

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

UNITED STATES	)	No. ACM 25036 (f rev)
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF
Daniel J. DELOE	)	DOCKETING
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>)	

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 29th day of April, 2026,

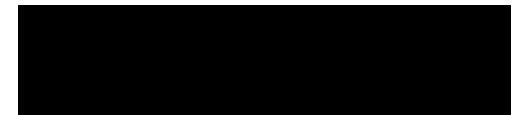
ORDERED:

The record of trial in the above-styled matter is referred to Panel 2.

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



JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

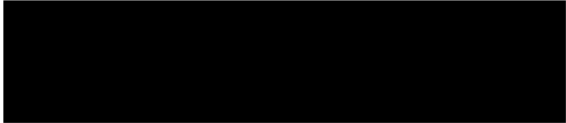
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	NOTICE OF DIRECT APPEAL
<i>Appellee</i>	)	PURSUANT TO ARTICLE
	)	66(b)(1)(A)
v.)	
)	
Senior Airman (E-4)	)	No. ACM _____
DANIEL J. DELOE)	
United States Air Force	)	2 June 2025
<i>Appellant</i>)	

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

On 17 December 2024, a military judge sitting as a special court-martial convicted Senior Airman (SrA) Daniel J. Deloe, consistent with his pleas, of one charge and with one specification of wrongfully using a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ) and one specification of wrongfully distributing a controlled substance in violation of Article 112a, UCMJ. Electronic Record of Trial (ROT), Vol. 1, *Entry of Judgment*, dated 2 February 2025. The military judge sentenced SrA Deloe to be reprimand, reduced to the grade of E-1, and confined for 10 months. R. at 139. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, *Convening Authority Decision on Action – United States v. SrA Daniel J. Deloe*, dated 24 January 2025.

On 4 March 2025, the Government sent SrA Deloe the required notice, by mail, of his right to appeal within 90 days. Pursuant to Article 66(b)(1)(A), UCMJ, 10 U.S.C. § 866(b)(1)(A), SrA Deloe files his notice of direct appeal with this Court.



JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel



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 2 June 2025.

Respectfully submitted,

[Redacted signature block]

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

[Redacted contact information]

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

UNITED STATES	)	No. ACM _____
<i>Appellee</i>)	
)	
v.)	
)	
Daniel J. DELOE	)	NOTICE OF
Senior Airman (E-4)	)	DOCKETING
U.S. Air Force)	
<i>Appellant</i>)	

On 2 June 2025, this court received a notice of direct appeal from Appellant in the above-styled case, pursuant to Article 66(b)(1)(A), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(b)(1)(A).

As of the date of this notice, the court has not received a record of trial in Appellant’s case.

Pursuant to Rule 18(d)(2) of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals, “[a]s soon as practicable after the filing of a Notice of Appeal, the [G]overnment shall provide the Court a complete record, including a verbatim transcript, and provide a copy to the defense. An appellant’s brief shall be filed no later than 60 days thereafter.” JT. CT. CRIM. APP. R. 18(d)(2) (as amended 17 May 2024). “[T]he record shall be the contents described in [Rule for Courts-Martial (R.C.M.)] 1112(b) as certified under R.C.M. 1112(c), the attachments for appellate review described in R.C.M. 1112(f), and . . . documents germane to timeliness of the appeal under Article 66(c)(1), UCMJ.” JT. CT. CRIM. APP. R. 6(a)(1).

The court defers decision with regard to timeliness of Appellant’s appeal pending receipt of the record of trial. *See* Article 66(c), UCMJ.

Accordingly, it is by the court on this 4th day of June, 2025,

ORDERED:

The case in the above-styled matter is referred to Panel 2.

It is further ordered:

The Government will forward a copy of the record of trial to Appellant and the court “as soon as practicable.” *See* JT. CT. CRIM. APP. R. 6(a)(1); 8(d)(2).



FOR THE COURT



TANICA S. BAGMON
Appellate Court Paralegal

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT
<i>Appellee</i>	)	OF TIME (FIRST)
)	
v.	)	Before Panel No. 2
)	
Senior Airman (E-4)	)	No. ACM 25036
DANIEL J. DELOE)	
United States Air Force	)	25 July 2025
<i>Appellant</i>)	

**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 an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **22 October 2025**.

Appellant’s direct appeal was docketed with this Court on 4 June 2025. At the time of docketing, the Court had not received the record of trial and ordered it delivered “as soon as practicable.” *Notice of Docketing*, dated 4 June 2025. The Government delivered the record of trial to the Court on 24 June 2025, **20 days** after docketing. Pursuant to Rule 18(d) of this Honorable Court’s Rules of Practice and Procedure, 24 June 2025 is the appropriate date to use when computing the timing of Appellant’s filings. From the date of docketing to the present date, 51 days have elapsed, 31 days have elapsed from the date the record was referred to this Court. On the date requested, 140 days will have elapsed since docketing and 120 days have elapsed since the date the record was referred to this Court.

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

Respectfully submitted,

[Redacted signature block]

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

[Redacted contact information]

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 25 July 25.

Respectfully submitted,

[REDACTED]

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
	)	Before Panel No. 2
Senior Airman (E-4))	
DANIEL J. DELOE,	)	No. ACM 25036
United States Air Force,)	
<i>Appellant.</i>)	
	)	28 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 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.

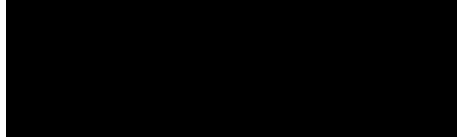
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VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

[Redacted contact information]

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 28 July 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



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

UNITED STATES	)	No. ACM 25036
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Daniel J. DELOE)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 2

On 25 July 2025, counsel for Appellant submitted a Motion for Enlargement of Time (First), requesting an additional 60 days in which to file Appellant's assignments of error. The Government opposes 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 29th day of July, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **22 October 2025**.

