

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

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME (FIRST)</b>
	)	
v.	)	Before Panel No. 1
	)	
<b>TYRONE GAMMAGE,</b>	)	No. ACM S32731
Airman (E-2)	)	
United States Air Force	)	1 September 2022
<i>Appellant</i>	)	

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

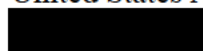
Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file an Assignment of Errors. Appellant requests an enlargement for a period of 60 days, which will end on **8 November 2022**. The record of trial was docketed with this Court on 11 July 2022. From the date of docketing to the present date, 52 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

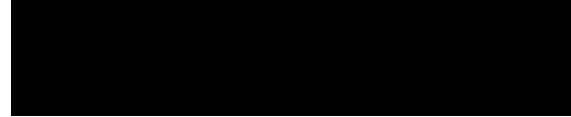


SAMANTHA P. GOLSETH, Capt, USAF  
Appellate Defense Counsel  
AF/JAJA  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 1 September 2022.



SAMANTHA P. GOLSETH, Capt, USAF  
Appellate Defense Counsel  
AF/JAJA  
United States Air Force



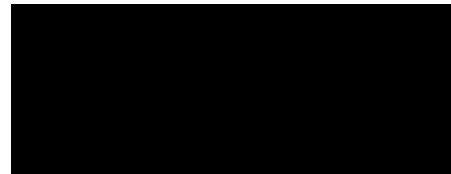
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM S32731
TYRONE GAMMAGE, USAF,	)	
<i>Appellant.</i>	)	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.



THOMAS J. ALFORD, Lt Col, USAFR  
Appellate Government Counsel, Government  
Trial and Appellate Operations Division  
Military Justice and Discipline  
United States Air Force

**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 September 2022.



THOMAS J. ALFORD, Lt Col, USAFR  
Appellate Government Counsel, Government  
Trial and Appellate Operations Division  
Military Justice and Discipline  
United States Air Force

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

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(SECOND)</b>
v.	)	
	)	Before Panel No. 1
<b>TYRONE GAMMAGE,</b>	)	
Airman (E-2)	)	No. ACM S32731
United States Air Force	)	
<i>Appellant</i>	)	1 November 2022

**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 a second enlargement of time (EOT) to file Appellant’s Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **8 December 2022**. The record of trial was docketed with this Court on 11 July 2022. From the date of docketing to the present date, 113 days have elapsed. On the date requested, 150 days will have elapsed.

Appellant was tried by a special court-martial composed of a military judge alone at Francis E. Warren Air Force Base, Wyoming. (Record of Trial (ROT), Vol. 1, Entry of Judgment (EOJ) at 1.) On 17 May 2022, consistent with Appellant’s pleas, the military judge found Appellant guilty of all of the following: one charge and one specification alleging failure to obey other lawful order, in violation of Article 92, Uniform Code of Military Justice (UCMJ); one charge and one specification alleging destruction of property other than military property of the United States, in violation of Article 109, UCMJ; one charge and two specifications of domestic violence, in violation of Article 128b, UCMJ; and one charge and one specification of disorderly conduct, in violation of Article 134, UCMJ. (*Id.*) On 17 May 2022, the military judge sentenced Appellant

to a reduction to the grade of E-1, forfeiture of \$1,190 pay per month for six months, confinement for a total of six months, and a bad conduct discharge. (*Id.* at 2.) The convening authority took no action on the findings or sentence. (ROT, Vol. 1, Convening Authority Decision on Action at 1.) The record of trial consists of 5 appellate exhibits, 3 prosecution exhibits, and 4 defense exhibits. The transcript is 105 pages. Appellant is not confined.

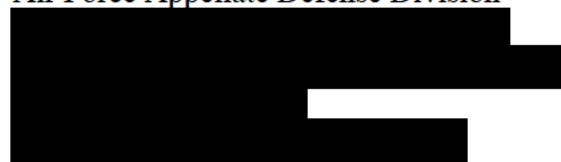
Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. This enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,



SAMANTHA P. GOLSETH, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 1 November 2022.

[REDACTED]

SAMANTHA P. GOLSETH, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

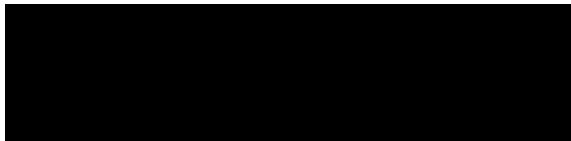
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM S32731
TYRONE GAMMAGE, USAF,	)	
<i>Appellant.</i>	)	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.



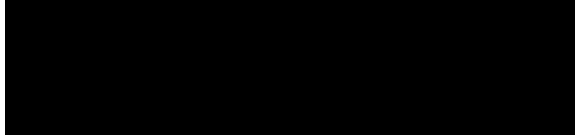
MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force





**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 2 November 2022.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



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

<b>UNITED STATES</b> <i>Appellee,</i>	)	<b>APPELLANT’S MOTION FOR</b>
v.	)	<b>ENLARGEMENT OF TIME</b>
<b>TYRONE GAMMAGE,</b> Airman (E-2) United States Air Force <i>Appellant</i>	)	<b>(THIRD)</b>
	)	Before Panel No. 1
	)	No. ACM S32731
	)	28 November 2022

**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 a third enlargement of time (EOT) to file Appellant’s Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **7 January 2023**. The record of trial was docketed with this Court on 11 July 2022. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

