva, without consent, in the guest bedroom. (R. at 677-693; R. at 703-720.) Additionally, the towel that RY used to clean herself after Appellant ejaculated on her chest was located in the guest room. (R. at 716-719; R. at 811.) OSI collected those items, and the panel heard testimony from the OSI agent concerning the items collected and trial defense counsel cross-examined the agent on the items retrieved from the master bedroom. (R. at 818-819.) The failure of the government to present this evidence, of very little evidentiary value is not a deficiency in proof.

Appellant cites to his own trial testimony to conclude that all sexual activity was consensual and suggests that his testimony constitutes a specific showing of a deficiency in proof. (App. Br. at 5.) Appellant's claim falls short. Here, the panel credited RY's testimony, along with other witness testimony, despite contrary testimony from Appellant. Appellant has given this Court no reason to credit Appellant's testimony over RY's when the members declined to do so. In Harvey, CAAF articulated that "a CCA might determine that the appropriate deference required for a court-martial's assessment of the testimony of a fact witness, whose

credibility was at issue, is high because the CCA judges could not see the witness testify." Harvey, 85 M.J. at 130. This court, consistent with Harvey, should apply those principles here and defer to the panel members assessment of the evidence and witness credibility. This Court should decline to conclude that Appellant's contrary testimony is sufficient to meet his burden to demonstrate a specific showing of a deficiency in proof.

Appellant also argued that RY lacked credibility because she told the sexual assault nurse examiner that "[Appellant] did not penetrate her vulva with his finger but testified in court that he did." (App. Br. at 6.) However, Appellant ignores that the panel acquitted Appellant of this specification (Specification 3). The panel may credit testimony or evidence for some specifications, while finding the testimony or evidence deficient for other specifications. The sexual assault nurse examiner testified that RY did not disclose that Appellant penetrated her with his finger. (R. at 837-838.) RY confirmed that she did not tell the examining nurse everything when questioned about her failure to report Appellant's digital penetration. (R. at 783.) The panel could have acquitted Appellant because they felt the evidence did not meet the high burden of proof beyond a reasonable doubt, not because they outright disbelieved RY's testimony. RY was forthcoming and admitted to the inconsistency. Further, RY's honesty about the inconsistency made her more credible, not less, and accordingly, the panel found RY sufficiently credible to convict Appellant on other charges. An inconsistency in proof, absent more, is insufficient to trigger a factual sufficiency review and Appellant has failed to make a specific showing of a deficiency in proof, particularly here, where Appellant was acquitted of the conduct.

B. The panel assessed RY's credibility and credited her testimony over Appellant's, while also crediting other evidence presented by the Government.

Appellant asserts that RY possessed a motive to fabricate or misrepresent because she "felt used, betrayed, and led on for weeks" after allegedly seeing a phone call on Appellant's phone from a number with a heart next to it. (App. Br. at 6-7.) According to Appellant, RY believed Appellant may have had an undisclosed girlfriend. "(Id.) However, on cross-examination, RY denied seeing Appellant's phone and was unaware of Appellant receiving a phone call with a number with a heart next to it. (R. at 762.) Again, Appellant asserts nothing more than a disagreement with the panel members' conclusion. The panel observed both RY and Appellant's demeanor and assessed their credibility. The panel credited RY's testimony. Again, Appellant has failed to make a specific showing of a deficiency in proof sufficient to trigger a full factual sufficiency review.

Appellant also argues that RY lacked credibility because she did not leave Appellant's home immediately after the sexual assault. Appellant asserts, "she clearly had access to her mobile device to ask friends and family for help, to order a ride share service, or to call police. She did none of this." (App. Br. at 6-7.) However, RY testified that she only had two local contacts in her phone—her host family in Illinois and her direct supervisor, BH. (R. at 695-696.) She did not want to call her supervisor because she did not want to involve her, and RY thought she was in trouble. (Id.) RY also testified that since her arrival on station four months prior, this was her first time off-base, she did not know where she was because it was night-time, and she was afraid to run because she believed Appellant had cameras around the house. (R. at 664; R. at 695-696)[5] Additionally, BH testified that RY did not hang out with a lot of people off-base, did

[5] Appellant seemingly confirmed exterior cameras around the home. (R. at 916.)

not have a car, did not know how to drive, and was not familiar with areas off-base. (R.at 796.) The panel observed both RY and BH's demeanor and credited their testimony concerning this issue, not Appellant's. RY's alleged counterintuitive behavior in not leaving is properly explained by her circumstances as an airman unfamiliar with her surroundings at Tyndall, and does not rise to the level of a specific showing of a deficiency in proof.

Finally, Appellant asserts that the guilty findings for "Specifications 4 and 5 of the Charge and the Specification of the Additional Charge are factually insufficient due to the findings in the SANE report." (App. Br. at 7.) Specifically, Appellant argues there was no evidence of trauma such as evidence of a physical struggle in the form of "bruising, fingernail scrapes, or scratches." (App. Br. at 7.) First, Appellant's arguments concerning the Additional Charge are misplaced. The Additional Charge alleges that Appellant committed indecent conduct by ejaculating on RY's chest without consent. Logically, evidence of Appellant ejaculating on RY's chest would not produce evidence of physical trauma.