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



JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT
	)	OF TIME (SECOND)
)	
v.	)	Before Panel No. 3
)	
Senior Airman (E-4)	)	No. ACM 25036
DANIEL J. DELOE)	
United States Air Force	)	9 October 2025
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(1) and (3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **21 November 2025**.

Appellant’s direct appeal was docketed with this Court on 4 June 2025. At the time of docketing, the Court had not received the record of trial and ordered it delivered “as soon as practicable.” *Notice of Docketing*, dated 4 June 2025. The Government delivered the record of trial to the Court on 24 June 2025, **20 days** after docketing. Pursuant to Rule 18(d) of this Honorable Court’s Rules of Practice and Procedure, **24 June 2025** is the appropriate date to use when computing the timing of Appellant’s filings. From the date of docketing to the present date, 127 days have elapsed, 107 days have elapsed from the date the record was referred to this Court. On the date requested, 170 days will have elapsed since docketing and 150 days have elapsed since the date the record was referred to this Court.

On 17 December 2024, consistent to his pleas, Appellant was convicted at a general court-martial consisting of a military judge sitting alone at McConnell Air Force Base, Kansas, of one charge with one charge with one specification of the wrongful use of a controlled substance in

violation of Article 112a, Uniform Code of Military Justice (UCMJ), and one specification of the wrongful distributing a controlled substance in violation of Article 112a.¹ Electronic Record of Trial (ROT), Entry of Judgment (EOJ), dated 2 February 2024; Record (R.) at 83. Appellant was sentenced to be reprimanded, reduced to the grade of E-1, and confined for ten months. R. at 139.

The convening authority took no action on the findings or sentence in this case. ROT, Convening Authority Decision on Action – *United States v. SrA Daniel J. Deloe*.

The electronic record of trial is three volumes and consists of seven Prosecution Exhibits, three Defense Exhibits, and seven Appellate Exhibits; the transcript is 141 pages. Counsel has not reviewed the ROT in this case. Appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

¹ The remaining specifications of the charge were withdrawn and dismissed with prejudice. R. at 83.

Respectfully submitted,

[REDACTED]

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]


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 October 2025.

Respectfully submitted,

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JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
	)	Before Panel No. 3
Senior Airman (E-4))	
DANIEL J. DELOE,	)	No. ACM 25036
United States Air Force,)	
<i>Appellant.</i>)	
	)	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 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.

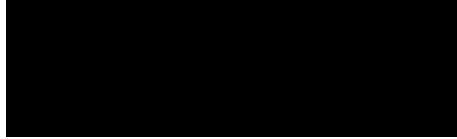
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VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

[Redacted address block]

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.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT
	)	OF TIME (THIRD)
)	
v.	)	Before Panel No. 3
)	
Senior Airman (E-4)	)	No. ACM 25036
DANIEL J. DELOE)	
United States Air Force	)	12 November 2025
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(1) and (3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **21 December 2025**.

Appellant’s direct appeal was docketed with this Court on 4 June 2025. At the time of docketing, the Court had not received the record of trial and ordered it delivered “as soon as practicable.” *Notice of Docketing*, dated 4 June 2025. The Government delivered the record of trial to the Court on 24 June 2025, **20 days** after docketing. Pursuant to Rule 18(d) of this Honorable Court’s Rules of Practice and Procedure, **24 June 2025** is the appropriate date to use when computing the timing of Appellant’s filings. From the date of docketing to the present date, 161 days have elapsed, 141 days have elapsed from the date the record was referred to this Court. On the date requested, 200 days will have elapsed since docketing and 180 days have elapsed since the date the record was referred to this Court.

On 17 December 2024, consistent to his pleas, Appellant was convicted at a general court-martial consisting of a military judge sitting alone at McConnell Air Force Base, Kansas, of one charge with one charge with one specification of the wrongful use of a controlled substance in

violation of Article 112a, Uniform Code of Military Justice (UCMJ), and one specification of the wrongful distributing a controlled substance in violation of Article 112a.¹ Electronic Record of Trial (ROT), Entry of Judgment (EOJ), dated 2 February 2024; Record (R.) at 83. Appellant was sentenced to be reprimanded, reduced to the grade of E-1, and confined for ten months. R. at 139.

The convening authority took no action on the findings or sentence in this case. ROT, Convening Authority Decision on Action – *United States v. SrA Daniel J. Deloe*.

The electronic record of trial is three volumes and consists of seven Prosecution Exhibits, three Defense Exhibits, and seven Appellate Exhibits; the transcript is 141 pages. Counsel has not reviewed the ROT in this case. Appellant is not currently confined.

The undersigned counsel is currently assigned twenty-six cases; twenty-one cases are pending before this Court (fourteen cases are pending AOE). To date, nine cases at this Court have priority over the present case:

1. *United States v. Szabo*, No. ACM 40590 - The ROT is twelve volume and consists of seven Prosecution Exhibits, thirty-five Defense Exhibits, and 121 Appellate Exhibits; the transcript is 1495 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

2. *United States v. Lucas*, No. ACM 40702 - The electronic ROT is five volumes and consists of eleven Prosecution Exhibits, three Defense Exhibits, and sixteen Appellate Exhibits; the transcript is 187 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

¹ The remaining specifications of the charge were withdrawn and dismissed with prejudice. R. at 83.