Appellant was tried by a special court-martial composed of a military judge alone at Francis E. Warren Air Force Base, Wyoming. (Record of Trial (ROT), Vol. 1, Entry of Judgment (EOJ) at 1.) On 17 May 2022, consistent with Appellant’s pleas, the military judge found Appellant guilty of all of the following: one charge and one specification alleging failure to obey other lawful order, in violation of Article 92, Uniform Code of Military Justice (UCMJ); one charge and one specification alleging destruction of property other than military property of the United States, in violation of Article 109, UCMJ; one charge and two specifications of domestic violence, in violation of Article 128b, UCMJ; and one charge and one specification of disorderly conduct, in violation of Article 134, UCMJ. (*Id.*) On 17 May 2022, the military judge sentenced Appellant

to a reduction to the grade of E-1, forfeiture of \$1,190 pay per month for six months, confinement for a total of six months, and a bad conduct discharge. (*Id.* at 2.) The convening authority took no action on the findings or sentence. (ROT, Vol. 1, Convening Authority Decision on Action at 1.) The record of trial consists of five appellate exhibits, three prosecution exhibits, and four defense exhibits. The transcript is 105 pages. Appellant is not confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. This enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has been advised of his right to a timely appeal and this request for an enlargement of time, and concurs with this request for an enlargement of time.

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

Respectfully submitted,



SAMANTHA P. GOLSETH, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 28 November 2022.

[REDACTED]

SAMANTHA P. GOLSETH, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

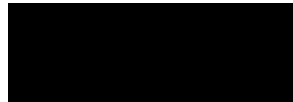
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM S32731
TYRONE GAMMAGE, USAF,	)	
<i>Appellant.</i>	)	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.

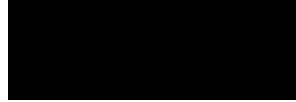


OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force

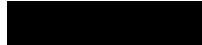


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 29 November 2022.



OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(FOURTH)</b>
v.	)	
	)	Before Panel No. 1
<b>TYRONE GAMMAGE,</b>	)	
Airman (E-2)	)	No. ACM S32731
United States Air Force	)	
<i>Appellant</i>	)	29 December 2022

**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 Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a fourth enlargement of time (EOT) to file Appellant’s Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **6 February 2023**. The record of trial was docketed with this Court on 11 July 2022. From the date of docketing to the present date, 171 days have elapsed. On the date requested, 210 days will have elapsed.

Appellant was tried by a special court-martial composed of a military judge alone at Francis E. Warren Air Force Base, Wyoming. (Record of Trial (ROT), Vol. 1, Entry of Judgment (EOJ) at 1.) On 17 May 2022, consistent with Appellant’s pleas, the military judge found Appellant guilty of all of the following: one charge and one specification alleging failure to obey other lawful order, in violation of Article 92, Uniform Code of Military Justice (UCMJ); one charge and one specification alleging destruction of property other than military property of the United States, in violation of Article 109, UCMJ; one charge and two specifications of domestic violence, in violation of Article 128b, UCMJ; and one charge and one specification of disorderly conduct, in violation of Article 134, UCMJ. (*Id.*) On 17 May 2022, the military judge sentenced Appellant

to a reduction to the grade of E-1, forfeiture of \$1,190 pay per month for six months, confinement for a total of six months, and a bad conduct discharge. (*Id.* at 2.) The convening authority took no action on the findings or sentence. (ROT, Vol. 1, Convening Authority Decision on Action at 1.) The record of trial consists of five appellate exhibits, three prosecution exhibits, and four defense exhibits. The transcript is 105 pages. Appellant is not confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information:

(1) Undersigned counsel currently represents 18 clients and is presently assigned 11 cases pending brief before this Court. Three cases pending brief before this Court currently have priority over the present case:

- a. *United States v. Johnson*, No. ACM 40291 – The record of trial consists of 23 appellate exhibits, 28 prosecution exhibits, and 4 defense exhibits. The transcript is 395 pages. Appellant is confined. Counsel has begun review of this record of trial.
- b. *United States v. Ross*, No. ACM 40289 – The record of trial consists of 11 prosecution exhibits, 1 defense exhibit, 2 court exhibits, and 4 appellate exhibits. The transcript is 130 pages. Appellant is not confined. Counsel has begun review of this record of trial.
- c. *United States v. Hernandez*, No. ACM 40287 – The record of trial consists of 7 prosecution exhibits, 27 defense exhibits, and 10 appellate exhibits. The transcript is 226 pages. Appellant is currently in confinement.

In addition, before the United States Court of Appeals for the Armed Forces, undersigned counsel has one case pending an answer *A.L. v. United States and Theodore J. Slusher, Captain*,

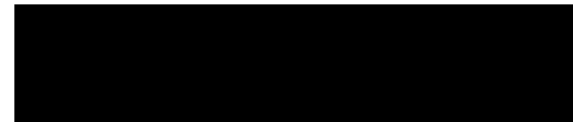


*United States Air Force*, USCA Dkt. No. 23-0073/AF, Crim App. No. 2022-12; and one case pending petition and supplement, *United States v. Brown*, No. ACM 40066.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. This enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has been advised of his right to a timely appeal, was consulted with regard to an enlargement of time, and agrees with this request for an enlargement of time.

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

Respectfully submitted,

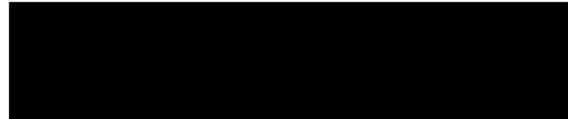


SAMANTHA P. GOLSETH, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 29 December 2022.



SAMANTHA P. GOLSETH, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



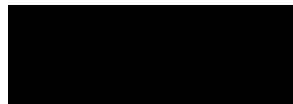
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM S32731
TYRONE GAMMAGE, USAF,	)	
<i>Appellant.</i>	)	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.