Concerning the evidence of a physical struggle, RY testified that she physically resisted Appellant's attempts to remove her clothing and to spread her legs. RY never testified that she scratched or left physical marks on Appellant from her resistance. During the sexual assault, RY testified that she was unable to put up much resistance because her pelvis was tired from resisting Appellant when Appellant attempted to forcefully spread her legs a few hours prior to successfully penetrating her vulva. (R. at 707.) RY described how her arms were pinned down while Appellant positioned her legs on his shoulders. (R. at 708-710.) When asked to describe the force used by Appellant, RY indicated that she was unable to fight back. (R. at 711-712.) RY testified that she physically resisted Appellant, not that she punched, kicked, or scratched Appellant during the sexual assault. Further, the examining nurse confirmed the presence of a

bruise like area on RY's left breast. (R. at 828.) Also, when asked by the trial counsel whether it was possible to be sexually assaulted without vaginal tearing, the examining nurse answered, "yes, I would say I've done 125 cases and seen less than 10 with vaginal issues." (R. at 828.) The examining nurse expounded further, "it's very common to not have injury with sexual assault." (R. at 828.) Parsing what RY considered to be evidence of a physical struggle does not establish a deficiency of proof. RY testified about the type of conduct she considered physical conduct, and the SANE Report does not disprove that a physical struggle occurred. The panel observed both RY and the examining nurse's demeanor and credited their testimony, along with additional evidence, concerning this issue. Since a lack of injury does not disapprove whether a physical struggle occurred, Appellant has not made a specific showing of a deficiency in proof. This court should decline Appellant's request to trigger a full factual sufficiency review.

Conclusion

None of the assertions within Appellant's brief credibly assert a deficiency in proof, but merely "a general disagreement" with the panel's verdict. As articulated in United States v. Valencia, 85 M.J. 529, 534-35 (N-M Ct. Crim. App. 2024), more is required. *See* Valencia (holding "a general disagreement with a verdict falls short of a specific showing of a deficiency in proof."). Retrieving the bedding from the master bedroom, where no sexual activity occurred, does not disprove the charged sexual assaults, which all occurred in the guest bedroom. Similarly, disagreeing with the level of physical force the panel deemed sufficient does not establish a deficiency in proof. Minor inconsistencies also do not establish a deficiency in proof.

After the sexual assault, RY immediately ceased contact with Appellant and with assistance from BH, reported the sexual assault almost immediately. RY also had a sexual assault examination performed almost two days after sexual assault. During the sexual assault

examination, the examining nurse described RY as "pretty timid and upset" and "tearful during the examination." (R. at 835.) The sexual assault nurse examiner, OSI agent, and forensic biologist testified about their respective roles in the investigation and findings. Their testimony was accompanied by documentary evidence, including the SANE report, text messages from RY's phone, and the USACIL DNA testing report. The panel also heard testimony from RY as well as the Appellant. This court, consistent with Harvey should defer to the witnesses observed in Court and the credibility attributed to each witness, particularly here, where Appellant fails to offer any reasoning for questioning the members' credibility determination. The panel credited the testimony of RY, the other witnesses, and the evidence provided by the government. Accordingly, this Court should conclude that the findings were not against the weight of the evidence, Appellant's convictions were factually sufficient, and he is therefore, not entitled to relief.

II.

APPELLANT HAS FAILED TO MAKE A PRIMA FACIE SHOWING THAT THE CONVENING AUTHORITY CONSIDERED RACE OR GENDER AND IS NOT ENTITLED TO A PRESUMPTION THAT THE PANEL WAS IMPROPERLY CONSTITUTED.

Additional Facts

The original convening authority detailed seven officers and eight enlisted members. (*Special Order A-9*, 30 November 2023, ROT, Vol. 1) The original convening order included five individuals with traditional female names. (Id.) Special Order A-19, the first amended convening order, relieved two enlisted members and included one officer and one enlisted member, all with traditional male sounding names. (*Special Order A-19*, 8 March 2024, ROT, Vol. 1) Special Order A-21, the second amended convening order, relieved all enlisted members

and detailed 11 officers consisting of four individuals with traditional female names, including Lt Col KP. (*Special Order A-21*, 19 March 2024, ROT Vol. 1)

Prior to voir dire, 18 officer members were detailed to the court-martial, including seven individuals with traditional female names. After voir dire, Special Trial Counsel (STC) challenged four members with traditional female sounding names. (R. at 333.) Defense counsel also joined in challenging one of the four members proposed by STC. (R. at 334.) Trial defense counsel challenged two members with traditional female sounding names. After the challenges were granted, Lt Col KP remained the only member with a traditional female sounding name on the panel. The court-martial failed to establish a quorum and Special Order A-23 was issued. (*Special Order A-23*, 26 March 2024, ROT, Vol. 1) Lt Col KP was the only member with a traditional female sounding name listed on Special Order A-23 and remained on the panel after the initial challenges. (*Special Order A-23*, 26 March 2024, ROT, Vol. 1;R. at 376.)