3. *United States v. Kelly*, No. ACM 40710 - The electronic ROT is one volume and consists of six Prosecution Exhibits, eight Defense Exhibits, and twelve Appellate Exhibits; the transcript is 172 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

4. *United States v. Lumm*, No. ACM 40752 - The electronic record of trial is one volume and consists of four Prosecution Exhibits, fourteen Defense Exhibits, seven Appellate Exhibits, and one Court Exhibit; the transcript is 111 pages. Appellant is not currently confined. Counsel has not yet reviewed the record of trial in this case. Counsel has not yet reviewed the ROT in this case.

5. *United States v. Gonzaga*, No. ACM 40744 – The electronic ROT is one volume and consists of twenty-four Prosecution Exhibits, one Defense Exhibit, thirty-six Appellate Exhibits, and five Court Exhibits; the transcript is 490 pages. Appellant is currently confined. Counsel has not yet reviewed the ROT in this case.

6. *United States v. Lowery*, No. ACM 40781 - The electronic ROT is seven volumes and consists of thirty-one Prosecution Exhibits, thirteen Defense Exhibits, and forty-two Appellate Exhibits. The total length of the ROT is 4529 pages; the transcript is 2491 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

7. *United States v. Byrd*, No. ACM S32814 – The electronic ROT is one volume, and a separate file folder containing twenty-one audio recordings. The electronic record of trial consists of forty Prosecution Exhibits, two Defense Exhibits, and forty-four Appellate Exhibits; the transcript is 615 pages. Appellant is not currently confined. Counsel has not yet reviewed the ROT in this case.

8. *United States v. Carlisle*, No. ACM 40784 – The electronic ROT is twenty-eight volumes and consists of four Prosecution Exhibits, nine Defense Exhibits, thirty-five Appellate Exhibits,

and is 2307 pages; the transcript is 273 pages. Counsel has not reviewed the ROT in this case. Appellant is not currently confined.

9. *United States v. Cox*, No. ACM S32820 – The electronic record of trial is one volume and consists of three Prosecution Exhibits, one Defense Exhibit, three Appellate Exhibits, and two court exhibits; the transcript is 157 pages. Counsel has not reviewed the ROT in this case. Appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

[Redacted signature block]

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

[Redacted contact information]

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 12 November 2025.

Respectfully submitted,

[REDACTED]

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

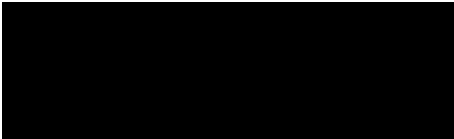




IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
	)	Before Panel No. 3
Senior Airman (E-4))	
DANIEL J. DELOE,	)	No. ACM 25036
United States Air Force,)	
<i>Appellant.</i>)	
	)	14 November 2025

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

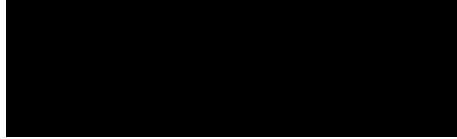
Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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


VANESSA BAIROS, Maj, USAF
Appellate Government Counsel





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 November 2025.



VANESSA BAIROS, Maj, USAF
Appellate Government Counsel



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

UNITED STATES	)	No. ACM 25036
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF PANEL
Daniel J. DELOE	)	CHANGE
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>)	

It is by the court on this 15th day of December, 2025,

ORDERED:

That the Record of Trial in the above-styled matter is withdrawn from Panel 3 and referred to Panel 2 for appellate review.

This panel letter supersedes all previous panel assignments.



JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

v.

Senior Airman (E-4)
Daniel J. Deloe,
United States Air Force,

Appellant

MERITS BRIEF

Before Panel No. 2

No. ACM 25036

Filed on: 22 December 2025

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

Submission of Case Without Specific Assignment of Error

The undersigned appellate defense counsel attests that he has, on behalf of Appellant, Senior Airman Daniel J. Deloe, carefully examined the record of trial in this case. Appellant does not admit that the findings and sentence are correct in law and fact but submits the case to this Honorable Court on its merits with no specific assignments of error.

Pursuant to Rule 18.2 of this Court's Rules of Practice and Procedure, Appellant raises two issues in the attached appendix.

Respectfully submitted,



Dwight H. Sullivan
Appellate Defense Counsel



Counsel for Appellant

CERTIFICATE OF FILING AND SERVICE

I certify that the foregoing was sent via electronic mail to the Court and served on the Government Trial and Appellate Operations Division on 22 December 2025.

Respectfully submitted,

A solid black rectangular redaction box covering the signature of Dwight H. Sullivan.

Dwight H. Sullivan
Appellate Defense Counsel

A large, irregular black redaction box covering contact information, likely a phone number and email address.

APPENDIX

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), Appellant, through appellate defense counsel, personally requests that this Court consider the following matters:

Issue I

WHETHER THE FAIRNESS AND APPEARANCE OF FAIRNESS OF APPELLANT'S COURT-MARTIAL WERE COMPROMISED WHEN HIS ORIGINAL DETAILED DEFENSE COUNSEL WAS REASSIGNED AS THE SUPERVISOR OF THE TRIAL COUNSEL PROSECUTING HIS CASE.

Issue II

WHETHER RECORDS OF APPELLANT'S CASH APP TRANSACTIONS WERE SEIZED IN VIOLATION OF HIS FOURTH AMENDMENT RIGHTS.

Argument

I.

THE FAIRNESS AND APPEARANCE OF FAIRNESS OF APPELLANT'S COURT-MARTIAL WERE COMPROMISED WHEN HIS ORIGINAL DETAILED DEFENSE COUNSEL WAS REASSIGNED AS THE SUPERVISOR OF THE TRIAL COUNSEL PROSECUTING HIS CASE.