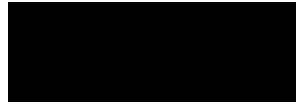


OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



**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 3 January 2023.



OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME (FIFTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
<b>TYRONE GAMMAGE,</b>	)	No. ACM S32731
Airman (E-2)	)	
United States Air Force	)	18 January 2023
<i>Appellant</i>	)	

**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 Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a fifth enlargement of time (EOT) to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **8 March 2023**. The record of trial was docketed with this Court on 11 July 2022. From the date of docketing to the present date, 191 days have elapsed. On the date requested, 240 days will have elapsed.

Appellant was tried by a special court-martial composed of a military judge alone at Francis E. Warren Air Force Base, Wyoming. (Record of Trial (ROT), Vol. 1, Entry of Judgment (EOJ) at 1.) On 17 May 2022, consistent with Appellant’s pleas, the military judge found Appellant guilty of all of the following: one charge and one specification alleging failure to obey other lawful order, in violation of Article 92, Uniform Code of Military Justice (UCMJ); one charge and one specification alleging destruction of property other than military property of the United States, in violation of Article 109, UCMJ; one charge and two specifications of domestic violence, in violation of Article 128b, UCMJ; and one charge and one specification of disorderly conduct, in violation of Article 134, UCMJ. (*Id.*) On 17 May 2022, the military judge sentenced Appellant

to a reduction to the grade of E-1, forfeiture of \$1,190 pay per month for six months, confinement for a total of six months, and a bad conduct discharge. (*Id.* at 2.) The convening authority took no action on the findings or sentence. (ROT, Vol. 1, Convening Authority Decision on Action at 1.) The record of trial consists of five appellate exhibits, three prosecution exhibits, and four defense exhibits. The transcript is 105 pages. Appellant is not confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information:

(1) Undersigned counsel currently represents 17 clients and is presently assigned 12 cases pending brief before this Court. Three cases pending brief before this Court currently have priority over the present case:

- a. *United States v. Johnson*, No. ACM 40291 – The record of trial consists of 23 appellate exhibits, 28 prosecution exhibits, and 4 defense exhibits. The transcript is 395 pages. Appellant is confined. Counsel has begun review of this record of trial.
- b. *United States v. Ross*, No. ACM 40289 – The record of trial consists of 11 prosecution exhibits, 1 defense exhibit, 2 court exhibits, and 4 appellate exhibits. The transcript is 130 pages. Appellant is not confined. Counsel has begun review of this record of trial.
- c. *United States v. Hernandez*, No. ACM 40287 – The record of trial consists of 7 prosecution exhibits, 27 defense exhibits, and 10 appellate exhibits. The transcript is 226 pages. Appellant is currently in confinement.

In addition, undersigned counsel has one case pending petition and supplement before the United States Court of Appeals for the Armed Forces, *United States v. Brown*, ACM No. 40066.

Since requesting the fourth EOT in this case, undersigned counsel has begun drafting the petition and supplement for *United States v. Brown*, ACM No. 40066, and filed an answer before the United States Court of Appeals for the Armed Forces in *A.L.*, USCA Dkt. No. 23-0073/AF, Crim App. No. 2022-12. Additionally, undersigned counsel will be out of the office on pre-authorized leave from 21-30 January 2023.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. This enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant has been advised of his right to a timely appeal, was consulted with regard to an enlargement of time, and agrees with this request for an enlargement of time.

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

Respectfully submitted,



SAMANTHA P. GOLSETH, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 18 January 2023.

[REDACTED]

SAMANTHA P. GOLSETH, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]



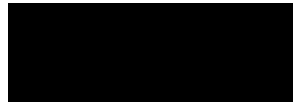
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM S32731
TYRONE GAMMAGE, USAF,	)	
<i>Appellant.</i>	)	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.

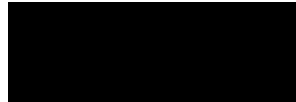


OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



**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 19 January 2023.



OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



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

UNITED STATES	)	No. ACM S32731
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Tyrone GAMMAGE	)	
Airman (E-2)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 18 January 2023, counsel for Appellant submitted a Motion for Enlargement of Time (Fifth), requesting “an enlargement period of 30 days, which will end on 8 March 2023.” Additionally, Appellant states that upon the requested end date, 240 days will have elapsed.” 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 19th day of January, 2023,

**ORDERED:**

Appellant’s Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant’s brief will be due **8 March 2023**.

Any subsequent motions for enlargement of time shall, in addition to the matters required under this court’s Rules of Practice and Procedure, include a statement as to: (1) whether Appellant was advised of his right to a timely appeal, (2) whether Appellant was advised of the request for an enlargement of time, and (3) whether Appellant agrees with the request for an enlargement of time.



FOR THE COURT



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

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

<b>UNITED STATES</b> <i>Appellee,</i>	)	<b>APPELLANT’S MOTION FOR</b>
	)	<b>ENLARGEMENT OF TIME (SIXTH)</b>
	)	
v.	)	Before Panel No. 1
	)	
<b>TYRONE GAMMAGE,</b>	)	No. ACM S32731
Airman (E-2)	)	
United States Air Force	)	1 March 2023
<i>Appellant</i>	)	

**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 Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a sixth enlargement of time (EOT) to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **7 April 2023**. The record of trial was docketed with this Court on 11 July 2022. From the date of docketing to the present date, 233 days have elapsed. On the date requested, 270 days will have elapsed.

