

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (FIRST)</b>
	)	
v.	)	Before Panel No. 2
	)	
Staff Sergeant (E-5)	)	No. ACM 40239
<b>CHARLES D. GARRON</b>	)	
United States Air Force	)	15 March 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)(2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **26 May 2022**. The record of trial was docketed with this Court on 26 January 2022. From docketing to the present date, 48 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,

[Redacted Signature]

pt, USAF

Appellate Defense Counsel  
Air Force Appellate Defense Division

[Redacted Address]



**GRANTED**  
**18 MAR 2022**

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 15 March 2022.

Respectfully submitted,



ALEXANDRA K. FLESZAR, 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
	)	
Staff Sergeant (E-5)	)	ACM 40239
CHARLES D. GARRON, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2
	)	

**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.



JOHN P. PATERA, Maj, USAF  
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 17 March 2009



JOHN P. PATERA, Maj, USAF  
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

UNITED STATES	)	<b>MOTION FOR ENLARGEMENT OF</b>
	)	<b>TIME (SECOND)</b>
	)	
v.	)	Before Panel No. 2
	)	
Staff Sergeant (E-5)	)	No. ACM 40239
<b>CHARLES D. GARRON</b>	)	
United States Air Force	)	13 May 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)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **25 June 2022**. The record of trial was docketed with this Court on 26 January 2022. From the date of docketing to the present date, 107 days have elapsed. On the date requested, 150 days will have elapsed.

On 8 September 2021, consistent with his pleas, Appellant was convicted at a general court-martial at Francis E. Warren Air Force Base, Wyoming, of one charge and one specification of sexual abuse of a child in violation of Article 120b, Uniform Code of Military Justice (UCMJ). Record of Trial (ROT), Vol. 1, Entry of Judgment (EOJ) in the Case of *United States v. Staff Sergeant Charles D. Garron*. The military judge sentenced Appellant to a reprimand, to be reduced to the grade of E-1, 12 months confinement, and a dishonorable discharge. *Id.* The Convening Authority denied Appellant’s request for deferment of maximum forfeitures of pay and reduction. *Id.*

The record of trial consists of six prosecution exhibits, 13 defense exhibits, and three exhibits, and one court exhibit; the transcript is 69 pages. Appellant is currently



**GRANTED**  
**17 MAY 2022**

confined. Through no fault of Appellant's, undersigned counsel has been working on other assigned matters and has not yet started her review of Appellant's case. Accordingly, an 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,

[Redacted Signature]

pt, USAF

Appellate Defense Counsel  
Air Force Appellate Defense Division

[Redacted Address]

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 13 May 2022.

Respectfully submitted,



ALEXANDRA K. FLESZAR, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



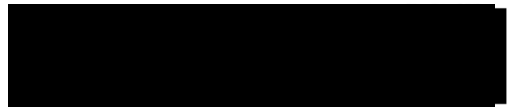
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Staff Sergeant (E-5)	)	ACM 40239
CHARLES D. GARRON, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2
	)	

**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.



JOHN P. PATERA, Maj, USAF  
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 16 May 2022



JOHN P. PATERA, Maj, USAF  
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

UNITED STATES	)	<b>MOTION FOR ENLARGEMENT OF</b>
	)	<b>TIME (THIRD)</b>
	)	
v.	)	Before Panel No. 2
	)	
Staff Sergeant (E-5)	)	No. ACM 40239
<b>CHARLES D. GARRON</b>	)	
United States Air Force	)	13 June 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)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **25 July 2022**. The record of trial was docketed with this Court on 26 January 2022. From the date of docketing to the present date, 138 days have elapsed. On the date requested, 180 days will have elapsed.

On 8 September 2021, consistent with his pleas, Appellant was convicted at a general court-martial at Francis E. Warren Air Force Base, Wyoming, of one charge and one specification of sexual abuse of a child in violation of Article 120b, Uniform Code of Military Justice (UCMJ). Record of Trial (ROT), Vol. 1, Entry of Judgment (EOJ) in the Case of *United States v. Staff Sergeant Charles D. Garron*. The military judge sentenced Appellant to a reprimand, to be reduced to the grade of E-1, 12 months confinement, and a dishonorable discharge. *Id.* The Convening Authority denied Appellant’s request for deferment of mandatory forfeitures of pay *on. Id.*

Record of trial consists of six prosecution exhibits, 13 defense exhibits, and three appellant exhibits, and one court exhibit; the transcript is 69 pages. Appellant is currently



**GRANTED**

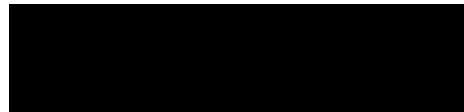
**16 JUN 2022**

confined, aware of his speedy appellate rights, and consents to this request for enlargement of time. Through no fault of Appellant's, undersigned counsel has been working on other assigned matters.

Undersigned counsel has begun review of Appellant's case, but has not had the opportunity fully review the record and discuss options with Appellant. Accordingly, an 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,



ALEXANDRA K. FLESZAR, 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 were sent via email to the Court and served on the Appellate Government Division on 13 June 2022.

Respectfully submitted,

[REDACTED]

ALEXANDRA K. FLESZAR, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division

[REDACTED]

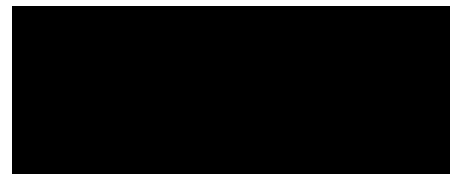
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Staff Sergeant (E-5)	)	ACM 40239
CHARLES D. GARRON, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2
	)	

**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.

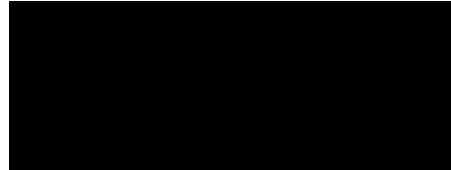


THOMAS J. ALFORD, Lt Col, USAFR  
Appellate Government Counsel, Government  
Trial and Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



**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 15 June 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

UNITED STATES	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (FOURTH)</b>
	)	
v.	)	Before Panel No. 2
	)	
Staff Sergeant (E-5)	)	No. ACM 40239
<b>CHARLES D. GARRON</b>	)	
United States Air Force	)	18 July 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)(3) and (4) 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 **24 August 2022**. The record of trial was docketed with this Court on 26 January 2022. From the date of docketing to the present date, 173 days have elapsed. On the date requested, 210 days will have elapsed.