Statement of Facts

On 17 December 2024, consistent to his pleas, Appellant was convicted at a special court-martial consisting of a military judge sitting alone at McConnell Air Force Base, Kansas, of one charge with one specification of wrongful use of a controlled substance on divers occasions in violation of Article 112a, Uniform Code of Military Justice, and one specification of wrongful

distribution of a controlled substance on divers occasions in violation of Article 112a.¹ Trial Tr. 21, 83. The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, and confinement for a total of ten months. *Id.* at 139. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action – *United States v. SrA Daniel J. Deloe*, Jan. 24, 2025.

Appellant’s original detailed defense counsel was Major (Maj) Sloan Smith,² then the senior defense counsel at McConnell Air Force Base, Kansas. *See* Major Sloan S. Ritchie [formerly Smith] Biography, United States Judge Advocate General’s Corps FLITE, JAG ROSTER, https://roster.jag.af.mil/pls/rosterdad/ROSTER.showBio?person_key=26928. However, in July 2024, Maj Smith changed duty assignments to become the deputy staff judge advocate, 22nd Air Refueling Wing, McConnell Air Force Base, Kansas. *Id.* In that position, she supervised the trial counsel who prosecuted Appellant. *See* Trial Tr. 4 (trial counsel detailed by 22nd Air Refueling Wing staff judge advocate).

The defense did not raise any issue at trial concerning Maj Smith.

Standard of Review

Because this issue was not raised below, this Court must necessarily review it de novo.

Analysis

The Court of Appeals for the Armed Forces has favorably quoted a 1972 opinion of the American Bar Association’s Committee on Ethics and Professional Responsibility stating, “[A]

¹ The remaining specifications of the charge were withdrawn and dismissed with prejudice. Trial Tr. 83.

² Upon request of the Court, Appellant will provide a declaration attesting to this fact.

basic tenet of an adversary system of justice is that a lawyer should have undivided loyalty to his client [A] fair system of justice requires that there be no appearance of divided loyalty.” *United States v. Lee*, 66 M.J. 387, 389 (C.A.A.F. 2008) (quoting ABA Comm. on Ethics and Prof'l Responsibility, Informal Op. 1235 (1972)). In this case, such an appearance of divided loyalty arose when Appellant’s former defense counsel became the trial counsel’s supervisor. To eliminate any such appearance, Appellant respectfully requests that this Court set aside the findings and the sentence.

II.

RECORDS OF APPELLANT’S CASH APP TRANSACTIONS WERE SEIZED IN VIOLATION OF HIS FOURTH AMENDMENT RIGHTS.

Statement of Facts

The offenses of which Appellant was convicted involved events between on or about 1 January 2021 and 31 March 2023. Charge Sheet. During the Government’s investigation of the charges, Air Force Office of Special Investigations (OSI) agents obtained records of Appellant’s Cash App account. OSI Report of Investigation at ¶ 2-70. OSI’s report of investigation highlights various transactions from Appellant’s Cash App account between 10 September 2022 and 10 April 2023. *Id.* at ¶¶ 2-71, 2-77, Ex. 14. The report of investigation states that the records were “obtained pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 et seq.” *Id.* at 3. That act includes a provision allowing a “Government authority” to obtain financial records “pursuant to an administrative subpoena or summons otherwise authorized by law” upon certain conditions. 12 U.S.C. § 3405. Upon information and belief, OSI agents obtained Appellant’s Cash App transaction records by falsely claiming that Appellant and his housemates were domestic terrorists.

After Appellant’s arraignment, his defense counsel filed a motion to suppress the Cash App transaction records and any evidence derived from them because the Government did not provide timely notice of those records and because the records were not accompanied by a custodian’s certification. App. Ex. VI. Appellant’s counsel identified that motion as one of three that the defense was not pursuing based on a provision in the plea agreement in which the defense waived all waivable motions. Trial Tr. 72; App. Ex. 4, ¶ 2.b. The military judge engaged in a colloquy with Appellant to ensure that he knowingly and voluntarily agreed with the defense-initiated provision to waive all waivable motions. Trial Tr. 73–74.

Standard of Review

Because this issue was not raised below, this Court must necessarily review it de novo.

Analysis

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend IV.

Military Rule of Evidence 311(d)(4)(B) provides, in relevant part:

If the defense makes a substantial preliminary showing that a government agent knowingly and intentionally or with reckless disregard for the truth included a false statement in the information presented to the authorizing officer, and if the allegedly false statement . . . is necessary to the finding of probable cause, the defense, upon request, is entitled to a hearing.

MIL. R. EVID. 311(d)(4)(B), *Manual for Courts-Martial, United States* (2024 ed.).

Based on Appellant's understanding that Government agents obtained his Cash App transaction records by making a material misrepresentation of fact, this Court should remand the case to the convening authority to: (1) hold a hearing in accordance with Military Rule of Evidence 311(d)(4)(B); or (2) if such a hearing is impracticable, set aside the findings of guilty and the sentence and dismiss the charge and its specifications.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’ ANSWER
<i>Appellee,</i>	)	TO ASSIGNMENTS OF ERROR
)	
)	
v.	)	Before Panel No. 2
)	
Senior Airman (E-4)	)	No. ACM 25036
DANIEL J. DELOE,)	
United States Air Force,	)	21 January 2026
<i>Appellant.</i>)	

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

ISSUES PRESENTED¹

I.