Initially, trial defense counsel appeared to raise a issue concerning the panel composition; however, when questioned further by the military judge, trial defense counsel requested to continue voir dire and did not formally seek relief before the military judge. (R. at 388-391.) Immediately after the final panel was selected and prior to opening statements, the military judge asked trial defense counsel whether they intended to address panel composition. (R. at 635.) Trial defense counsel declined, stating, "[w]e have not been notified that any contacts [have] been made [with] the SPCMCA, but if we do become aware of any evidence that suggests that it's an improper referral, then we will bring it to the court's attention." (R. at 635.) The next morning, the members were impaneled. (R. at 637-639.) Trial defense counsel never raised the issue again and never requested appropriate relief throughout the court-martial.

Law and Analysis

"When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament." Article 25(e)(2), UCMJ, 10 U.S.C. § 825(e)(2).

Here, Appellant contends the convening authority impermissibly considered gender during the court member selection process after the court-martial lacked a quorum, asserting "[t]here is no evidence in the record indicating a gender-neutral reason for either the SPCMCA's decision to include only one woman or the GCMCA's decision to select all members except the one woman." (App. Br. at 8.) Conversely, there is also no evidence in the record that gender ***was*** considered for either decision. Taking Appellant's contention to its logical conclusion, the SPCMCA and GCMCA would also be guilty of impermissibly considering gender if either automatically chose the lone woman on the list solely because of her gender.

"Whether an appellant has waived an issue [is] a question of law reviewed de novo." United States v. Givens, 82 M.J. 211, 215 (C.A.A.F. 2022). Whether a waiver of a right was "knowing and intelligent" is "a question of law [assessed] under a de novo standard of review." United States v. Rosenthal, 62 M.J. 261, 262 (C.A.A.F. 2005). Voluntariness of a waiver is also reviewed de novo. United States v. Hasan, 84 M.J. 181, 198 (C.A.A.F. 2024) (citation omitted). "When . . . an appellant intentionally waives a known right at trial, it is extinguished and may not be raised on appeal." United States v. Gladue, 67 M.J. 311, 313 (C.A.A.F. 2009).

Prior to opening statements, trial defense counsel requested additional time to interview the SPCMCA after the panel lacked a quorum. (R. at 388-391; R. at 635.) There was no evidence indicating that the Government impeded trial defense counsel's access to the SPCMCA. STC

indicated to the military judge that he would present argument concerning panel composition if the defense formally brought the issue before the court. (R. at 391.) Trial defense counsel never formally moved for appropriate relief before the court preventing the parties from litigating the matter appropriately at the trial level. After additional prompting from the military judge, trial defense counsel still failed to move for appropriate relief. (R. at 635.). After panel composition, trial defense counsel never raised the issue of panel composition before the Court again, either formally or informally. Appellant knew he had the right to make a motion concerning panel composition, was given the opportunity to do so, but ultimately decided not to. Appellant intentionally abandoned a known right. Accordingly, Appellant waived the issue and should be precluded from now asserting panel composition before this Court when Appellant should have addressed the matter at the trial level.

Appellant Failed to Make a Prima Facie Showing

If this Court concludes Appellant did not waive the issue, Appellant has failed to present a prima facie case sufficient to create a presumption that the panel was improperly constituted. Mere questions or assertions by trial defense counsel, absent more, are insufficient.

CAAF previously addressed considerations of race in panel composition in United States v. Jeter, 84 M.J. 68, 71 (C.A.A.F. 2023). In Jeter, the defense challenged the panel composition, asserting a "systematic exclusion of members based on race and gender." Jeter, 84 M.J. at 71. Citing "racial identifiers" in the court member questionnaires and what appeared to be "systematic exclusion" of African American members in multiple courts-martials by the same convening authority, CAAF concluded Appellant made a prima facie showing that race may have infected the selection process. Jeter at 74. CAAF concluded Appellant established an "unrebutted inference that [his] constitutional right to equal protection under the law was violated when the acting

convening authority presumptively used a race-conscious selection process for panel members." Jeter at 74.

Recently, this court addressed considerations of gender in panel composition in several unpublished opinions. When conducting its analysis, this court presumed, without deciding, that the Supreme Court's holding that "gender—like race—is an unconstitutional proxy for juror competence and impartiality," was applicable. United States v. Patterson, No. ACM 40426, 2024 CCA LEXIS 399, *17 (A.F. Ct. Crim. App. Sep. 27, 2024) (unpub. op.) (quoting J.E.B. v. Ala. ex rel. T.B., 511 U.S. 127, 128, 114 S. Ct. 1419, 128 L. Ed. 2d 89 (1994)). In each case cited below, where this Court addressed gender considerations in panel composition, with facts analogous to this Case, the court concluded the Appellants failed to satisfy their burden to make a prima facie showing of improper member selection under plan error review. *See* United States v. Casillas, No. ACM 40551, 2025 CCA LEXIS 445 (A.F. Ct. Crim. App. Sep. 18, 2025) (unpub. op.).; United States v. Hagen, No. ACM 40561, 2025 CCA LEXIS 234 (A.F. Ct. Crim. App. May 28, 2025) (unpub. op.); United States v. York, No. ACM 40604, 2025 CCA LEXIS 184 (A.F. Ct. Crim. App. Apr. 30, 2025) (unpub. op.); Patterson, No. ACM 40426, 2024 CCA LEXIS 399 (A.F. Ct. Crim. App. Sep. 27, 2024) (unpub. op.); United States v. York, No. ACM 40604, 2025 CCA LEXIS 184 (A.F. Ct. Crim. App. Apr. 30, 2025) (unpub. op.).