On 8 September 2021, consistent with his pleas, Appellant was convicted at a general court-martial at Francis E. Warren Air Force Base, Wyoming, of one charge and one specification of sexual abuse of a child in violation of Article 120b, Uniform Code of Military Justice (UCMJ). Record of Trial (ROT), Vol. 1, Entry of Judgment (EOJ) in the Case of *United States v. Staff Sergeant Charles D. Garron*. The military judge sentenced Appellant to a reprimand, to be reduced to the grade of E-1, 12 months confinement, and a dishonorable discharge. *Id.* The Convening Authority denied Appellant’s request for deferment of mandatory forfeitures of pay and reduction. *Id.*

Counsel is currently assigned 16 cases; nine of which are pending initial AOE’s before this  
The record of trial consists of six prosecution exhibits, 13 defense exhibits, and three



**GRANTED**  
**19 JULY 2022**

appellate exhibits, and one court exhibit; the transcript is 69 pages. Appellant is not currently confined, aware of his speedy appellate rights, and consents to this request for enlargement of time.

Through no fault of Appellant's, undersigned counsel has been working on other assigned matters. Undersigned counsel has begun review of Appellant's case, but has not had the opportunity fully review the record and discuss options with Appellant. Five cases have priority over Appellant's:

1. *United States v. Rodriguez*, ACM No. 40218 – Counsel anticipates filing the drafted Reply to the Government's Answer with this Court on 20 July 2022.

2. *United States v. Todd*, ACM No. S32701 – Counsel anticipates drafting the Reply to the Government's Answer in this case between 29 July and 5 August 2022, for submission before this Court.

3. *United States v. Injerd*, ACM No. 40111 – Counsel anticipates assisting in drafting the Reply to the Government's Answer between 4 and 11 August 2022 for submission before this Court.

4. *United States v. Lopez*, ACM No. 40161 – The record of trial consists of 35 prosecution exhibits; 39 defense exhibits; three court exhibits; and 79 appellate exhibits; the transcript is 1291 pages. Counsel has not yet begun review of this Appellant's case.

5. *United States v. Bousman*, ACM No. 40174 – The record of trial consists of 13 prosecution exhibits, six defense exhibits, and 37 appellate exhibits; the transcript is 566 pages. Counsel has not yet begun review of this Appellant's case.

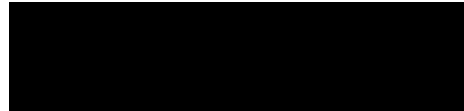
Additionally, undersigned counsel anticipates losing approximately one day of the intervening time training incoming counsel, as well as four days of pre-approved leave.



Accordingly, an 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,



ALEXANDRA K. FLESZAR, 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 were sent via email to the Court and served on the Appellate Government Division on 18 July 2022.

Respectfully submitted,



ALEXANDRA K. FLESZAR, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



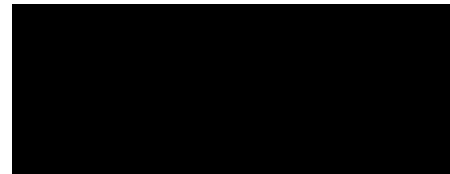
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Staff Sergeant (E-5)	)	ACM 40239
CHARLES D. GARRON, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2
	)	

**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 19 July 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

UNITED STATES	)	<b>MOTION FOR ENLARGEMENT OF</b>
	)	<b>TIME (FIFTH)</b>
	)	
v.	)	Before Panel No. 2
	)	
Staff Sergeant (E-5)	)	No. ACM 40239
<b>CHARLES D. GARRON</b>	)	
United States Air Force	)	17 August 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)(3) and (6) 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 **23 September 2022**. The record of trial was docketed with this Court on 26 January 2022. From the date of docketing to the present date, 203 days have elapsed. Undersigned counsel respectfully requests to withdraw Appellant’s previously filed Motion for Enlargement of Time (Fifth), dated 17 August 2022, as the prior motion erroneously stated that 202 days had elapsed from the date of docketing to the present date. On the date requested, 240 days will have elapsed.

On 8 September 2021, consistent with his pleas, Appellant was convicted at a general court-martial at Francis E. Warren Air Force Base, Wyoming, of one charge and one specification of sexual abuse of a child in violation of Article 120b, Uniform Code of Military Justice (UCMJ). Record of Trial (ROT), Vol. 1, Entry of Judgment (EOJ) in the Case of *United States v. Staff Sergeant Charles D. Garron*. The military judge sentenced Appellant to a reprimand, to be

grade of E-1, 12 months confinement, and a dishonorable discharge. *Id.* The authority denied Appellant’s request for deferment of mandatory forfeitures of pay



and reduction. *Id.*

**GRANTED**

**24 AUG 2022**

Counsel is currently assigned 14 cases; eight of which are pending initial AOE's before this Court. The record of trial consists of six prosecution exhibits, 13 defense exhibits, three appellate exhibits, and one court exhibit; the transcript is 69 pages. Appellant is not currently confined, is aware of his speedy appellate rights, and consents to this request for enlargement of time.

Through no fault of Appellant's, undersigned counsel has been working on other assigned matters. Undersigned counsel has begun review of Appellant's case, but has not had the opportunity fully review the record and discuss options with Appellant. One case currently has priority over Appellant's for submission of an initial AOE before this Court, *United States v. Bousman*, ACM No. 40174. The record of trial consists of 13 prosecution exhibits, six defense exhibits, and 37 appellate exhibits; the transcript is 566 pages. Counsel has completed review of approximately half of this record of trial. Prior to the requested date of 23 September 2022, undersigned counsel also anticipates drafting and filing Replies to the Government's Answers in *United States v. Injerd*, ACM No. 40111 and *United States v. Tarnowski*, ACM No. 40110, before this Court.

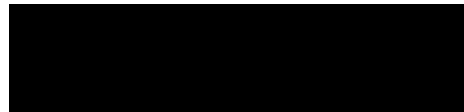
Since this Court's grant of Appellant's last requested enlargement of time, undersigned counsel also conducted partial review of the record and case file in *United States v. Lopez*, ACM No. 40161, examining sealed materials over the course of approximately two days, and unsealed materials for over a half-day. Undersigned counsel dedicated several days of the intervening time between this Court's Order and filing of the instant motion to researching, drafting, and submitting two motions related to *United States v. Lopez*, filed on 3 and 4 August 2022. Undersigned counsel also drafted and filed a Reply Brief in *United States v. Todd*, ACM No. S32701, filed with this Court on 5 August 2022. Additionally, undersigned counsel dedicated approximately two days to training new Appellate Defense Division counsel. Undersigned counsel also lost two days of time

to pre-approved “use or lose” leave on 28-29 July 2022, and lost approximately two days of review time due to illness.