WHETHER THE FAIRNESS AND APPEARANCE OF FAIRNESS OF APPELLANT’S COURT-MARTIAL WERE COMPROMISED WHEN HIS ORIGINAL DETAILED DEFENSE COUNSEL WAS REASSIGNED AS THE SUPERVISOR OF THE TRIAL COUNSEL PROSECUTING THE CASE.

II.

WHETHER RECORDS OF APPELLANT’S CASH APP TRANSACTIONS WERE SEIZED IN VIOLATION OF HIS FOURTH AMENDMENT RIGHTS.

STATEMENT OF CASE

At a special court-martial consistent with Appellant’s pleas, a military judge found Appellant guilty of one charge with one specification of wrongful use of cocaine on divers occasions and one specification of wrongful distribution of cocaine on divers occasions both in

¹ Appellant raises Issues I-II pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

violation of Article 112a, UCMJ.² (*Entry of Judgment*, 2 February 2025, eROT, Vol. 1.) The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, and confinement for a total of ten months. (Id.) The convening authority took no action on the findings or sentence. (Id.)

STATEMENT OF FACTS

Appellant offered to enter into a plea agreement. (App. Ex. IV.) In exchange for his plea of guilty to one specification of divers use of cocaine and one specification of distribution of cocaine on divers occasions, the government withdrew and dismissed the following two specifications: 1) wrongful possession of marijuana, and 2) wrongful use of methamphetamine. (Id.) The plea agreement authorized the military judge to adjudicate a term of confinement ranging from 7-11 months and prevented the military judge from adjudicating a bad-conduct discharge.

Appellant's offer for a plea agreement waived all waivable motions as authorized under the Rules for Courts-Martial. (App. Ex. IV.) During Appellant's plea colloquy, the military judge reviewed the plea agreement term that waived all waivable motions with Appellant and his trial defense counsel. (R. at 72.) Trial defense counsel confirmed that one of the motions that the defense was not pursuing pursuant to this provision of the plea agreement was a "Defense Motion to Suppress Transaction Documents Pursuant to Military Rule of Evidence 902(11)." (Id.) The factual basis for filing this motion was that the government's notice was filed with the court passed the scheduling order deadline. (Id.)

² All references to the UMCJ, Rules for Courts-Martial, and Mil. R. Evid. are to the 2019 Manual for Courts-Martial.

Next, the military judge told Appellant that certain motions were waived, including a motion to suppress transaction documents. (R. at 73.) The military judge asked Appellant if he understood this term of his plea agreement that he gave up the right to raise motions which by law is given up when he pleaded guilty. (R. at 74.) Appellant agreed. (Id.) Additional relevant facts are outlined under the responsive assignment of error.

ARGUMENT

I.

APPELLANT WAIVED THE ISSUE OF WHETHER HIS FORMER DETAILED DEFENSE COUNSEL WAS DISLOYAL.

Additional Facts

In his brief, Appellant states that his original detailed defense counsel was Maj SR, the then senior defense counsel at McConnell Air Force Base, Kansas. (App. Br. at 4 citing Maj [SR] Biography, United States Judge Advocate General's Corps FLITE, JAG ROSTER, https://roster.jag.af.mil/pls/rosterdad/ROSTER.showBio?person_key=26928.) After SR's assignment as a senior defense counsel, in July 2024, she became the deputy staff judge advocate at McConnell Air Force Base, the base legal office prosecuting Appellant's court-martial. (Id.) Appellant did not provide a sworn declaration to this Court stating that he formed an attorney client relationship with SR.

Standard of Review

"A criminal defendant may knowingly and voluntarily waive many of the most fundamental protections afforded by the Constitution." United States v. Mezzanatto, 513 U.S. 196, 201 (1995). This Court reviews whether an appellant has waived an issue de novo as a question of law. United States v. Givens, 82 M.J. 211, 215 (C.A.A.F. 2022). Whether a waiver

of rights was knowing and intelligent is also reviewed under the de novo standard. United States v. Rosenthal, 62 M.J. 261, 262 (C.A.A.F. 2005). Appellant waived raising this assignment of error pursuant to the waive all waivable motions provision in his plea agreement.

If this Court finds that Appellant did not waive this issue, this Court must review it for plain error. United States v. Schmidt, 82 M.J. 68, 72 (C.A.A.F. 2022). Thus, Appellant has the burden of proving that: 1) there was error; 2) that the error was clear or obvious; and 3) that the error resulted in material prejudice to his substantial rights. Id. at 73.

Law and Analysis

First, this Court should not consider Maj SR's biography as cited in Appellant's brief. (See App. Br. at 4.) Our superior Court acknowledged that its precedents "have permitted the CCAs to supplement the record by accepting affidavits or ordering additional factfinding hearings when the CCAs decide issues that are raised by materials in the record but that are not fully resolvable by those materials." United States v. Jessie, 79 M.J. 437, 440 (C.A.A.F. 2020). Here, Maj SR's previous attorney client relationship with Appellant was not raised by the materials in the record and therefore not ripe for appeal. Appellant should not get the opportunity for the first time on appeal to raise this assignment of error and reference Maj SR's biography. Maj SR's biography is not part of the record, and it is not something this Court may attach to the record under Jessie.

Appellant waived this issue by pleading guilty. "[A]n unconditional plea of guilty waives all nonjurisdictional defects at earlier stages of proceedings." United States v. Hardy, 77 M.J. 438, 442 (C.A.A.F. 2018). Exceptions to this proposition, such as a speedy trial objection under Article 10, UCMJ, or a multiplicity objection when offenses are facially duplicative, do not apply in Appellant's case. See id. Also, by virtue of his plea agreement, he waived all waivable

motions. (App. Ex. IV.) In sum, Appellant waived this issue, and this Court should not review this assignment of error on appeal when Appellant raised it for the first time.