In each case cited above, this Court, in distinguishing Jeter from the above cases, stated "[f]irst, and importantly, the appellant in [Jeter] did not forfeit the issue but challenged the selection process at trial, alleging 'systematic exclusion of members based on race and gender.'" *See* Patterson, 2024 CCA LEXIS 399 at *23 (quoting Jeter, 84 M.J. at 71)). Here, Appellant also failed to challenge the selection process at trial.

In Patterson, three separate convening authorities issued a total of six special orders appointing members to Appellant's court-martial. Patterson, 2024 CCA LEXIS 399 at *13-14. The list of potential court-martial members for consideration was included in the record of trial. Id. at 14. The documents provided to the convening authority included each individual's name, rank, unit of assignment, duty title, and other identifiers, but "[n]either the gender nor race of the individuals was expressly indicated on [the] documents." Id. The convening authority confirmed selection to the panel by initialing next to the selected individual's name. Id. On the fifth appointment of court-martial members, nine proposed members were included on the replacement list. Id. Two of the suggested members had traditional female names; six of the members had traditional male names, with the remaining member identified by their first two initials and their surname. Id. The two female names were selected along with two individuals with male names. Id. Appellant did not object to the convening authority's selection process prior to his appeal. Id.

In Patterson, this court found a convening authority's selection, "*on one occasion*, [of] two females and two males from a pool of two female and seven male prospective members" was insufficient to demonstrate "clear" or "obvious" error. Patterson, 2024 CCA LEXIS 399 at *22. (alterations in original) (emphasis added). This court was unpersuaded that the Appellant met his burden when (1) an innocent explanation was facially plausible, and (2) Appellant failed to identify a *similar pattern* of possible discrimination in the prior five member selections in his court-martial, nor in other courts-martial involving the same convening authorities." Id. (emphasis added)

Similarly, in this case, four special orders were issued by two separate convening authorities. (ROT, Vol. 1.) Appellant failed to make a prima facie showing that the convening authority demonstrated a pattern of discrimination during member selections particularly when the pretrial advice and the first convening order disclaimed considerations of race and gender. (ROT,

Vol. 1 at 1-3) To the extent, Appellant's objection is directed only to Special Order A-23, the final special order issued after the panel lacked a quorum, Appellant failed to demonstrate the absence of an innocent explanation and a pattern of discrimination attributable to the convening authority. This case is easily distinguishable from Jeter, where the court found Appellant established a prima facie case under ordinary standards of review, when the panel was composed entirely of white men and the convening authority appeared to demonstrate a pattern of discrimination. Jeter, 84 M.J. at 74. CAAF emphasized that "the racial identifier in the questionnaires, [among] other evidence before the court of criminal appeals, including the convening authorities "understandable belief that [United States v. Crawford, 15 C.M.A. 31, 35 C.M.R. 3 (1964)]—which not only authorized but essentially encouraged the consideration of race—was still good law," demonstrated a prima facie showing that race was allowed to enter the selection process.. Those factors are not present here.

In Patterson, the court declined to "presume improper motives from inclusion of racial and gender identifiers on lists of nominees for court-martial duty." Patterson, 2024 CCA LEXIS 399 at *24 (quoting *United States v. Loving*, 41 M.J. 213, 285 (C.A.A.F. 1994)). This court should also decline to presume an improper motive here, where Appellant attributes an impermissible purpose to the SPCMCA for submitting only one female to the GCMCA in Special Order A-23 after previously submitting multiple members with traditional female names in prior special orders. Similarly, this court should also decline Appellant's invitation to attribute an impermissible motive to the GCMCA because the GCMCA did not automatically select the sole female member on the list, Lt Col KP, who, at the time, was still on the panel. This court should decline Appellant's attempts to attribute improper motives here, particularly, in light of the pretrial advice provided by the SJA. (*Pretrial Advice*, 30 November 2023, ROT, Vol. 1 at 1) While the special orders signed

by the second convening authority do not contain the same expressed statement—"I did not consider race or gender while selecting"—there is no evidence to suggest that the pretrial advice—to exclude considerations of race or gender—provided to the original convening authority, was different than the pretrial advice provided to the second convening authority.

In Hagen, two amendments to the convening order were issued prior to the court-martial, resulting in a venire of 14 members, including five individuals with traditionally female names. Hagen, 2025 CCA LEXIS 234 at *6. After voir dire, the final panel consisted of "four members with traditionally male names and four members with traditionally female names." Hagen, 2025 CCA LEXIS 234 at *6. Similar to Patterson, the appellant in Hagen did not object to the court member selection process at trial, prior to appealing.