Absent unforeseen circumstances, undersigned counsel anticipates this to be the final request for enlargement of time, and being able to submit Appellant’s AOE on or before the requested date of 23 September 2022. Accordingly, an 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,



ALEXANDRA K. FLESZAR, 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 were sent via email to the Court and served on the Appellate Government Division on 17 August 2022.

Respectfully submitted,



ALEXANDRA K. FLESZAR, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division





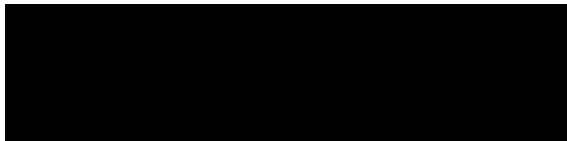
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Staff Sergeant (E-5)	)	ACM 40239
CHARLES D. GARRON, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2
	)	

**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.

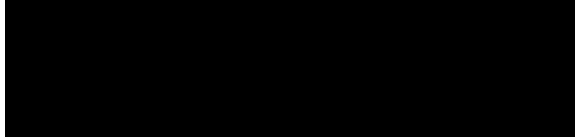


MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



**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 17 August 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>	)	<b>MOTION TO EXAMINE</b>
	)	<b>SEALED MATERIALS</b>
v.	)	
	)	Before Panel No. 2
	)	
Staff Sargent (E-5)	)	No. ACM 40239
<b>CHARLES D. GARRON</b>	)	
United States Air Force	)	9 September 2022
<i>Appellant</i>	)	

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

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and 23.3(f)(1) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel hereby moves to examine the sealed portions of Preliminary Hearing Officer’s (PHO) Report and Preliminary Hearing Exhibits (PHO Exhibits) 3 and 4.<sup>1</sup> On 8 September 2021, consistent with his pleas, Appellant was convicted at a general court-martial at Francis E. Warren Air Force Base, Wyoming, of one charge and one specification of sexual abuse of a child in violation of Article 120b, Uniform Code of Military Justice (UCMJ). R. at Vol. 1, Entry of Judgment (EOJ) in the Case of *United States v. Staff Sergeant Charles D. Garron*. The military judge sentenced Appellant to a reprimand, to be reduced to the grade of E-1, 12 months’ confinement, and a dishonorable discharge. *Id.*

The PHO Report indicates sub-paragraphs k.(7) and m.(10) are sealed.<sup>2</sup> PHO Exhibit 3 is the Air Force Office of Special Investigations (AFOSI) Report of Investigation (ROI) which

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<sup>1</sup> PHO Exhibit 5, also sealed, is a recorded phone call between Appellant and a case witness. The record supports that this exhibit is contained in its entirety as Prosecution Exhibit (PE) 4. *Compare* Record (R.) at Vol. 2, Continuation of DD Form 457, at \*4 (noting the recording’s length as “a little more than six and a half minutes” *with* PE 4 (a recording six minutes and forty-two seconds in length). As PE 4 appears to be a complete replication based on the record, undersigned counsel is not requesting to examine PHO Exhibit 5 at this time.

<sup>2</sup> Though the record appears to include a version of both sub-paragraphs k.(7) and m.(10), undersigned counsel requests to review the sealed PHO Report for the reasons detailed below.

includes the following sealed materials: Exhibit 3 to the ROI (medical records), and portions of Section 2, Investigative Activities, paragraphs 2-1 through 2-40. R. at Vol. 2, DD Form 457, at \*2; PHO Exhibit 6.<sup>3</sup> PHO Exhibit 4 is a sealed recording of the named child witness' (V.G.) Child Forensic Interview (CFI). The PHO Report and Exhibits were entered as evidence in support of the charged offense at the Article 32, Uniform Code of Military Justice (UCMJ), preliminary hearing in the case.

These materials were reviewed by both trial and defense counsel and sealed by the PHO. R. at Vol. 2, DD Form 457 at \*1-2 (item 13a noting that the accused, who was represented by counsel throughout the hearing per item 11a, “was permitted to examine” each of the statements, documents, or matters listed in the continuation of item 13a); R. at Vol. 2, Continuation of DD Form 457 at \*1 (denoting each of the considered and sealed exhibits, and that each was offered by government counsel); *see also* R.C.M. 405(h)(1)(B) (requiring parties to provide “notice of any other evidence that the party intends to offer at the preliminary hearing”); R. at Vol. 2, Acknowledgements of Receipt (indicating that defense counsel received a copy of the Article 32, Preliminary Hearing Report). The PHO did not review any material *in camera*, nor did the military judge review any material *in camera* or order any material at trial sealed.<sup>4</sup> *See generally* R. at Vol. 2, DD Form 457 and Continuation; R. at 1-69.

In the PHO Report at sub-paragraph i.(2), the PHO discussed that government counsel introduced evidence which at one point could have been subject to Mil. R. Evid. 513. R. at Vol. 2, Continuation of DD Form 457, at \*2. Neither government nor defense counsel objected to the admission of these records based on Mil. R. Evid. 513, and the evidence was thus admitted at the

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<sup>3</sup> PHO Exhibit 6 is a copy of the AFOSI ROI (PHO Exhibit 3) with sealed materials and PII redacted. *See* R. at Vol. 2, Continuation to DD Form 457, at \*1.

<sup>4</sup> Counsel has reviewed the entirety of the record of trial, including the transcript and all volumes.

preliminary hearing. The PHO determined the parties were “in agreement that any privilege had been waived because the matters were disclosed to third parties. As such, no [Mil. R. Evid.] 513 analysis was conducted or ruled upon. Such material [w]as, however, [] sealed based on considerations of V.G.’s privacy.”<sup>5</sup> *Id.* This was the only reason the PHO identified for sealing materials, without providing an individual ruling on each of the sealed materials or portions of the evidence or report, or an independent order to seal materials. *See generally* R. at Vol. 2, DD Form 457 and Continuation; *see also* R.C.M. 405(j)(8) and Discussion (noting the PHO should include language in the sealing order identifying the purpose for which the exhibit or proceeding is being sealed”).

In accordance with R.C.M. 1113(b)(3)(B)(i), which requires a colorable showing that examination of these materials is reasonably necessary to appellate counsel’s responsibilities, undersigned counsel asserts that review of the sealed portions of the PHO Report, and PHO Exhibits 3 and 4, is necessary to conduct a complete review of the record of trial and be in a position to advocate competently on behalf of Appellant. PHO Exhibit 3 is an unredacted copy of the ROI, including information related to the conduct of the investigation and V.G.’s medical records related to her report of sexual abuse to doctors. DD Form 457 and Continuation; PHO Exhibit 6<sup>6</sup> at \*24-76. PHO Exhibit 4 contains the full CFI, including V.G.’s descriptions of the alleged conduct. DD Form 457 and Continuation.