Even if this Court found the issue forfeited, Appellant has not met his burden under the plain error standard that his former detailed defense counsel was disloyal and that there was at least the appearance of unfairness. First, Appellant has not established that he had an attorney client relationship with Maj SR. Appellant could have done this by submitting a sworn declaration, but he did not. Appellant claims that his former detailed defense counsel was disloyal because after Maj SR's assignment as a defense counsel, she supervised the trial counsel prosecuting Appellant. (App. Br. at 5.) But he fails to offer any evidence that Maj SR breached any ethical duty or was in any way involved in his trial.

“[A] basic tenant of an adversary system of justice is that a lawyer should have undivided loyalty to his client and because a fair system of justice requires that there be no appearance of divided loyalty.” United States v. Lee, 66 M.J. 387, 389 (C.A.A.F. 2008) (citing ABA Comm. on Ethics and Prof'l Responsibility, Informal Op. 1472 (1982)). Appellant has not articulated any fact drawn from the record or elsewhere given the lack of a declaration or affidavit indicating any disloyalty, such as Maj SR advising trial counsel on strategy matters related to Appellant's court-martial or Maj SR acting in the official capacity as trial counsel's supervisor. Staff judge advocates are in the rating chain of officers in the legal office as the official supervisor and not the deputy staff judge advocate unless the deputy staff judge advocate was the acting staff judge advocate. There was no indication from the record that Maj SR was acting in the role as the acting staff judge advocate. Appellant failed to show that Maj SR supervised trial counsel in any capacity as it related to his court-martial. In fact, the staff judge advocate detailed trial counsel to prosecute Appellant's court-martial – not Maj SR. (R. at 4.) A review

of the record showed that Maj SR took no part of Appellant's court-martial proceedings even from a supervisory standpoint.

Per ethical rules, Maj SR is presumed to maintain loyalty to a client or former client, and Appellant has not demonstrated otherwise. *See United States v. Nicholson*, 15 M.J. 436, 438 (C.M.A. 1983) (recognizing "that a lawyer must provide zealous representation, and give unswerving loyalty to a client free from any influence that might weigh against that fidelity"). Appellant has failed to demonstrate that Maj SR did not deconflict herself from working on Appellant's case while assigned to McConnell Air Force Base base legal office. Appellant has failed to demonstrate error, let alone clear or obvious error. It was evident from the record that this issue did not rise to the level of unfairness because this concern was not raised at trial. Any competent defense counsel who thought there was an issue with the fundamental fairness with his or her client's trial proceedings would raise the issue of a potential ethical conflict to the military judge for further inquiry. That did not happen here. Thus, Appellant failed to demonstrate error, and there was no appearance of unfairness or disloyalty.

Assuming error, Appellant failed to demonstrate that he suffered any prejudice. Appellant offered to plead guilty, which the staff judge advocate recommended acceptance of the agreement, and the agreement was accepted by the convening authority – demonstrating that the staff judge advocate was involved with Appellant's court-martial not the deputy staff judge advocate. (App. Ex. IV.) At the time of Appellant's offer for a plea agreement, in November 2024, Maj SR was the deputy staff judge advocate. Yet, that did not stop him from entering into a favorable plea agreement that dismissed two specifications, limited confinement to 11 months, and did not allow the sentencing authority to adjudicate a bad-conduct discharge. Given Maj SR's lack of involvement in Appellant's court-martial proceedings in any capacity, coupled with

Appellant's plea agreement that he initiated, Appellant has not demonstrated prejudice. Even if this issue was not waived, this Court should deny this assignment of error.

II.

APPELLANT'S CLAIM THAT HIS FOURTH AMENDMENT RIGHTS WERE VIOLATED WAS WAIVED.

Additional Facts

Pursuant to a lawful search the Air Force Office of Special Investigations (OSI) obtained Appellant's Cash App account records between 10 September 2022 and 10 April 2023. (*OSI Report of Investigation paragraph 2-71, 2-77, eROT, Vol 1.*) The 18th District of Sedgwick County, Kansas also issued a search warrant to search Appellant's residence. (*Report of Investigation Exhibit 2, eROT, Vol. 1.*)

Appellant claims, without any substantiation from the record or a declaration, that OSI obtained his Cash App transaction records by falsely claiming that he and his housemates were domestic terrorists. (App. Br. at 5.)

Standard of Review

The United States adopts the waiver jurisprudence outlined in Issue I. Like Issue I, Appellant waived raising this assignment of error.

Law and Analysis

Appellant waived the right to contest the search authorizations executed during his criminal investigation for at least three reasons: (1) he failed to make a timely objection; (2) his unconditional guilty plea waived this nonjurisdictional issue; and (3) his plea agreement waived all waivable motions.

An accused must make a timely motion to suppress evidence subject to an unlawful search or make an objection to the evidence under Mil. R. Evid. 311(a)(1). Under this rule,

failure to object or move to suppress prior to pleas constitutes waiver. United States v. Perkins, 73 M.J. 381, 390 (C.A.A.F. 2019); Mil. R. Evid. 311(d)(2)(A). Here, Appellant did not make a timely motion to suppress evidence on the basis that law enforcement agents made a false representation to establish probable cause. Per Mil. R. Evid. 311, Appellant waived this issue.