In Hagen, the court concluded Appellant failed to demonstrate "clear" or "obvious" error. Hagen, 2025 CCA LEXIS 234 at *11. Specifically, the court adopted the Government's position "that providing the convening authority some professional and personal information about potential court members, including race and gender, does not constitute a prima facie showing that the convening authority improperly relied on race or gender in selecting members under the plain error standard of review." Hagen, 2025 CCA LEXIS 234 at *11.

Here, while Appellant does not argue, as in Hagen, that the documentation provided to the convening authority evinces an impermissible purpose, the argument advanced by Appellant here, is much less. Specifically, Appellant argues that the most recent convening order establishes a prima facie case that gender was used to constitute the panel where "the GCMCA selected all male members but excluded the female member." (App. Br. at 10.) Appellant ignores that if the lone female panel member was selected automatically based *solely* on her gender, then the SPCMCA and GCMCA, according to Appellant, would be guilty of considering, and giving preference to,

gender. Likewise, if the SPCMCA and GCMCA considered the presence of only one female member and sought to include more female members as a result, the SPCMCA and GCMCA would also be guilty of considering gender in the panel selection process. Hence, more is required before Appellant can credibly assert a claim that gender was considered impermissibly in the panel selection process and Appellant has failed to establish "clear" or "obvious" error in the selection process. This Court should therefore deny this assignment of error.

CONCLUSION

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's claims and affirm the findings and sentence in this case.

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 6 October 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*, v. Senior Airman (E-4) **DIODERSON AUGUSTIN,** United States Air Force, *Appellant*.	))))))))))	**APPELLANT'S MOTION FOR AN ENLARGEMENT OF TIME (FIRST) TO FILE REPLY – OUT OF TIME** Before Panel 1 No. ACM 40655 10 October 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.3(m)(3) and (6) of this Court's Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file a reply brief to the Government's Answer, out of time. Appellant requests an enlargement for a period of 21 days, which will end on **3 November 2025**. The record of trial was docketed with this Court on 14 November 2023. From the date of docketing to the present date, 696 days have elapsed. On the date requested, 720 days will have elapsed.

On 6 December 2023 and 25-29 March 2024, R. at 1, 18, 1201, Appellant was tried by a general court-martial comprised of officer members. R. at 29. Contrary to his pleas, R. at 32, Appellant was found guilty of one charge and two specifications of sexual assault, in violation of Article 120, Uniform Code of Military Justice (UCMJ), and one charge and specification of indecent conduct, in violation of Article 134, UCMJ. R. at 1152. The military judge sentenced Appellant to a dishonorable discharge and confinement for 36 months. R. at 1200. The convening authority took no action with respect to the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action. Appellant is confined.

GRANTED
20 OCT 2025

The ROT is eight volumes consisting of 10 prosecution exhibits, seven defense exhibit, and 24 appellate exhibits, and one court exhibit. The transcript is 1,201 pages long. Undersigned counsel is currently assigned 27 cases; 9 cases are pending initial AOEs before this Court. No case for either civilian or undersigned counsel takes priority over this case.

Both counsel have been diligently working other matters before this court, other courts of criminal appeals, the Court of Appeals for the Armed Forces (CAAF), and the Supreme Court. Relevant to this motion, civilian co-counsel has three AOE briefs due next week: two before this Court (*United States v. Turtu* and *United States v. Fundis*) and one before the Army Court of Criminal Appeals (*United States v. Puente*). The week after, civilian co-counsel is travelling to Washington, D.C., to prepare for a CAAF oral argument in *United States v. Serjak*. Undersigned counsel spent most of this week working a post-trial discovery issue in *United States v. Barlow*, which resulted in four filings at the CAAF last night. In addition, undersigned counsel was selected as the backfill Director of Staff to the Military Justice and Discipline Directorate. In the last week, undersigned counsel has worked two and a half days in that position, while handling his case matters in the evening.

There is good cause to grant this out of time motion. Counsel initially believed they could file a reply to the Government's Answer on time. However, after a more thorough review of the Government's brief, additional time is necessary to complete research and drafting. Additionally, the Government sought and obtained two enlargements to file its Answer in this case. These enlargements pushed the deadline to a week where undersigned counsel is serving as Director of Staff and civilian co-counsel has three AOE briefs due.

Through no fault of Appellant, undersigned counsel have been unable to complete research and drafting for the reply. An enlargement of time is necessary to allow counsel time competently

complete the reply brief. Appellant has provided limited consent to disclose confidential communications, wherein:

(1) Appellant has been advised of his right to a timely appeal.

(2) Appellant has been advised of this request for enlargement of time.

(3) Appellant has been apprised of the status of undersigned counsel's progress on the reply.

(4) Appellant has consented to this enlargement of time.

WHEREFORE, Appellant respectfully requests that this Court grant his motion for an enlargement of time, out of time.

Respectfully submitted,

[redacted]

TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 10 October 2025.