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<sup>5</sup> Of note, V.G. was represented by Special Victim’s Counsel, who “was present throughout the hearing of evidence” and did not object to the government’s presentation of evidence. *Id.* at \*1.

<sup>6</sup> PHO Exhibit 6, pages 25-75 make up the ROI’s sealed Exhibit 3 and are entirely redacted. Page 76 of this exhibit is a DD Form 2870, Authorization for Disclosure of Medical or Dental Information signed by V.G.’s mother, authorizing disclosure of V.G.’s inpatient treatment records from Cheyenne Regional Medical Center (CRMC), specifically “any notes, records, or documentation of patient disclosure of being sexually abused.”

In order to provide competent representation, undersigned counsel must review the entire record of trial, including these sealed materials, to, *inter alia*, adequately evaluate the PHO's determination of probable cause, charging recommendations, and the evidence available to the litigants prior to entering into the plea agreement. Though the PHO Report in the record appears to contain a version of sub-paragraphs k.(7) and m.(10), to fully evaluate the PHO's conclusions and determinations, undersigned counsel must ensure the information contained in the sealed version of the paragraphs is the same as that appearing in the PHO Report in the unsealed portions of the record. Additionally, while certain portions of information gathered during the AFOSI investigation (PHO Exhibit 3) and the CFI (PHO Exhibit 4) formed the basis of the stipulation of fact, neither were entered at trial in full. *See* PE 1, \*1-3; R. at Vol. 2, Continuation of DD Form 457, at \*4, 24-76.

The sealed materials bear directly on several potential sentencing issues identified on appeal, further necessitating review. At trial, J.M., the victim's mother, testified that 12-year-old<sup>7</sup> V.G. had attempted suicide and self-harm, each on several occasions, and that she gradually became "a shell of" herself, losing interest in hobbies, and neglecting to bathe or feed herself. R. at 40-41. J.M. also testified to "the impact the last couple of years" had on V.G., stating that V.G. "has manic highs and lows in regards to their friendships" one day appearing "happy and confident and want[ing] to spend time with their friends; and then the next day, [] ignore[ing] their friends to the point that [V.G.] has lost friends due to the irregularity of contact." R. at 44. Government counsel apparently elicited this evidence at sentencing as victim impact and evidence in aggravation. *See* R. at 40-41, 44.

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<sup>7</sup> V.G. was 12 years old at the time of trial; and 11 years old at the time of her report. R. at 38, *see* PE 1.

One of V.G.'s suicide attempts resulted in V.G.'s hospitalization at the Denver Springs Treatment Center (DSTC), after which she received in-patient treatment at the CRMC. PE 1; R. at Vol. 2, Continuation of DD Form 457 at \*5, 8. While V.G.'s report of Appellant's conduct initially arose during V.G.'s treatment, the record reveals that this treatment took place more than a year following Appellant's alleged conduct, as V.G. was entering pre-teen age. See PE 1; R. at Vol. 1, Charge Sheet; R. at Vol. 2, Continuation of DD Form 457 at \*5, 8. The record also makes clear that prior to 2015, V.G. lived with her biological father, where V.G. was subjected to extreme and apparently prolonged child abuse and neglect. PHO Exhibit 6, para. 2-32 (J.M. describing that V.G. lived with her biological father (M.G.) "early in [her] life" but returned to live with J.M. at age 7 "covered in bruises, smell[ing] of cat urine, and [] rail thin", and that V.G. was beaten, forced to sleep on hardwood floors, and not educated or potty trained while living M.G.). Additionally, J.M. testified during sentencing that V.G.'s preferred pronouns are "they and them", suggesting that as a very young child, V.G. identified with a more progressive and potentially alternative lifestyle while growing up in Wyoming. See R. at 38. Beyond that the initial report of Appellant's alleged conduct arose during V.G.'s treatment, these facts raise the very reasonable inference that there are alternative reasons for V.G.'s suicide attempts and self-harm, calling into question the direct nexus between Appellant's conduct and the aggravating and victim impact evidence, and thus necessitating examination of the sealed materials.

"Not every consequence of an accused's actions is admissible in sentencing, as an accused may not be held responsible for 'a never-ending chain of causes and effects[;]'" nor for impact unrelated to the offense. *United States v. Dunlap*, 2020 CCA LEXIS 148, \*10 (A.F. Ct. Crim. App. 2020) (unpub. op.) (quoting *United States v. Rust*, 41 M.J. 472, 478 (C.A.A.F. 1995) (citations omitted)); see also *United States v. Hardison*, 64 M.J. 279 (C.A.A.F. 2007). Proper

evaluation of whether aggravating evidence is directly related to the offense involves assessing “whether the evidence is both direct and ‘closely related in time, type, and/or often outcome, to the convicted crime.’” *Dunlap*, 2020 CCA LEXIS at \*11 (quoting *Hardison*, 64 M.J. at 281-82). Moreover, “[e]ven when evidence qualifies for admission under R.C.M. 1001(b)(4), its probative value must still be weighed against its prejudicial impact under Mil. R. Evid. 403.” *Id.* (citing *Hardison*, 64 M.J. at 281).

Ultimately, undersigned counsel must review the sealed PHO Report and PHO Exhibits 3 and 4 to fully evaluate the military judge’s admission of aggravating and victim impact evidence at sentencing, as well as defense counsel’s decisions during litigation of the plea agreement, stipulation of fact, and sentencing. The PHO indicated that materials were sealed due to privacy concerns for V.G. in the paragraph of the Report dedicated to a discussion of Mil. R. Evid. 513 evidence and victim issues, suggesting that the sealed material concerns V.G.’s in-patient treatment and report of the allegation. R. at Vol. 2, Continuation of DD Form 457 at \*2. To adequately evaluate 1) the alleged nexus of Appellant’s conduct to the sentencing evidence; 2) the PHO’s determinations, including that he “consider[ed] V.G. to be credible” (*id.* at \*6); and 3) the credibility of V.G.’s report and multiple statements, undersigned counsel must be able to review the PHO Report and PHO Exhibits 3 and 4 in their entirety.