Appellant was tried by a special court-martial composed of a military judge alone at Francis E. Warren Air Force Base, Wyoming. (Record of Trial (ROT), Vol. 1, Entry of Judgment (EOJ) at 1.) On 17 May 2022, consistent with Appellant’s pleas, the military judge found Appellant guilty of all of the following: one charge and one specification alleging failure to obey other lawful order, in violation of Article 92, Uniform Code of Military Justice (UCMJ); one charge and one specification alleging destruction of property other than military property of the United States, in violation of Article 109, UCMJ; one charge and two specifications of domestic violence, in violation of Article 128b, UCMJ; and one charge and one specification of disorderly conduct, in violation of Article 134, UCMJ. (*Id.*) On 17 May 2022, the military judge sentenced Appellant to a reduction to the grade of E-1, forfeiture of \$1,190 pay per month for six months, confinement

for a total of six months, and a bad conduct discharge. (*Id.* at 2.) The convening authority took no action on the findings or sentence. (ROT, Vol. 1, Convening Authority Decision on Action at 1.) The record of trial consists of five appellate exhibits, three prosecution exhibits, and four defense exhibits. The transcript is 105 pages. Appellant is not confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information:

(1) Undersigned counsel currently represents 17 clients and is presently assigned 12 cases pending brief before this Court. Three cases pending brief before this Court currently have priority over the present case:

- a. *United States v. Johnson*, No. ACM 40291 – The record of trial consists of 23 appellate exhibits, 28 prosecution exhibits, and 4 defense exhibits. The transcript is 395 pages. Appellant is confined. Counsel is currently reviewing this record of trial.
- b. *United States v. Ross*, No. ACM 40289 – The record of trial consists of 11 prosecution exhibits, 1 defense exhibit, 2 court exhibits, and 4 appellate exhibits. The transcript is 130 pages. Appellant is not confined. Counsel has begun review of this record of trial.
- c. *United States v. Hernandez*, No. ACM 40287 – The record of trial consists of 7 prosecution exhibits, 27 defense exhibits, and 10 appellate exhibits. The transcript is 226 pages. Appellant is currently in confinement.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. This enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant

regarding potential errors. Appellant has been advised of his right to a timely appeal, was consulted with regard to an enlargement of time, and agrees with this request for an enlargement of time.

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

Respectfully submitted,

A solid black rectangular redaction box covering the signature of Samantha P. Golseth.

SAMANTHA P. GOLSETH, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

A solid black rectangular redaction box covering the contact information, including address and phone number.

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 1 March 2023.

[REDACTED]

SAMANTHA P. GOLSETH, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

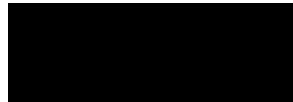
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	ACM S32731
TYRONE GAMMAGE, USAF,	)	
<i>Appellant.</i>	)	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.



OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force





**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 2 March 2023.



OLIVIA B. HOFF, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(SEVENTH)</b>
v.	)	
	)	Before Panel No. 1
<b>TYRONE GAMMAGE,</b>	)	
Airman (E-2)	)	No. ACM S32731
United States Air Force	)	
<i>Appellant</i>	)	27 March 2023

**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 Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a seventh enlargement of time (EOT) to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **7 May 2023**. The record of trial was docketed with this Court on 11 July 2022. From the date of docketing to the present date, 259 days have elapsed. On the date requested, 300 days will have elapsed.

Appellant was tried by a special court-martial composed of a military judge alone at Francis E. Warren Air Force Base, Wyoming. (Record of Trial (ROT), Vol. 1, Entry of Judgment (EOJ) at 1.) On 17 May 2022, consistent with Appellant’s pleas, the military judge found Appellant guilty of all of the following: one charge and one specification alleging failure to obey other lawful order, in violation of Article 92, Uniform Code of Military Justice (UCMJ); one charge and one specification alleging destruction of property other than military property of the United States, in violation of Article 109, UCMJ; one charge and two specifications of domestic violence, in violation of Article 128b, UCMJ; and one charge and one specification of disorderly conduct, in violation of Article 134, UCMJ. (*Id.*) On 17 May 2022, the military judge sentenced Appellant

to a reduction to the grade of E-1, forfeiture of \$1,190 pay per month for six months, confinement for a total of six months, and a bad conduct discharge. (*Id.* at 2.) The convening authority took no action on the findings or sentence. (ROT, Vol. 1, Convening Authority Decision on Action at 1.) The record of trial consists of five appellate exhibits, three prosecution exhibits, and four defense exhibits. The transcript is 105 pages. Appellant is not confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information:

(1) Undersigned counsel currently represents 14 clients and is presently assigned 11 cases pending brief before this Court. Two cases pending brief before this Court currently have priority over the present case:

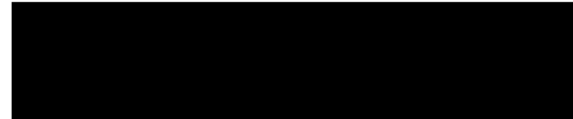
- a. *United States v. Ross*, No. ACM 40289 – The record of trial consists of 11 prosecution exhibits, 1 defense exhibit, 2 court exhibits, and 4 appellate exhibits. The transcript is 130 pages. Appellant is not confined. Counsel is currently reviewing this record of trial and anticipates filing this Appellant’s Assignments of Error in April 2023.
- b. *United States v. Johnson*, No. ACM 40291 – The record of trial consists of 23 appellate exhibits, 28 prosecution exhibits, and 4 defense exhibits. The transcript is 395 pages. Appellant is confined. Counsel is currently reviewing this record of trial and discussing potential issues with this Appellant.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant’s case. Though undersigned counsel has begun to review Appellant’s record of trial, this enlargement of time is necessary to allow undersigned counsel to fully review Appellant’s case and advise Appellant regarding potential

errors. Appellant has been advised of his right to a timely appeal, was consulted with regard to an enlargement of time, and agrees with this request for an enlargement of time.

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

Respectfully submitted,

A solid black rectangular redaction box covering the signature of Samantha P. Golseth.

SAMANTHA P. GOLSETH, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

A solid black rectangular redaction box covering the contact information, including phone and email details.

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 27 March 2023.



SAMANTHA P. GOLSETH, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



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

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	
Airman (E-2)	)	ACM S32731
TYRONE GAMMAGE, USAF,	)	
<i>Appellant.</i>	)	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 opposition to Appellant's Motion for Enlargement of Time.