Further, “an unconditional plea of guilty waives all nonjurisdictional defects at earlier stages of proceedings.” Hardy, 77 M.J. at 442. Accordingly, Appellant’s plea of guilty waived this nonjurisdictional issue to contest the validity of the search warrants executed against him. Notably, Appellant waived all waivable motions by entering into a plea agreement that contained a provision that waived all waivable motions – including a motion under R.C.M. 311. (*See App. Ex. IV at 1.*) Appellant understood that he could not raise issues regarding suppressing his Cash App transactions per the terms of the plea agreement. (R. at 73-74.) Thus, Appellant waived the right to raise this issue on appeal.

Recently, our superior Court found that an appellant waived appellate review of whether unlawful influence affected his court-martial by entering into a plea agreement with a “waive all waivable motions” provision. United States v. Suarez, 2025 CAAF LEXIS 651, at *2-3 (C.A.A.F. 5 August 2025). Not only did the plea agreement waive all waivable motions, but the military judge during the plea colloquy confirmed with the appellant that he understood the term that waived all waivable motions. The military judge outlined that the appellant previously litigated the following motions: a motion to dismiss for unlawful command influence, motion to preclude evidence under Mil. R. Evid. 404(b), release from pretrial confinement, a motion to compel experts, and a motion to suppress evidence. Id. at *10. The military judge then said that the provision to waive all waivable motions waived the appellant’s right to pursue these claims.

Id. at *10-11. The appellant agreed with the military judge and understood that he waived appellate review of these issues. Id. at *11.

Appellant’s case is no different than Suarez. Both cases had plea agreements with a provision that waived all waivable motions. Also in both cases, the military judge engaged in a colloquy that discussed that although there were motions raised prior to the plea agreement, the plea agreement waived the right to pursue these issues at trial. Appellant affirmed that he understood the provision to waive all waivable motions. For these reasons, Appellant made a knowing and intelligent waiver of his rights to waive all waivable motions by entering into a plea agreement. In line with Suarez, this Court should find that Appellant waived Issue II.

In sum, Appellant failed to make a timely motion under Mil. R. Evid. 311(d)(2)(A). By virtue of pleading guilty and entering into a plea agreement with a waive all waivable motions provision, Appellant also waived all nonjurisdictional issues to include this assignment of error. For these reasons, this Court should deny this assignment of error.

CONCLUSION

The United States respectfully requests that this Honorable Court deny Appellant’s claims and affirm the findings and sentence in this case.

[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

MARY ELLEN PAYNE
Associate Chief
Government Trial and Appellate Operations

[REDACTED]
[REDACTED]
[REDACTED]

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 21 January 2026.

[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

record.” *Jessie*, 79 M.J. at 440. Congress preserved the “on the basis of the entire record” language in its 2016 revision of Article 66, UCMJ, but moved it from subsection (c) to subsection (d)(1). *See* Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) (2019 MCM). However, effective 1 January 2021, Congress again revised Article 66, UCMJ, and removed this phrase from subsection (d)(1). *See* National Defense Authorization Act for Fiscal Year 2021, § 542(b)(1)(A), Pub. L. 116-283, 134 Stat. 3388, 3560 (1 Jan. 2021); Article 66(d)(1)(A), UCMJ (*Manual for Courts-Martial, United States* (2024 ed.)).

United States v. Giles, No. ACM 40482, 2024 CCA LEXIS 544, at *27 n.5 (A.F. Ct. Crim. App. Dec. 23, 2024), *petition denied*, 85 M.J. 447 (C.A.A.F. 2025); *see also United States v. Banks*, No. ACM 24057, 2025 CCA LEXIS 578, *7 n.5 (A.F. Ct. Crim. App. Dec. 18, 2025).


The revised version of Article 66, UCMJ, without the “on the basis of the entire record” limitation applies to “any case in which every finding of guilty entered into the record under section 860c of title 10, United States Code (article 60c of the Uniform Code of Military Justice), is for an offense that occurred on or after” the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021’s date of enactment. Pub. L. No. 116-283, § 542(e)(2), 134 Stat. 3388, 3612–13 (2021). The earliest date of an offense of which Appellant was convicted was 1 January 2021—the date of the William M. (Mac) Thornberry National Defense Authorization Act’s enactment. *See* Entry of Judgment, Charge, Specifications 2, 3, Dec. 17, 2024. The new statute, therefore, applies to this case. Thus, contrary to the Government’s position, *Jessie* does not preclude this Court from considering Maj Smith’s biography.

For the foregoing reasons, as well as those set out in Appendix A to his original merits brief, Appellant personally requests that this Court set aside the findings and sentence.

Respectfully submitted,



Dwight H. Sullivan
Appellate Defense Counsel



Counsel for Appellant

CERTIFICATE OF FILING AND SERVICE

I certify that foregoing was sent via email to the Court and the Air Force Government Trial and Appellate Operations Division on 28 January 2026.

Respectfully submitted,



Dwight H. Sullivan
Air Force Appellate Defense Division

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION TO ATTACH
<i>Appellee,</i>	)	DOCUMENT
)	
)	
v.)	
	)	Before Panel 2
Senior Airman (E-4))	
Daniel J. Deloe,	)	No. ACM 25036
United States Air Force,)	
<i>Appellant.</i>	)	28 January 2026

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

COMES NOW Appellant, Senior Airman Daniel J. Deloe, by and through his undersigned counsel, and moves pursuant to Rule 23.3(b) of this Honorable Court’s Rules of Practice and Procedure to attach a document.