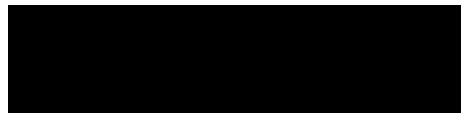
Finally, a review of the entire record of trial is necessary because this Court is empowered by Article 66, Uniform Code of Military Justice (UCMJ), to grant relief based on a review and analysis of “the entire record.” To determine whether the record of trial yields grounds for this Court to grant relief under Article 66, UCMJ, appellate defense counsel must, therefore, examine “the entire record.” The sealed materials referenced above must be reviewed to ensure undersigned counsel provides “competent appellate representation.” *United States v. May*,



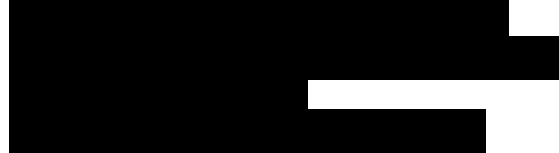
47 M.J. 478, 481, (C.A.A.F. 1998). Accordingly, examination of these exhibits is reasonably necessary since counsel cannot fulfill her duty of representation under Article 70, UCMJ, without first reviewing the complete record of trial.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the motion.

Respectfully submitted,



ALEXANDRA K. FLESZAR, 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 were sent via email to the Court and served on the Appellate Government Division on 9 September 2022.

Respectfully submitted,



ALEXANDRA K. FLESZAR, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



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

UNITED STATES,	)	UNITED STATES' RESPONSE
<i>Appellee,</i>	)	TO APPELLANT'S MOTION
	)	TO EXAMINE SEALED
v.	)	MATERIALS
	)	
Staff Sergeant (E-5)	)	No. ACM 40239
CHARLES D. GARRON, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2
	)	

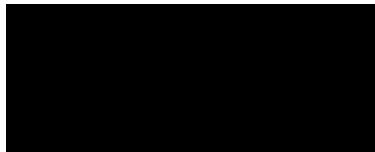
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States responds to Appellant's Motion to Examine Sealed Materials, dated 9 September 2022.

The United States does not object to Appellant's counsel examining any portions of the Article 32, UCMJ, Preliminary Hearing Officer's (PHO) Report and Preliminary Hearing Exhibits that were released to the parties if the United States can also review the sealed portions of the Article 32, UCMJ, record as necessary to respond to any assignment of error that references the sealed materials. The United States thus respectfully requests that any order issued by this Court also allows appellate counsel for the United States to view the sealed materials.

The United States would not consent to Appellant's counsel viewing any exhibits that were reviewed in camera but not released to the parties unless this Court has determined there is good cause for Appellant's counsel to do so under R.C.M. 1113.

WHEREFORE, the United States respectfully responds to Appellant's motion.



THOMAS J. ALFORD, Lt Col, USAFR  
Appellate Government Counsel  
Government Trial and Appellate Counsel 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 13 September 2022.



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

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

UNITED STATES	)	No. ACM 40239
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Charles D. GARRON	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 9 September 2022, Appellant’s counsel submitted a Motion to Examine Sealed Materials, requesting to examine Preliminary Hearing Officer Exhibits 3 and 4 and the sealed portions of the Preliminary Hearing Officer Report.\*

Appellant’s motion states the exhibits and report were reviewed by trial and defense counsel and sealed by the Preliminary Hearing Officer. Appellant’s counsel avers that viewing the exhibits “is necessary to conduct a complete review of the record of trial and be in a position to advocate competently on behalf of Appellant.”

The Government responded to the motion on 13 September 2022. It does not object to Appellant’s counsel reviewing exhibits that were released to both parties at trial—as long as the Government “can also review the sealed portions of the . . . record as necessary to respond to any assignment of error that references the sealed materials.”

Appellate counsel may examine sealed materials released to counsel at trial “upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities.” Rule for Courts-Martial 1113(b)(3)(B)(i), *Manual for Courts-Martial, United States* (2019 ed.). The court finds Appellant’s counsel has made a colorable showing that review of the exhibits is necessary to fulfill counsel’s duties of representation to Appellant.

The court also notes that in the record of trial filed with the court, Preliminary Hearing Officer Exhibits 3 and 4 and sealed portions of the Preliminary Hearing Officer Report are not properly sealed in an envelope with appropriate markings.

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\* Paragraphs k(7) and m(10) the Preliminary Hearing Officer Report were ordered sealed by the Preliminary Hearing Officer.

Accordingly, it is by the court on this 21st day of September, 2022,

**ORDERED:**

Appellant's Motion to Examine Sealed Materials, dated 9 September 2022, is **GRANTED**.

Appellate defense counsel and appellate government counsel may view **Preliminary Hearing Officer Exhibits 3 and 4 and sealed portions of the Preliminary Hearing Officer report**, subject to the following conditions:

To view the sealed materials, counsel will coordinate with the court.

No counsel granted access to the materials may photocopy, photograph, reproduce, disclose, or make available the content to any other individual without the court's prior written authorization.

**It is further ordered:**

The Government shall take all steps necessary to ensure that copies of Preliminary Hearing Officer Exhibits 3 and 4 and the sealed portions of the Preliminary Hearing Officer Report included in the Appellant's record of trial in the possession of any Government office, Appellant, counsel for Appellant (trial and appellate), or any other known copy of Preliminary Hearing Officer Exhibits 3 and 4 and the sealed portions of the Preliminary Hearing Officer Report, be retrieved and destroyed.

However, if appellate defense counsel and appellate government counsel possess copies of Preliminary Hearing Officer Exhibits 3 and 4 and the sealed portions of the Preliminary Hearing Officer Report, counsel are authorized to retain copies of Preliminary Hearing Officer Exhibits 3 and 4 and the sealed portions of the Preliminary Hearing Officer Report in their possession until completion of our Article 66, UCMJ, 10 U.S.C. § 866, review of Appellant's case, to include the period for reconsideration in accordance with JT. CT. CRIM. APP. R. 31. After this period, appellate defense and appellate government counsel shall destroy any retained copies of Preliminary Hearing Officer Exhibits 3 and 4 and the sealed portions of the Preliminary Hearing Officer Report, in their possession.

The Clerk of the Court will ensure Preliminary Hearing Officer Exhibits 3 and 4 and the sealed portions of the Preliminary Hearing Officer Report are

properly sealed in the court's record.