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 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.

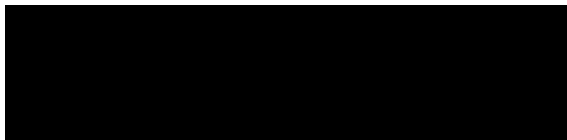


MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



**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 27 March 2023.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



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

UNITED STATES,	)	<b>ANSWER TO ASSIGNMENT</b>
<i>Appellee</i>	)	<b>OF ERROR</b>
	)	
	)	
v.	)	
	)	Before Panel No. 1
Airman (E-2)	)	
<b>TYRONE GAMMAGE, USAF</b>	)	No. ACM S32731
	)	
<i>Appellant.</i>	)	

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

**ISSUES PRESENTED**

**I.**

**WHETHER THE RECORD OF TRIAL IS INCOMPLETE  
BECAUSE IT OMITS THE ATTACHMENTS TO THE  
STIPULATION OF FACT, WHICH THE GOVERNMENT  
ADMITTED AS A PROSECUTION EXHIBIT AT TRIAL.**

**STATEMENT OF THE CASE**

On 17 May 2022, a military judge, sitting at a special court-martial at F.E. Warren Air Force Base, Wyoming found Appellant guilty, pursuant to his pleas, of one charge and one specification of failure to obey a lawful order in violation of Article 92, Uniform Code of Military Justice (UCMJ), one charge and one specification of destruction of nonmilitary property in violation of Article 109, UCMJ, one charge and two specifications of domestic violence in violation of Article 128b, UCMJ, and one charge and one specification of disorderly conduct in violation of Article 134, UCMJ. (*Entry of Judgment*, 8 June 2022, ROT, Vol. 1.) The military judge sentenced Appellant to confinement for six months, reduction to the grade of E-1, forfeitures of \$1,190 pay per month for six months, and to be discharged with a bad conduct discharge. (Id.)



## STATEMENT OF FACTS

Appellant pleaded guilty, in accordance with a plea agreement, to a variety of charges. (*Entry of Judgment*, 8 June 2022, ROT, Vol. 1.) He pleaded guilty to failing to obey a lawful order when he contacted the victim, C.W., via electronic messages and sent her cash via the application, CashApp, destroying C.W.'s personal laptop and tablet, and committing disorderly conduct. (Id.) Appellant also pleaded guilty to committing domestic violence when he suffocated C.W. with a pillow, bit her neck, shoved her, pulled her hair, struck her in the face, and restrained her wrists and neck with his hands. (Id.) In exchange for his guilty plea, the convening authority agreed he could not be adjudged confinement of greater than six months for Charges I, II, and III and could not be adjudged confinement of greater than one month for Charge IV; the total time of confinement could not exceed six months. (App. Ex. III.) Additionally, the military judge was required to adjudge a bad conduct discharge. (Id.)

As part of his plea agreement, Appellant agreed to enter a reasonable stipulation of fact. (Id.) The stipulation of fact was six pages and included eight attachments which were provided to the court on a disc. (Pros. Ex. 1, R. at 103.) The following attachments to the stipulation of fact are missing from the Record of Trial (ROT): (1) No Contact Order, a one page document, dated 10 January 2022; (2) CashApp payment screenshot, a one page document, undated; (3) CashApp refund screenshot, a one page document, undated; (4) Dormitory Hallway video, approximately one hour and four minutes in length, dated 1 January 2022; (5) Photographs of a MacBook and iPad, a three page document containing twelve images, undated; (6) Photographs of C.W.'s injuries; a three page document containing ten images, undated; (7) Photographs of C.W.'s dorm room, a two page document containing eight images, undated; (8) Cellphone video,

approximately two minutes and twenty seconds in length, dated 24 January 2022. (Pros. Ex. 1, R. at 102-103.)

## **ARGUMENT**

### **I.**

#### **APPELLANT’S RECORD OF TRIAL SHOULD BE REMANDED FOR CORRECTION.**

##### *Standard of Review*

Whether the record of trial (ROT) is incomplete is a question of law that the Court reviews de novo. United States v. Henry, 53 M.J. 108, 110 (C.A.A.F. 2000).

##### *Law and Analysis*

Under R.C.M. 1112(b)(6), the record of trial in every general and special court-martial should include “[e]xhibits . . . that were received in evidence.” When a record of trial “is missing an exhibit, this Court evaluates whether the omission is substantial.” United States v. Lovely, 73 M.J. 658, 676 (A.F. Ct. Crim. App. 2021) (citing Henry, 53 M.J. at 111). An omission is qualitatively substantial when it is “related directly to the sufficiency of the Government's evidence on the merits,” and “the testimony could not ordinarily have been recalled with any degree of fidelity.” United States v. Davenport, 73 M.J. 373, 377 (C.A.A.F. 2014). (quoting United States v. Lashley, 14 M.J. 7, 9 (C.M.A. 1982)). While “[o]missions are quantitatively substantial unless ‘the totality of omissions . . . becomes so unimportant and so uninfluential when viewed in the light of the whole record, that it approaches nothingness.’” Id. (quoting United States v. Nelson, 3 C.M.A. 482, 13 (C.M.A. 1953).

“[I]nsubstantial omissions should not prevent characterizing a record as complete.” United States v. McCullah, 11 M.J. 234, 237 (C.M.A. 1981) (internal quotation marks omitted). And if there is a substantial omission it “does not necessarily require reversal. Rather, an

incomplete or non-verbatim record . . . raises a presumption of prejudice which the Government may rebut.” United States v. Abrams, 50 M.J. 361, 363 (C.A.A.F. 1999).