Respectfully submitted,

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME TO FILE REPLY – OUT OF TIME
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4) **DIODERSON AUGUSTIN,** United States Air Force, *Appellant.*	)	No. ACM 40655
	)	14 October 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion for Enlargement of Time of 21 days to file a Reply Brief to the Government's Answer in this case. However, the United States does not oppose an enlargement of time of seven days to reply to the United States' Answer Brief.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

[redacted]

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 14 October 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**REPLY BRIEF ON BEHALF OF APPELLANT**
v.	)	Before Panel 1
Senior Airman (E-4) **DIODERSON AUGUSTIN** United States Air Force *Appellant*	)	No. ACM 40655 3 November 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Appellant, Senior Airman (SrA) Dioderson Augustin, pursuant to Rule 18(d) of this Court's Rules of Practice and Procedure, files this Reply to the Government's Answer (Ans.), dated 6 October 2025. In addition to the arguments in his opening brief (Appellant's Br.), SrA Augustin submits the following arguments for the issues below.

I

THE FINDINGS OF GUILTY OF SPECIFICATIONS 4 AND 5 OF THE CHARGE AND THE SPECIFICATION OF THE ADDITIONAL CHARGE ARE LEGALLY AND FACTUALLY INSUFFICIENT.

Additional Facts

Prosecution Exhibit 2 is thirty-three pages long and captures messages sent between SrA Augustin and A1C R.Y. from 21 December 2022 to 2 January 2023. Excerpts that capture the parties' thoughts and states of mind from the perspective of a potential budding romance are set forth below (referencing the page of the exhibit, the date/time, and the message):

P. 10 of 33, 12/22/2022 8:01:55 AM: u cold… u wanna cuddle? [sent by Appellant]

P. 10 of 33, 12/22/2022 8:13:33 AM: Am nothing just a mixture of blushing and laughing [sent by A1C R.Y.]

P. 11 of 33, 12/22/2022 9:09:16 AM: Am just smiling since I started chatting with you, it

fun! It's been a long time to have this kind of excitement! [sent by A1C R.Y.]

P. 15 of 33, 12/22/2022, 2:17:03 PM: When are you leaving to Maryland? [sent by A1C R.Y.]

P. 15 of 33, 12/22/02, 2:17:12 PM: I wish I could leave with you [smiley face imoji sent by A1C R.Y.]

P. 17 of 33, 12/22/2022, 5:41:03 PM: [heart imoji sent by Appellant]

P. 17 of 33, 12/22/2022, 8:02:59 PM: [smiley face imoji sent by A1C R.Y.]

P. 17 of 33, 12/22/2022, 8:03:17 PM: mmmmmmmmm [sent by Appellant]

P. 17 of 33, 12/22/2022, 8:06:25 PM: Thank you for the love imoji [sent by A1C R.Y. with a smiley face]

P. 17 of 33, 12/22/2022, 8:25:46 PM: Don't be too sweet to me, I don't wanna fall in love. [sent by A1C R.Y.]

P. 17 of 33, 12/22/2022, 8:26:41 PM: It's OK to fall in love. [sent by Appellant]

P. 17 of 33, 12/22/2022, 8:27:29 PM: Am scared of falling in love. [sent by A1C R.Y.]

P. 17 of 33, 12/22/2022, 8:27:39 PM: why [sent by Appellant]

P. 18 of 33, 12/22/2022, 8:28:28 PM: because I don't wanna get hurt, I hate pain remember because people do change [sent by A1C R.Y.]

P. 18 of 33, 12/22/2022, 8:41:02 PM: I just told you don't be too sweet, I don't want you to make me feel like I am on cloud 9 then I woke up to realize I was in a world of fantasy. what a pity. [sent by A1C R.Y.]

P. 25 of 33, 12/23/2022, 10:51:33 AM: You have been all over my mind since I woke up. [sent by A1C R.Y.]

P. 27 of 33, 12/24/2022, 9:06:22 AM: good morning lovely [sent by Appellant]

P. 28 of 33, 12/24/2022, 10:02:51 AM: I have no feelings they died long a go. [sent by A1C R.Y.]

P. 28-29 of 33, 12/24/2022, 10:04:20 AM: Been so busy until I forgot about love stuff, and the cells and hormones ended up dying. [sent by A1C R.Y.]

P. 29 of 33, 12/24/2022, 10:04:48 AM: When they come back i might not be able to handle them [sent by Appellant]

P. 29 of 33, 12/24/2022, 10:07:16 AM: I don't think if they will come back, they are gone for good lol. [sent by A1C R.Y.]

P. 29 of 33, 12/24/2022, 10:15:10 AM: you have so long no sexual feeling for man nor woman [sent by Appellant]

P. 29 of 33, 12/24/2022, 10:25:43 AM: I can say yes to your question. [sent by A1C R.Y.]

P. 32 of 33, 01/02/2023, 3:38:36 PM: hi there, i left my phone in Florida, i am so sorry [sent by Appellant after no communication since 26 December 2022]

Pros. Ex. 2.

Both SrA Augustin and A1C R.Y. gave consistent testimony about her behavior the day after the alleged sexual assault. In particular they confirmed that she was there almost all day and made numerous phone calls, including phone calls with her family speaking her native language with which SrA Augustin was unfamiliar. She testified, "My – my family did call me as usual" using WhatsApp to make the call. (R. at 781-82). He testified, "she was speaking with her own family in her own language. And then video calls also. It's like a lot hours." (R. at 936). He played video games while she talked at length, inside and outside the house. (R. at 936-37).