FOR THE COURT



ANTHONY F. ROCK, Maj, USAF  
Deputy Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	<b>BRIEF ON BEHALF OF</b>
<i>Appellee,</i>	)	<b>APPELLANT</b>
	)	
v.	)	Before Panel No. 2
	)	
Staff Sergeant (E-5)	)	No. ACM 40239
<b>CHARLES D. GARRON,</b>	)	
United States Air Force	)	23 September 2022
<i>Appellant</i>	)	

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

ASSIGNMENT OF ERROR

IS THE RECORD OF TRIAL SUBSTANTIALLY INCOMPLETE  
IF IT OMITTS THE RECORDING OF THE PRELIMINARY  
HEARING AND A PRELIMINARY HEARING EXHIBIT  
CONTAINING THE COMPLAINING WITNESS' INTERVIEW?<sup>1</sup>

STATEMENT OF THE CASE

On 8 September 2021, at F.E. Warren Air Force Base (AFB), Wyoming, a military judge sitting as a general-court martial convicted Appellant, SSgt Charles D. Garron (SSgt Garron), consistent with his pleas, of one charge and one specification of sexual abuse of a child under 12 years of age in violation of Article 120b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920b (2019).<sup>2</sup> Record (R.) at 10, 32. The military judge sentenced SSgt Garron to confinement for 12 months, a dishonorable discharge, forfeiture of all pay and allowances, and reduction to the grade of E-1. R. at 69. The convening authority took no action on

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<sup>1</sup> SSgt Garron raises this issue personally pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). See Appendix.

<sup>2</sup> References to the UCMJ, Military Rules of Evidence, and Rules for Courts-Martial (R.C.M.) are to the *Manual for Courts-Martial*, United States (2019 ed.).



the findings or sentence and denied SSgt Garron's requested deferments. Record of Trial (ROT) Vol. 1, Convening Authority Decision on Action, dated 4 October 2021; Clemency Request, dated 18 September 2021.

### **STATEMENT OF FACTS**

SSgt Garron was the oldest of five siblings; the family moved constantly between Missouri, Kentucky, and Arkansas due to his mother's three remarriages after his parent's divorce when he was 11. Defense Exhibit (DE) J, M. As a child, "[h]e practically raised his biological brothers and sisters all by himself" because "his mother was not very involved in her children's life or care." DE J. SSgt Garron was first exposed to violence and abuse within the home when he was 12, where he repeatedly witnessed his mother's boyfriend hit her and physically and psychologically abuse his younger siblings through various forms of punishment. DE M. He "often had to defend his siblings in abusive situations," as "[h]is mother took him away from his father for many years." DE J. As his stepmother put it, SSgt Garron and his siblings were "put through hell with the life their mother dragged them through" but they "turned out to be strong, sacrificing, loving adults who have given back to society and our country," in part "because [SSgt Garron] led them by example." DE J.

Despite receiving a scholarship to Arkansas State University, which he attended for two years, SSgt Garron abandoned those pursuits to join the Air Force due to family tradition. DE M. There has always been at least one member of his family serving in the military since the Revolutionary War. *Id.* Though he did not

enlist from high school because his friends were attending college, he eventually followed in his family's footsteps by joining the military, where his father, stepmother, grandfather, grandmother, and uncle had all served. *Id.*

After joining the military, SSgt Garron was first stationed at F.E. Warren AFB in August 2016. Prosecution Exhibit (PE) 1. While in basic training, SSgt Garron met Senior Airman (SrA) B.M. and they remained friends while attending the same technical school. *Id.*; R. at 47. They were then stationed together after graduation and SSgt Garron met SrA B.M.'s spouse, J.M., and 10-year-old stepdaughter, V.G., in October 2016. *Id.*; R. at 17; *see* PE 1. SSgt Garron regularly visited SrA B.M. and his family to socialize and became a close friend of the family. PE 1; R. at 38.

On two occasions while SSgt Garron was over at the family's home, V.G. sat on SSgt Garron's lap while they watched television, at which time he touched her vulva over her clothing. PE 1. The first occasion was on or about 1 March 2019, the second on or about 30 September 2019, and each encounter was largely the same. *Id.* SSgt Garron had imbibed approximately two beers prior to the first occasion, but was not intoxicated. *Id.* V.G. ended both encounters by getting up to use the bathroom and either sitting on the opposite side of the couch when she returned after the first occasion, or going upstairs to her room after the second. *Id.*

Over a year later in November 2020, then 12-year-old V.G. was admitted to the hospital. PE 1; R. at 40-41. While undergoing treatment, V.G. disclosed that SSgt Garron had touched her inappropriately approximately one year prior. PE 1.

V.G.'s parents were alerted on 17 November 2020, and the Air Force Office of Special Investigations (AFOSI) began an investigation. PE 1; R. at 40. On 20 November 2020, SrA B.M. texted and spoke with SSgt Garron by phone; the conversations were later admitted as evidence at trial. PE 3, 4.

After AFOSI concluded its investigation, the Article 32, UCMJ hearing took place on 16 April 2021. ROT Vol. 2, Continuation of DD Form 457, at \*9. The Preliminary Hearing Officer's (PHO) report noted that the Article 32 hearing was recorded by the government. *Id.* at \*2. The recording of the Article 32, UCMJ, hearing is not included with the Article 32, UCMJ, Preliminary Hearing Report, nor is it contained elsewhere in the record. *See generally* ROT Vol. 1-2.

The PHO report indicates that PHO Exhibit 4 is a recording of V.G.'s child forensic interview (CFI). ROT Vol. 2, Continuation of DD Form 457, at \*1, 4. The PHO reviewed V.G.'s CFI as part of his evaluation of the charged offenses, noting "V.G. was interviewed by a Child Forensic Interviewer on 2 December 2020" and describing in part that "V.G. provided the interviewer a detailed explanation of the book *Divergent*, demonstrating a clear ability to accurately recall past experiences . . . ." *Id.* at \*4. He further recounted V.G.'s allegations from the CFI. *Id.* at \*4-5.

Based on V.G.'s CFI, the PHO determined V.G. to be credible, and concluded her cognitive development and maturity were appropriate for a 12-year-old (her age at the time of the interview). *Id.* at \*4, 6. The PHO reasoned that "[i]f V.G.'s allegations are found to be credible, then there is probable cause to believe that the Accused committed the charged offense." *Id.* at \*6. The PHO ultimately concluded

he “consider[ed] V.G. to be credible.” *Id.* Trial and defense counsel were both in possession of PHO Exhibit 4 prior to referral and SSgt Garron’s signing either the plea agreement or the stipulation of fact. *See* ROT Vol. 2, DD Form 457 at \*1-2, Continuation of DD Form 457 at \*1.