Finally, the lack of a verbatim transcript and an incomplete record are two separate and distinct errors. United States v. Gaskins, 72 M.J. 225, 230 (C.A.A.F. 2013). “Only in cases where ‘a verbatim transcript cannot be prepared’ are the remedial options ‘limited and definitively circumscribed.’” United States v. King, ACM 39583, 2021 CCA LEXIS 415, at \*12 (A.F. Ct. Crim. App. 16 August 2021) (unpub. op.) (citing Davenport, 73 M.J. at 378. When attachments to the stipulation of fact are missing from the record, this Court has repeatedly employed its authority under Rule for Court-Martial 1112(d) and returned the record of trial to the Chief Trial Judge for correction. See United States v. Perez, No. ACM S32637, 2021 CCA LEXIS 285 (A.F. Ct. Crim. App. 14 Jun. 2021); United States v. Hernandez, No. ACM S32641, 2020 CCA LEXIS 277 (A.F. Ct. Crim. App. 21 Aug. 2020) (holding that it was appropriate to return the record of trial to the Chief Trial Judge where the stipulations of fact were missing attachments.).

Since eight attachments to the stipulation of fact are missing, including two videos, this Court should return the ROT to the military judge for correction. Trial counsel has located the eight attachments to Prosecution Exhibit 1, the stipulation of fact. This Court may return the original ROT to the military judge for correction under R.C.M. 1112 so “[t]he military judge may take corrective action by . . . reconstructing the portion of the record affected.” R.C.M. 1112(d)(2)-(3).

Since Appellant’s requested relief is for this Court to remand Appellant’s case for corrective action under R.C.M. 1112(d), Appellant will not be prejudiced by this course of action. (App. Br. at 8.) Thus, this case should be returned to the military judge to correct the record in accordance with R.C.M. 1112(d).

**CONCLUSION**

**WHEREFORE**, the United States respectfully requests this Court to return the case to the military judge for correction.



BRITTANY M. SPEIRS, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
United States Air Force



MARY ELLEN PAYNE  
Associate Chief  
Government Trial and Appellate Operations Division  
United States Air Force



**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 30 May 2023 via electronic filing.



BRITTANY M. SPEIRS, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>BRIEF ON BEHALF OF</b>
<i>Appellee,</i>	)	<b>APPELLANT</b>
	)	
v.	)	
	)	Before Panel No. 1
	)	
Airman (E-2),	)	No. ACM S32731
<b>TYRONE GAMAGE,</b>	)	
United States Air Force	)	5 May 2023
<i>Appellant.</i>	)	

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

**Assignment of Error**

**I.**

**WHETHER THE RECORD OF TRIAL IS INCOMPLETE BECAUSE IT  
OMITS THE ATTACHMENTS TO THE STIPULATION OF FACT,  
WHICH THE GOVERNMENT ADMITTED AS A PROSECUTION  
EXHIBIT AT TRIAL.**

**Statement of the Case**

On 17 May 2022, a military judge sitting as a special court-martial convicted Airman (Amn) Tyrone Gamage, consistent with his pleas in accordance with a plea agreement,<sup>1</sup> of one charge and one specification of failing to obey other lawful order, one charge and one specification of destroying nonmilitary property, one charge and two specifications of domestic violence, and one charge and one specification of disorderly conduct under Articles 92, 109, 128b, and 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 892, 909, 928b, and 934.<sup>2</sup> Record (R.) at 2, 8-10, 78. The military judge sentenced Amn Gamage to a bad-conduct discharge, confinement for six months, reduction to the grade of E-1, and forfeiture of \$1,190 of

<sup>1</sup> Appellate Exhibit III.

<sup>2</sup> All references to the Uniform Code of Military Justice and Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2019 ed.).

pay per month for six months. R. at 104. The Convening Authority took no action on the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 1 June 2022.

### **Statement of Facts**

At trial, the military judge admitted a stipulation of fact into evidence as Prosecution Exhibit (Pros. Ex.) 1. R. at 16. The stipulation of fact was a six-page document that also contained one disc attachment. Pros. Ex. 1 at 2-5, 13; ROT, Vol. 1, Exhibit Index. The disc contained the following items, which were referred to as attachments:

1. No Contact Order, dated 10 January 2022, one page.
2. CashApp payment screenshot, undated, one page containing one image.
3. CashApp refund screenshot, one page containing one image.
4. Dormitory hallway video from 1 January 2022, playable on VLC media player, with an overall length of 1 hour, 4 minutes, and 13 seconds.
5. Photos of the MacBook and iPad, three pages containing 12 images.
6. Photos of C.W.'s injuries, three pages containing 10 images.
7. Photos of C.W.'s dorm room, two pages containing 8 images.
8. Cell Phone Video from 24 January 2022, playable on QuickTime or Media Player, with an overall length of two minutes and 20 seconds.

Pros. Ex. 1 at 5; R. at 103-04.

These attachments to the stipulation of fact purported to demonstrate Amn Gammage violating a no contact order, destroying C.W.'s MacBook and iPad, physically assaulting C.W., and verbally encouraging a fight between two other Airmen while recording the fight. Pros. Ex. 1 at 1-3, ¶¶ 4-6, 8-10.

The Government introduced only three exhibits throughout the court-martial: Prosecution Exhibit 1, the stipulation of fact; Prosecution Exhibit 2, a personal data sheet; and Prosecution

Exhibit 3, a record of non-judicial punishment. R. at 12-16, 79-80; Pros. Ex. 1-3. It also called only one witness, who briefly testified to his response as the unit's first sergeant, his perception of unit impact, and his opinion of Amn Gammage's potential for rehabilitation. R. at 81-90.