Argument

The government did not address Prosecution Exhibit 2 and had no explanation for the nature of the relationship that developed between SrA Augustin and A1C R.Y. in the weeks before they spent the night together. They have no answer for how the heart emoji she saw on his phone could have triggered her strong emotional response, especially in light of the heart emoji, referenced above, he sent her. It is fair to infer that she felt she had been used by him and had taken advantage of her willingness to engage in consensual sex with him.

The government also did not address her lengthy phone calls with her family and her ability to communicate with them in her own language outside of SrA Augustin's presence. There is no

indication she was in distress and shared that with her family. When viewed in a perfectly reasonable light, her interactions with SrA Augustin before and after the alleged sexual assault reflect how she displayed interest in a romantic relationship with him before she went to his home and how she did not display any kind of traumatized behavior after they had consensual sexual relations.

For all the reasons stated above and those articulated in SrA Augustin's opening brief, Specifications 4 and 5 of the Charge and the Specification of the Additional Charge are not legally and factually sufficient and this Court should not affirm the findings of guilty.

II

THE RECORD SHOWS UNEQUIVOCAL EVIDENCE THAT THE CONVENING AUTHORITY USED GENDER TO EMPANEL THE SECOND VENIRE. BECAUSE THE GOVERNMENT HAS PRESENTED NO GENDER-NEUTRAL EVIDENCE FOR THIS DECISION, THE APPELLANT'S CONVICTION MUST BE SET ASIDE.

Argument

A. *Jeter*[1] issues are constitutional in nature. Therefore, there is a presumption against waiver.

Jeter issues are constitutional. 84 M.J. at 75 (Maggs, J., dissenting) (agreeing with the majority's conclusion that considering race in empanelment of members violates the Due Process Clause). Because there is a general presumption against waiver for constitutional rights, military courts generally decline to find waiver when a constitutional error is alleged for the first time on appeal. *United States v. Smith*, 85 M.J. 283, 287 (C.A.A.F. 2024) (citing *United States v. Sweeney*, 70 M.J. 296, 303-04 (C.A.A.F. 2011)). Because this is a *Jeter* issue, this Court should decline to

[1] *United States v. Jeter*, 84 M.J. 68 (2023)

find waiver and instead review this case for plain error. *Id.* This is particularly true because neither the Appellant nor his counsel affirmatively waived this issue at trial.

B. Because it was legal error to permit the convening authority to use gender to make-up the venire, the error was plain and obvious.

By the time of Appellant's court-martial, the Court of Appeals for the Armed Forces already decided *Jeter*. *Compare* 84 M.J. 68, *with* R. at 1. At trial, the military judge had sufficient evidence to show gender was used to create the second venire. R. at 376-77. Further, it was plain and obvious at the time of trial that *Jeter* applied to gender, not just race. *See* Brief on Behalf of Appellant at 9-10. Therefore, it was plain and obvious error for the military judge to permit the convening authority to exclude all women from the second venire.

C. The record contains sufficient evidence to satisfy the "prima facie showing" required by *Jeter*. The Government has failed to provide any evidence of a gender-neutral reason for the decision to exclude all women from the second venire. As such, the conviction must be set aside.

To shift the burden to the Government, an appellant need only point to some evidence in the record to show that an immutable characteristic was used in member selection. *Jeter*, 84 M.J. at 74. Here, the record demonstrates uncontroverted evidence that gender was used to create the second venire: the convening authorities excluded *all* women. R. at 376-77. The Government cannot point to any evidence of a gender-neutral reason for this brash choice. In fact, it does not even try to. Instead, the Government portends only that if the convening authorities had instead selected women to serve on the venire "based solely" on their gender, this too would violate *Jeter*. Gov't Br. at 25-26. The Government's argument betrays its ignorance—excluding *or* including someone from a panel merely because of their gender violates the protections of *Jeter*. *Jeter*, 84 M.J. at 72-73; *see J.E.B. v. Ala. ex rel. T.B.*, 511 U.S. 127, 142 n.13 (1994) ("The exclusion of

even one juror for impermissible reasons harms that juror and undermines public confidence in the fairness of the system.").

Here, the appellant has presented some evidence that the convening authorities used gender to create the second venire. Because the Government has presented no gender-neutral reason for their decision, the Government has failed to meet its burden. Therefore, the Appellant's findings and sentence should be set aside.

Respectfully submitted,

[redacted]

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 3 November 2025.

Respectfully submitted,

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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40655**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Dioderson AUGUSTIN	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 1**

On 29 March 2024, at Tyndall Air Force Base, Florida, a general court-martial consisting of officer members found Appellant guilty, contrary to his pleas, of two specifications of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920, and one specification of indecent conduct, in violation of Article 134, UCMJ, 10 U.S.C. § 934.* At trial, the military judge sentenced Appellant to confinement for 36 months, reduction to the grade of E-1 and a dishonorable discharge.