On 21 September 2022, this Court noted that the sealed portions of the record of trial filed with the Court, including PHO Exhibits 3 and 4 and PHO report subparagraphs (k)(7) and (m)(10), had not been properly sealed. Order, No. ACM 40239, dtd 21 Sep 22. The PHO Exhibit 4 included in this Court’s record of trial contains [REDACTED]

[REDACTED]. PHO Exhibit 4. This evidence, collected during the AFOSI investigation, was not submitted by either trial or defense counsel at the Article 32 hearing. ROT Vol. 2, Continuation of DD Form 457 at \*1; PHO Exhibit 6 at \*12. None of the information the PHO relayed in his report as being part of PHO Exhibit 4 is contained on the disc included in the record as PHO Exhibit 4. *Cf.* PHO Exhibit 4 *with* ROT Vol. 2, Continuation of DD Form 457 at \*4-5. The intended and actual PHO Exhibit 4, a video of the CFI conducted with V.G., is not contained in the record. *See generally* ROT Vol. 1, 2.

At trial, in accordance with his pleas, the military judge found SSgt Garron guilty of one charge and one specification of sexual abuse of a child on divers occasions. R. at 10, 32. At sentencing, SSgt Garron provided character letters supporting that he was someone with “a great capacity to rehabilitate” and that he

“underst[ood] the gravity of what he has done” and “would have traded his own life to take it all back.” DE I-K. SSgt Garron began his written unsworn statement with, “I would like to apologize to the Air Force, the 90th Civil Engineer Squadron, the Court, V.G., and V.G.’s parents for this court-martial. I know I am here because I made bad decisions. There is no excuse for what I have done and I take full and sole responsibility for my actions.” DE M. He concluded, in part, by stating:

I know that nothing I have been through, or that I can see will make what I did okay. I feel awful, and I am not trying to minimize my actions. I am not making excuses, since I alone am solely responsible for my actions. It has been hard to come to grips with what I did. I fell into the darkest period of my life, but thankfully, my unit got me the help I needed. I realized I needed help to better understand myself, my past, and how my past affected me. I know I have just started working through a lot of issues, and now I will have to come to grips with what happened. I know that I cannot deal with these by myself and I will continue to get all the help I need to get better.

DE M. He took full responsibility for his actions, apologized to V.G., her family, and the Air Force, and recognized that there was no excuse for his conduct. *Id.*

### **ERRORS & ARGUMENT**

Undersigned appellate defense counsel attests she has, on behalf of SSgt Garron, carefully examined the record of trial in this case. SSgt Garron does not admit that the findings and sentence are correct in law and fact, and raises one issue on appeal pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). Appendix. The case is otherwise submitted to this Honorable Court on its merits.

Respectfully Submitted,



ALEXANDRA K. FLESZAR, 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 were sent via electronic mail to the Court and served on the Appellate Government Division on 23 September 2022.

Respectfully submitted,



ALEXANDRA K. FLESZAR, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



## APPENDIX

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

### ARGUMENT

#### **THE RECORD OF TRIAL IS SUBSTANTIALLY INCOMPLETE IF IT OMITTS THE RECORDING OF THE PRELIMINARY HEARING AND A PRELIMINARY HEARING EXHIBIT CONTAINING THE COMPLAINING WITNESS' INTERVIEW.**

##### **Standard of Review**

Whether the record of trial is incomplete is a question of law reviewed *de novo*. *United States v. Henry*, 53 M.J. 108, 110-11 (C.A.A.F. 2000) (citations omitted).

##### **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. Under R.C.M. 1112(f)(1)(A), if not used as exhibits, the preliminary hearing report must be attached before the certified record is forwarded for appellate review. R.C.M. 405(l)(2)(B) requires the preliminary hearing report include the recording of the preliminary hearing made in accordance with R.C.M. 405(j)(5).

A substantial omission renders a record of trial incomplete and raises a presumption of prejudice that the Government must rebut. *Henry*, 53 M.J at 111 (citations omitted). However, “[i]nsubstantial omissions from a record of trial do not raise a presumption of prejudice or affect that record’s characterization as a



complete one.” *Id.* (holding that four missing prosecution exhibits were insubstantial omissions when other exhibits of similar sexually explicit material were included).

This Court approaches the question of what constitutes a substantial omission on a case-by-case basis. *United States v. Abrams*, 50 M.J. 361, 363 (C.A.A.F. 1999) (citation omitted). In *United States v. Stoffer*, 53 M.J. 26, 27 (C.A.A.F. 2000), the Court of Appeals for the Armed Forces (CAAF) held the absence of three defense exhibits that were not contained or reproduced elsewhere in the record was a substantial omission and therefore disapproved the adjudged bad-conduct discharge. Alternatively, an incomplete record may be returned to the military judge for correction. R.C.M. 1112(d)(2).

### **Analysis**

In this case, the failure to provide both the preliminary hearing recording and PHO Exhibit 4 as admitted at trial, containing V.G.’s CFI, qualifies as a substantial omission from the record of trial, rendering it incomplete and warranting relief. *See* Article 54(c); *Stoffer*, 53 M.J. at 27.

The plain language of R.C.M. 1112(f) requires the inclusion of the preliminary hearing report as an attachment to the record prior to certification and forwarding for appellate review. The preliminary hearing report is incomplete without the recording of the hearing in accordance with R.C.M. 405(l)(2)(B). The President would not have implemented such requirements absent the necessity of these materials for legally sufficient appellate review.

While the missing preliminary hearing recording is a substantial omission in and of itself, the record further lacks the *actual evidence* admitted at the hearing in support of the PHOs determinations. PHO Exhibit 4, submitted and considered as V.G.'s CFI, is instead a wholly erroneous [REDACTED], and contains no information relied upon by the PHO for the preliminary hearing nor counsel in advising SSgt Garron on the plea agreement and stipulation of fact. *Cf.* PHO Exhibit 4 *with* ROT Vol. 2, Continuation of DD Form 457 at \*4-5. These errors raise the presumption of prejudice in this case, which the government cannot rebut or prove harmless. *See Stoffer*, 53 M.J. at 27.

Even if this Court were to find these omissions insubstantial, SSgt Garron was in fact prejudiced. In compounding error, these issues cripple adequate appellate evaluation of the case, as it is impossible to accurately assess: the sufficiency of the preliminary hearing and the PHO's ultimate determinations, V.G.'s credibility, and the effectiveness of counsel below both in advising SSgt Garron on the stipulations and plea agreement and in litigating the sentencing case. Not only is SSgt Garron unable to evaluate any arguments that may have been made at the hearing or whether any erroneous submissions infected the proceedings and PHO's determinations, he is also completely prevented from reviewing the *primary evidence supporting litigation*. Based on the CFI, the PHO found V.G. to be credible—which was the very fact upon which the PHO's determination of probable cause turned. ROT Vol. 2, Continuation of DD Form 457, at \*6. As it stands now, it is impossible to determine whether the PHO overlooked

information in the CFI, or trial defense counsel overlooked information or arguments which should have been made either at the hearing or in trial litigation. Ultimately, based on these omissions and their resultant impact, SSgt Garron is denied a full and fair review by this Court under Article 66, UCMJ.