During presentencing arguments, trial counsel referred to the attachments to the stipulation of fact several times and at length. R. at 94-98. Trial counsel's entire presentencing argument was less than four and a half pages, and trial counsel focused on the dormitory hallway video for an entire page of this argument. *Id.* As part of this argument, trial counsel urged the military judge to view the video in the following manner:

I encourage you, Your Honor, to review the dorm hallway video attached to the stipulation of fact. The first two minutes or so of that video will tell you, Your Honor, much more about the accused than anything I can say here today.

R. at 95.

The ROT was certified on 15 June 2022. ROT, Vol. 1, Certification of the Record of Trial, dated 15 June 2022. However, the ROT does not appear to contain the disc attachment to the stipulation of fact or all the attachments that were supposed to be contained on the disc. The ROT contains a no contact order, dated 10 January 2022, and various videos and photographs, however, the videos and photographs do not match the page count, image count, or video length described by the military judge. *Compare* R. at 103-04 *with* ROT, Vol. 2, 1st Indorsement, DD Form 458, *Charge Sheet*, dated 7 April 2022, Attachment 2, Exhibits 2, 13; ROT, Vol. 2, Pretrial Confinement of Amn Tyrone Gammage, Attachment 1. Attachment 4 to the stipulation of fact is 1 hour, 4 minutes, and 13 seconds and no video contained in the ROT is this length. *Id.* Similarly, attachment 5 to the stipulation of fact is three pages containing 12 images, attachment 6 is three pages containing 10 images, and attachment 7 is two pages containing 8 images, totaling 5 pages and 30 images while the ROT contains only 26 images and none of them are organized in the manner described by the military judge. *Id.* Attachments 2, 3, and 8 appear nowhere in the ROT.



## Argument

### I.

#### **THE RECORD OF TRIAL IS INCOMPLETE BECAUSE IT OMITTS THE ATTACHMENTS TO THE STIPULATION OF FACT, WHICH THE GOVERNMENT ADMITTED AS A PROSECUTION EXHIBIT AT TRIAL.**

##### *Standard of Review*

“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).

##### *Law*

Article 54(c)(2), UCMJ, requires that a “complete record of proceedings and testimony shall be prepared in any case” where the sentence includes a discharge. 10 U.S.C. § 854. The ROT in every general or special court-martial contains “any evidence or exhibits considered by the court-martial in determining the findings or sentence” including “[e]xhibits, or, if permitted by the military judge, copies, photographs, or descriptions of any exhibits that were received in evidence.” Rules for Courts-Martial (R.C.M.) 1112(b)(6).

A substantial omission renders a ROT 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). A ROT that is missing exhibits may be substantially incomplete. *See Stoffer*, 53 M.J. at 27 (holding that the record was substantially incomplete for sentencing when all three defense sentencing exhibits were missing). “Insubstantial” omissions from a record of trial do not render the record incomplete. *See Henry*, 53 M.J. at 111 (holding that four missing prosecution exhibits were insubstantial omissions when other exhibits of similar sexually explicit material were included). The threshold question is whether the missing exhibits are substantial, either qualitatively or quantitatively. *United States v. Davenport*, 73 M.J. 373, 377 (C.A.A.F. 2014). Omissions may be quantitatively insubstantial when, considering the entire record, the omission

is "so unimportant and so uninfluential . . . that it approaches nothingness." *Id.* (citing *United States v. Nelson*, 3 C.M.A. 482, 13 C.M.R. 38, 43 (C.M.A. 1953)). This Court individually analyzes whether an omission is substantial. *United States v. Abrams*, 50 M.J. 361, 363 (C.A.A.F. 1999).

Attachments to the appellate record do not complete the record. *See United States v. Garcia-Arcos*, No. ACM 40009, 2022 CCA LEXIS 339, at \*6 (A.F. Ct. Crim. App. 9 Jun. 2022) (unpub. op.) (“[W]e do not consider the attachments to the appellate record as a means to complete the record; we assume our granting both motions does not change the fact that the record, as certified and submitted to the court, is incomplete.”); *United States v. Welsh*, No. ACM S32719, 2022 CCA LEXIS 631, \*2 (A.F. Ct. Crim. App. 26 Oct. 2022) (unpub. op.) (“We acknowledge the motion to attach was granted, but we do not agree that this cures the defect without the exhibit actually being incorporated into the ROT.”); *United States v. Mardis*, No. ACM 39980, 2022 CCA LEXIS 10, \*7 (A.F. Ct. Crim. App. 6 Jan. 2022) (unpub. op.) (“[W]e considered the attachments to trial counsel's declaration to determine whether the omission of the exhibits from the record of trial was substantial, [...]; we did not consider the exhibits as a means to complete the record.”).

This Court has held that evidence found elsewhere in the record can defeat a finding of incompleteness. *See United States v. Dipippo*, No. ACM S32299, 2016 CCA LEXIS 117, \*6-7 (A.F. Ct. Crim. App. 26 Feb. 2016) (unpub. op.) (finding the Government reconstituted the ROT when trial counsel provided an affidavit stating the DVD attached to the first endorsement within the pretrial allied papers in the ROT was the same as the one supposed to be attached to the stipulation of fact). However, this Court has also recently found in a guilty plea context, the omission of two attachments to the stipulation of fact (an interview recording and a transcript of the recording) was substantial error, even when fuller versions of the missing recording and transcript were present elsewhere in the ROT. *Mardis*, unpub. op. at \*8-9. This Court explained

it could not know which time hacks were relied upon by the military judge in an abridged version of the recording, and regarding the transcript, the reviewer “has to carve the applicable [16] pages out of a larger [59 page] document.” *Id.* This Court determined this omission was substantial as the “Appellant’s confession and admission to AFOSI provided key evidence and information referred to within the stipulation of fact. Furthermore, trial counsel referred to the attachments in argument.” *Id.*

An incomplete record may be returned to the military judge for correction. R.C.M. 1112(d)(2); *e.g.*, *Welsh*, unpub. op. at \*2-3 (explaining R.C.M. 1112(d) provides for correction of a record of trial found to be incomplete or defective after authentication and returning the ROT for correction after finding the absence of eight attachments to the stipulation of fact substantial); *Mardis*, unpub. op. at \*9-10. R.C.M. 1112 (d)(2) states “[a] superior competent authority may return a [ROT] to the military judge for correction under this rule. The military judge shall give notice of the proposed correction to all parties and permit them to examine and respond to the proposed correction.”