On 20 May 2024, Appellant submitted a clemency request asking the convening authority, *inter alia*, to defer "the automatic forfeitures mandated by his sentence."

On 11 June 2024, the convening authority took no action on the findings or sentence. In the decision on action memorandum, the convening authority denied Appellant's request for deferment of automatic forfeitures because the "punishment appropriately addresses the nature of [Appellant]'s offenses." Despite this decision, on 2 July 2024, the military judge signed a copy of the entry of judgment (EoJ) where the section of the EoJ titled "Deferments" reads "N/A."

According to Rule for Courts-Martial 1111(b)(3)(A), if an accused requests that any portion of the sentence be deferred, "the judgment shall specify the nature of the request, the convening authority's action, the effective date if approved, and, if the deferment ended prior to the [EoJ], the date the deferment ended." *Manual for Courts-Martial*, *United States* (2024 ed.). In Appellant's case, the EoJ should have shown the "nature of [Appellant's] request" for defer-

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* Unless otherwise stated, references to the UCMJ and Rules for Courts-Martial are to the *Manual for Courts-Martial*, *United States* (2019 ed.).

ment of the automatic forfeitures. Specifically, the EoJ should reflect the request, the convening authority's action on the request, and the effective date and length of any relief granted by the convening authority. *Id.*

As a result of the absence of information in the "Deferments" section of the EoJ, we find it appropriate to order the Government to show cause why the court should not remand Appellant's case to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the EoJ prior to completing our review under Article 66, UCMJ, 10 U.S.C. § 866.

Accordingly, it is by the court on this 13th day of November, 2025,

ORDERED:

Not later than **20 November 2025**, counsel for the Government shall **SHOW GOOD CAUSE** as to why this court should not remand the record back to the trial judiciary to correct the entry of judgment.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	ANSWER TO SHOW CAUSE ORDER
v.	)	Before Panel No. 1
Senior Airman (E-4) **DIODERSON AUGUSTIN** United States Air Force *Appellant.*	)	No. ACM 40655 19 November 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

On 29 March 2024, on Tyndall Air Force Base, Florida, Appellant was found guilty at a general court-martial, contrary to his pleas, of two specifications of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ) and one specification of indecent conduct, in violation of Article 134, UCMJ. The military judge sentenced Appellant to confinement for 36 months, reduction in grade to E-1, and a dishonorable discharge. (*Entry of Judgment (EOJ)*, ROT at Vol. 1.)

On 20 May 2024, Appellant submitted a request for clemency. (*Clemency Request*, ROT at Vol. 3.) Appellant requested to defer all automatic forfeitures of pay for six months. (Id.) On 11 June 2024, the Convening Authority denied Appellant's request and declined action on the findings and sentence. (*Convening Authority Decision on Action*, ROT at Vol. 1.) On 2 July 2024, the military judge signed the EOJ. (*Entry of Judgment*, ROT at Vol. 1.) However, the entry of judgment failed to identify Appellant's deferment request and the convening authority's action on the request as required by Rule for Courts-Martial 1111(b)(3)(A). (Id.)

On 13 November 2025, this Honorable Court issued an order directing the Government to show cause why this case should not be returned to the Chief Trial Judge, Air Force Trial Judiciary, to correct the EOJ. Pursuant to R.C.M. 1111(c), "[t]he Judge Advocate General [TJAG], the Court of Criminal Appeals, and the Court of Appeals for the Armed Forces [CAAF] may modify a judgment in the performance of their duties and responsibilities" or "[i]f a case is remanded to a military judge, the military judge may modify the judgment consistent with the purposes of the remand." R.C.M. 1111(c)(2)-(3). "Any modification to the judgment of a court-martial must be included in the record of trial." R.C.M. 1111(c)(4). This Honorable Court should correct the error and modify the judgment in this case.

This Court previously addressed a similar omission in United States v. McGinnis, 2020 CCA LEXIS 2, *1 (A.F. Ct. Crim. App. 2020) (per curiam). In McGinnis, the entry of judgment omitted the convening authority's denial of the appellant's request to defer the adjudged reduction in grade as required by R.C.M. 1111(b)(3)(A). Id. In McGinnis, this Court found "no colorable showing of possible prejudice from this minor omission" as "the request and denial were properly reflected in the convening authority's [] decision on action, which [was] attached to the entry of judgment." Id.

Here, while the EOJ failed to detail Appellant's deferment request, the convening authority's decision on action is included in the record of trial and properly captures Appellant's request and the convening authority's denial. (*Convening Authority Decision on Action*, ROT at Vol. 1.) Accordingly, this Court should take one of two courses of action. Like in McGinnis, this Court could simply find the error in the EOJ nonprejudicial and the omission, a minor error. Or, for judicial economy, this Court could exercise its authority under R.C.M. 1111(c)(2) and modify the EOJ itself. Since the record already reflects the deferment request and denial, and this Court

has the power to correct the EOJ itself, a remand is unnecessary and would only serve to unnecessarily delay appellate review.

CONCLUSION

For these reasons, the United States respectfully requests that this Honorable Court decline to remand this case for correction of the EOJ.

[redacted]

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I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 19 November 2025.

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