

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

UNITED STATES)	No. ACM 40296
<i>Appellee</i>)	
)	
v.)	
)	ORDER
Douglas C. BOREN)	
First Lieutenant (O-2))	
U.S. Air Force)	
<i>Appellant</i>)	Special Panel

On 7 August 2021, Appellant was convicted at a general court-martial of one specification of violating Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920 (*Manual for Courts-Martial, United States* (2019 ed.) (2019 *MCM*)).¹ On 8 August 2021, members adjudged a sentence consisting of 30 days’ confinement, forfeiture of \$2,645.00 pay per month for six months, and a reprimand. On 26 August 2021, the convening authority approved the sentence in its entirety. On 12 May 2022, the military judge entered the judgment of the court-martial.

On 3 June 2022, a designated judge advocate completed a review of the record of trial pursuant to Article 65(d), UCMJ, 10 U.S.C. § 865(d) (2019 *MCM*). The judge advocate concluded the general court-martial had jurisdiction over Appellant and the offense, the charge and specification stated an offense, “the sentence was legal,” and the findings and sentence were correct in law and fact.

On 8 March 2023, Appellant filed a notice of direct appeal pursuant to Article 66(b)(1)(A), UCMJ, 10 U.S.C. § 866(b)(1)(A), which the court docketed on 10 March 2023.²

On 5 June 2024, Appellant submitted a “Motion for Leave to File and Motion for Remand” to this court, identifying several discrepancies within the record. Appellant claims that the record of trial (ROT) has the following deficiencies:

¹ Unless previous versions as printed in the 2019 *MCM* are cited, references to the UCMJ and Rules for Courts-Martial are to versions currently in effect.

² Appellant’s notice was filed *pro se*. However, he now is represented by military appellate defense counsel. See National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, § 544(b)(1)(A), 136 Stat. 2395, 2582 (23 Dec. 2022).

- Preliminary Hearing Officer (PHO) [E]xhibits 2 (a report of investigation (ROI)), 3 (another ROI), and 5 (the audio from the preliminary hearing) are non-functional on the DVD provided in the ROT in volume 3.
- The interview of SF that is an attachment to Appellate Exhibit IV does not function.
- Appellate Exhibit XXIX, the excusal of a panel member, Major AG, is missing.

On 12 June 2024, the Government filed its response opposing Appellant's Motion to Remand. Separately, the Government moved this court to attach copies of all items identified as missing or non-functional as described *supra*.

On 24 June 2024, this court separately granted the Government's motion to attach. However, that action did not remedy the fact that appellate exhibits are required contents in the ROT. *See* Rule for Courts Martial (R.C.M.) 1112(b)(5).

Accordingly, it is by the court on this 24th day of June, 2024,

ORDERED:

Appellant's "Motion for Leave to File and Motion for Remand" are **GRANTED**.

It is further ordered:

The record of trial in Appellant's case is **REMANDED** to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the record, specifically to account for any missing exhibits or documents, including, but not limited to, the portions referenced above. *See* Article 66(f)(3), UCMJ, 10 U.S.C. § 866(f)(3); R.C.M. 1112(d)(2)–(3). Thereafter, the record of trial will be returned to this court for completion of its appellate review under Article 66(d), UCMJ, 10 U.S.C. § 866(d), not later than **10 July 2024**.

This court notes that over the past year a number of incomplete records have been submitted to this court; therefore, we encourage a complete and thorough review of the full record before it is returned to this court.

Should the 10 July 2024 deadline not be met, the Chief Trial Judge, Air Force Trial Judiciary, or his designee, shall provide a memorandum for record not later than **11 July 2024** to the Government Trial and Appellate Operations Division (JAJG) to submit to this court as a motion to attach. *See* A.F. Ct. Crim.

App. R. 23.3(b). Until the record of trial is returned to the court, a memorandum of record will be prepared every seven days thereafter.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court