#### *Analysis*

The plain language of R.C.M. 1112(b)(6) requires the inclusion of “any evidence or exhibits considered by the court-martial in determining the findings or sentence.” The attachments to the stipulation of fact were admitted into evidence as part of Prosecution Exhibit 1 and were considered by the military judge in findings and sentencing. R. at 16, 103. The omission of the attachments to the stipulation of fact in the ROT is substantial qualitatively as the attachments provided key evidence which trial counsel referred to in presentencing argument, and specifically urged “that video will tell you, Your Honor, much more about the accused than anything I can say here today.” R. at 95-96. Trial counsel’s argument underscores the importance of the evidence located in the attachments to the stipulation of fact and the gravity of the error of not including the

attachments in the ROT for appellate review. Moreover, this Court cannot meaningfully assess the propriety of trial counsel's reference to the attachments in argument without the attachments. Appellate defense counsel also cannot meaningfully complete her duties under Article 70, UCMJ, to assess whether the plea was improvident or the sentence inappropriately severe if she cannot review the basis for the convictions in the first place. 10 U.S.C. § 870.

Information elsewhere in the ROT also does not complete the record. In *Mardis*, this Court found even when fuller versions of two attachments to the stipulation of fact were present elsewhere in the ROT, the omission of the attachments to the stipulation of fact was substantial error. Unpub. op. at \*8-9. Like *Mardis*, the attachments here provided key evidence, were referred to in the stipulation of fact and trial counsel's argument, and this Court cannot be sure that it is viewing the same photographs or video that the military judge viewed in attachments 4, 5, 6, and 7. This is because no video in the ROT is the same length as the attachment 4 video viewed by the military judge, and the page and image counts in the ROT do not match or equal what the military judge viewed in attachments 5, 6, and 7. Compare R. at 103-04 with ROT, Vol. 2, 1st Indorsement, DD Form 458, *Charge Sheet*, dated 7 April 2022, Attachment 2, Exhibits 2, 13; ROT, Vol. 2, Pretrial Confinement of Amn Tyrone Gammage, Attachment 1. Further attachment 1 to the stipulation of fact, like *Mardis*, must also be carved out of a 59-page document (ROT, Vol. 2, 1st Indorsement, DD Form 458, *Charge Sheet*, dated 7 April 2022, Attachment 2, Exhibit 13), and worse than *Mardis*, attachments 2, 3, and 8 appear nowhere in the record.

Additionally, at trial, the defense did not agree the information contained within the attachments is true. R. at 16. Therefore, any description of them found in the ROT cannot be adequately relied upon to remedy the absence of the attachments to the stipulation of fact. Only the attachments themselves are sufficient to allow Appellate counsel to accurately evaluate the ROT given the nature of the evidence. The impact from these omissions is denying

Amn Gammage a full and fair review by this Court under Article 66, UCMJ, and this Court cannot perform this function without knowing exactly what aggravating evidence the military judge considered. 10 U.S.C. § 866; *Cf. United States v. Tate*, 82 M.J. 291, 298 (C.A.A.F. 2022) (holding that the Army Court of Criminal Appeals could not perform its Article 66, UCMJ, function when the military judge relied upon unrecorded testimony).

Finally, the omission of the attachments from the record of trial is substantial quantitatively. The sentencing proceedings in this case were brief. The government introduced only three exhibits and the only exhibit that contained substantive evidence of the offenses was Pros. Ex. 1—the stipulation of fact. R. at 12-16, 79-80; Pros. Ex. 1-3.

The failure to provide all the attachments to the stipulation of fact in the ROT qualifies as a substantial omission which renders the ROT incomplete. This substantial omission creates a presumption of prejudice which is not remedied elsewhere in the ROT and warrants relief. Where a record was so substantially lacking, the CAAF disapproved a punitive discharge. *See Stoffer*, 53 M.J. at 27. This Court should take the opportunity to remedy this prejudicial omission from the record of trial by remanding this case for the record to be completed with the missing attachments in accord with R.C.M. 1112 (d)(2). Upon remand, if the record cannot be completed, this Court should disapprove and set aside the bad-conduct discharge. This would both offset the detrimental impact of these errors and send the appropriate message regarding the importance of accuracy and completeness when it comes to records of trial.

**WHEREFORE**, Ann Gammage respectfully requests this Honorable Court remand this case pursuant to R.C.M. 1112 and, if the record cannot be completed, disapprove the bad-conduct discharge.

Respectfully submitted,

[REDACTED]  
SAMANTHA P. GOLSETH, Capt, USAF  
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[REDACTED]

//SIGNED//  
JACOB P. FRANKSON<sup>3</sup>  
Legal Extern

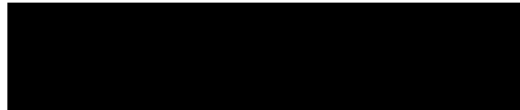
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<sup>3</sup> Mr. Frankson is a second-year law student at George Mason University, Antonin Scalia Law School. Mr. Frankson was at all times supervised by attorneys assigned to AF/JAJA during his participation in the writing of this brief, in accordance with Rule 14.1(c) of this Court's Rules of Practice and Procedure.

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 5 May 2023.

Respectfully submitted,



SAMANTHA P. GOLSETH, Capt, USAF  
Appellate Defense Counsel  
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