Appellant’s opening brief averred that Appellant’s original detailed defense counsel was Major (Maj) Sloan Smith, then the senior defense counsel at McConnell Air Force Base, Kansas. Merits Brief, Appendix A, at 4. The brief further averred that in July 2024, Maj Smith changed duty assignments to become the deputy staff judge advocate, 22nd Air Refueling Wing, McConnell Air Force Base, Kansas. *Id.* The brief further averred that in her new position, she supervised the trial counsel who prosecuted Appellant. *Id.* Appellant’s opening brief also offered to submit a declaration stating that Maj Smith was Appellant’s original detailed defense counsel should this Court desire him to do so. *Id.* at 4 n.2.

In its answer, the Government objects that “Appellant did not provide a sworn declaration to this Court stating that he formed an attorney client relationship with SR.” United States’ Answer to Assignments of Error at 3. The answer later states, “Appellant has not established that he had an attorney client relationship with Maj SR. Appellant could have done this by submitting a sworn

declaration, but he did not.” *Id.* at 5.

This motion provides a declaration from Appellant in which he states, under penalty of perjury, that Maj Smith was his original detailed defense counsel, that the two formed an attorney-client relationship, that he made confidential communications to her, and that the attorney-client relationship ended when she became the deputy staff judge advocate of the 22nd Air Refueling Wing, McConnell Air Force Base, Kansas, in approximately July 2024. Appellant further declares, under penalty of perjury, that in her position as deputy staff judge advocate, Maj Smith supervised the trial counsel who prosecuted his case.

The Court of Appeals for the Armed Forces’ *Jessie* decision does not limit this Court’s authority to attach Appellant’s declaration to the record because *Jessie* has been superseded by statute. *See United States v. Jessie*, 79 M.J. 437, 444 (C.A.A.F. 2020). As this Court has explained:

The CAAF’s opinion in *Jessie* was based on the then-applicable version of Article 66(c), UCMJ, which provided that CCAs decided whether or not to affirm the findings and sentence “on the basis of the entire record.” *Jessie*, 79 M.J. at 440. Congress preserved the “on the basis of the entire record” language in its 2016 revision of Article 66, UCMJ, but moved it from subsection (c) to subsection (d)(1). *See* Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) (2019 MCM). However, effective 1 January 2021, Congress again revised Article 66, UCMJ, and removed this phrase from subsection (d)(1). *See* National Defense Authorization Act for Fiscal Year 2021, § 542(b)(1)(A), Pub. L. 116-283, 134 Stat. 3388, 3560 (1 Jan. 2021); Article 66(d)(1)(A), UCMJ (*Manual for Courts-Martial, United States* (2024 ed.)).

United States v. Giles, No. ACM 40482, 2024 CCA LEXIS 544, at *27 n.5 (A.F. Ct. Crim. App. Dec. 23, 2024), *petition denied*, 85 M.J. 447 (C.A.A.F. 2025); *see also United States v. Banks*, No. ACM 24057, 2025 CCA LEXIS 578, *7 n.5 (A.F. Ct. Crim. App. Dec. 18, 2025).

The revised version of Article 66, UCMJ, without the “on the basis of the entire record” limitation applies to “any case in which every finding of guilty entered into the record under section 860c of title 10, United States Code (article 60c of the Uniform Code of Military Justice), is for an

offense that occurred on or after” the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021’s date of enactment. Pub. L. No. 116-283, § 542(e)(2), 134 Stat. 3388, 3612–13 (2021). The earliest date of an offense of which Appellant was convicted was 1 January 2021—the date of the William M. (Mac) Thornberry National Defense Authorization Act’s enactment. *See* Entry of Judgment, Charge, Specifications 2, 3, Dec. 17, 2024. The new statute, therefore, applies to this case. This Court may, therefore, supplement the record without regard to *Jessie*.

For the foregoing reasons, Appellant respectfully requests that this Court this motion.

Respectfully submitted,



Dwight H. Sullivan
Appellate Defense Counsel

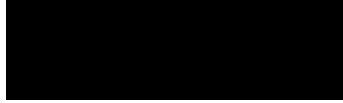


Counsel for Appellant

CERTIFICATE OF FILING AND SERVICE

I certify that foregoing was sent via email to the Court and the Air Force Government Trial and Appellate Operations Division on 28 January 2026.

Respectfully submitted,



Dwight H. Sullivan
Air Force Appellate Defense Division

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, <i>Appellee,</i>	)	UNITED STATES’ OPPOSITION TO MOTION TO ATTACH
)	
v.	)	Before Panel No. 2
)	
Senior Airman (E-4)	)	No. ACM 25036
DANIEL J. DELOE,)	
United States Air Force,	)	4 February 2026
<i>Appellant.</i>)	

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

Under Rule 23.2 of this Honorable Court’s Rules of Practice and Procedure, the United States opposes Appellant’s motion to attach a document – Appellant’s Declaration.

Appellant had the opportunity to attach a declaration when he filed his merits brief, along with his assignments of error filed under United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982). Appellant offers no good cause for why he could not have filed this declaration with his initial brief. This Court should not allow piecemeal litigation. The government does not ordinarily get to respond to an appellant’s reply brief. Thus, it is inappropriate to move to add new evidence that could have been submitted before at the time of filing the initial brief. Like our superior Court has done, this Court should decline to consider matters raised for the first time in a reply brief. United States v. Ozbirn, 81 M.J. 38, 44 (C.A.A.F. 2021). If this Court grants Appellant’s motion to attach, then the United States will need to move file a response to the reply brief, since Appellant’s newly attached documents will change the United States’ response to Issue I. This will unnecessarily delay appellate review.

For these reasons, the United States asks this Court to deny Appellant's motion to attach.

[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MARY ELLEN PAYNE
Associate Chief
Government Trial and Appellate Operations

[REDACTED]

[REDACTED]

[REDACTED]

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 4 February 2026.

[REDACTED]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]