

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

UNITED STATES)	No. ACM 40139 (reh)
<i>Appellee</i>)	
)	
v.)	
)	ORDER
Colin R. COVITZ)	
Captain (O-3))	
U.S. Air Force)	
<i>Appellant</i>)	Panel 1

On 30 September 2022, this court set aside the findings of guilty and sentence as to Specifications 1–4 of the Charge and the Charge in Appellant’s original court martial and authorized a rehearing on findings and sentence. *United States v. Covitz*, No. ACM 40193, 2022 CCA LEXIS 563, at *40 (A.F. Ct. Crim. App. 30 Sep. 2022) (unpub. op.). On 12 July 2023, at the rehearing of Appellant’s case, at Creech Air Force Base, Nevada, a military judge, sitting as a general court-martial, found Appellant guilty, contrary to his pleas, of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b.*

On 18 July 2024, Appellant filed his assignments of error to the rehearing with this court, alleging, *inter alia*, “the record of trial’s omission of the arraignment audio requires relief, or at a minimum, remand for correction.”

On 19 August 2024, Appellee filed its answer to Appellant’s assignments of error, contesting Appellant’s request, and separately filing a motion to attach two matters to the record of trial: (1) the audio recording of Appellant’s 26 June 2023 arraignment, and (2) a declaration of the NCOIC of Military Justice at Creech Air Force Base, Nevada, dated 8 August 2024.

On 30 August 2024, in his reply brief, Appellant opposed the Appellee’s motion to attach. Appellant instead requested this court provide relief related to the failure to attach the arraignment audio, or at a minimum, remand the case for correction to attach the arraignment audio, citing *United States v. Kershaw*, No. ACM 40455, 2024 CCA LEXIS 354, at *5 (A.F. Ct. Crim. App. 26 Aug. 2024)

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

(showing this court remanded an appellant's case for lack of certain audio recordings).

"A substantial omission renders a record of trial incomplete and raises a presumption of prejudice that the Government must rebut." *United States v. Henry*, 53 M.J. 108, 111 (C.A.A.F. 2000) (citations omitted). "Insubstantial omissions from a record of trial do not raise a presumption of prejudice or affect that record's characterization as a complete one." *Id.* "Whether an omission from a record of trial is 'substantial' is a question of law which [appellate courts] review de novo." *United States v. Stoffer*, 53 M.J. 26, 27 (C.A.A.F. 2000). We agree with Appellant that the record of trial is incomplete without the arraignment audio and this omission is substantial. We grant the requested relief in our decretal paragraph below by ordering the record remanded so that the trial judge may include the missing audio recording after he has provided the parties an opportunity to examine and respond to any proposed corrections and signs a certificate of correction.

Further, the court has considered the Government's motion to attach, and the applicable law, and we grant only the request to attach the declaration of the NCOIC of Military Justice at Creech Air Force Base, Nevada, dated 8 August 2024. However, we specifically defer consideration of the applicability of *United States v. Jessie*, 79 M.J. 437 (C.A.A.F. 2020), and related case law, to this attachment until we complete our Article 66, UCMJ, 10 U.S.C. § 866, review of Appellant's entire case.

Accordingly, it is by the court on this 6th day of December, 2024,

ORDERED:

Government's Motion to Attach Materials, dated 19 August 2024, is **GRANTED IN PART**, attaching only the declaration of the NCOIC of Military Justice, dated 8 August 2024.

It is further ordered:

Appellant's case is **REMANDED** to the Chief Trial Judge, Air Force Trial Judiciary, to correct the record under R.C.M. 1112(d) to include in Appellant's record of trial the missing audio recording of Appellant's 26 June 2023 arraignment. Thereafter, the record of trial will be returned to this court not later than **9 January 2025** for completion of its appellate review under Article 66, UCMJ.

If the record cannot be returned to the court by that date, the Government will inform the court in writing not later than **9 January 2025** of the status of the Government's compliance with this order.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court