Where a record was so substantially lacking that it rendered it impossible to determine what information it originally contained, the CAAF disapproved a punitive discharge. *See Stoffer*, 53 M.J. at 27. This Court should take the opportunity to do the same here: given the *significant* errors and omissions contained in this record, approving the remainder of SSgt Garron's sentence without a punitive discharge 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. In absence of this requested relief, this Court should remand the case to the military judge to correct the record, thereby enabling full and fair appellate review of SSgt Garron's complete and accurate record of trial. R.C.M. 1112(d)(2); Article 66, UCMJ.

**WHEREFORE**, SSgt Garron respectfully requests this Honorable Court to disapprove the punitive discharge. In the alternative, SSgt Garron requests this Honorable Court remand his case to the military judge to complete the record by including the preliminary hearing recording and originally submitted PHO Exhibit 4.

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

<b>UNITED STATES,</b>	)	<b>UNITED STATES' ANSWER TO</b>
<i>Appellee,</i>	)	<b>ASSIGNMENT OF ERROR</b>
	)	
v.	)	Before Panel No. 2
	)	
Staff Sergeant (E-5),	)	No. ACM 40239
<b>CHARLES D. GARRON, USAF,</b>	)	
<i>Appellant.</i>	)	21 October 2022

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

**ISSUE PRESENTED**

**IS THE RECORD OF TRIAL SUBSTANTIALLY  
INCOMPLETE IF IT OMITTS THE RECORDING OF THE  
PRELIMINARY HEARING AND A PRELIMINARY  
HEARING EXHIBIT CONTAINING THE COMPLAINING  
WITNESS' INTERVIEW?<sup>1</sup>**

**STATEMENT OF THE CASE**

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

**STATEMENT OF FACTS**

**A. The Preliminary Hearing**

On 30 March 2021, Lt Col BL preferred one charge and one specification of sexual abuse of a child under 12 years of age in violation of Article 120b, UCMJ. (*Charge Sheet*, ROT Vol.

1.) On 13 April 2021, the Special Court-Martial Convening Authority (SPCMCA) appointed Maj BS to serve as the Preliminary Hearing Officer (PHO) pursuant to Article 32, UCMJ.

(*Memorandum for Maj BS*, 13 April 2021, ROT Vol. 2.)

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<sup>1</sup> Appellant raises this issue pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

The Article 32, UCMJ preliminary hearing took place on 23 April 2021. (*Continuation Pages of PHO Report*, 5 May 2021, ROT Vol. 2 at 9.) A member of the F.E. Warren AFB legal office recorded the preliminary hearing. (Id. at 2.) Appellant was represented at the hearing by his Area Defense Counsel, Capt JW. (Id. at 1.) Neither the Defense nor the Government called witnesses during the preliminary hearing. (Id. at 1-2.) The Defense offered no exhibits for the PHO's consideration. (Id. at 1.)

The Government offered five exhibits during the preliminary hearing. (Id.) After the conclusion of the preliminary hearing, the Government submitted PHO Exhibits 6 and 7 "in order to appropriately redact PHO Exhibits 3 and 5 such that they could be included in some form in the report unsealed." (Id. at 9.) The Defense submitted no supplementary information under R.C.M. 405(k)(1)-(2). (Id.) In total, the PHO considered seven exhibits, all submitted by the Government. These exhibits were:

PHO Exhibit 1: Charge Sheet

PHO Exhibit 2: PHO Appointment Letter

PHO Exhibit 3: AFOSI Report of Investigation (PII Redacted)

PHO Exhibit 4: Recording of VG's Child Forensic Interview  
(2 Video Files)

PHO Exhibit 5: Recording of Phone Call between Appellant and  
SrA BM (1 Audio File)

PHO Exhibit 6: AFOSI Report of Investigation (PII and Sealed  
Material Redacted)

PHO Exhibit 7: Recording of Phone Call between Appellant and  
SrA BM (Sealed Material Redacted) (1 Audio  
File)

(Id. at 1.) The PHO ordered PHO Exhibits 3-5 sealed. (Id.)

In drafting his report, the PHO evaluated the credibility of VG, the victim. (Id. at 4, 6-7.) The PHO found VG to be credible. (Id. at 6.) The PHO based his conclusion in part on his

review of PHO Exhibit 4, the recording of VG’s child forensic interview (CFI). (Id. at 6.) The PHO summarized relevant portions of VG’s CFI in paragraph k.(6) of his report. (Id. at 4-5.) The PHO found VG, who was 12 years old at the time of her CFI, “generally exhibited the poise and maturity of an average child her age.” (Id.) The PHO also remarked on VG’s thoughtfulness, her “very particular . . . description of when the alleged instances of abuse occurred,” her “generally consistent” accounts of how Appellant sexually abused her, and VG’s lack of a motive to fabricate allegations against Appellant. (Id. at 6-7.)

The PHO noted “[t]here is no evidence before me which would suggest that V.G. is being intentionally untruthful about the uncharged offense.” (Id. at 7.) Furthermore, the PHO reasoned that VG’s accounts of Appellant’s crimes were “consistent with [Appellant’s] reaction to being confronted with having committed [them].” (Id.) Specifically, the PHO noted as “strong evidence of guilt” that Appellant contemplated suicide after VG’s stepfather, SrA BM, confronted Appellant with the accusations. (Id.) Finally, the PHO stated,

To the extent that V.G.’s account of the alleged offense is unreliable given her age and maturity, any shortfall with respect to probable cause and a recommendation to refer the case to trial by general court-martial is overcome based on [Appellant’s] reaction to the accusation by [SrA BM] that [Appellant] touched V.G. inappropriately, in the manner alleged.

(Id. at 8.)

Based on his review of the evidence presented at the preliminary hearing, the PHO found probable cause to believe Appellant committed the offense alleged in the Specification of the Charge and recommended the Charge and its Specification be referred to a general court-martial with some minor changes.<sup>2</sup> (Id. at 9.)

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<sup>2</sup> The PHO recommended the Specification, which alleged sexual abuse of a child on divers occasions, be split into two specifications—each specification alleging a separate instance of sexual abuse of a child. (*Continuation Pages of PHO Report*, 5 May 2021, ROT Vol. 2 at 9).

The PHO delivered his report on 5 May 2021. (Id.) Appellant received a copy of the report on 11 May 2021. (*Appellant's Acknowledgement of Receipt*, 11 May 2021, ROT Vol. 2.) Appellant did not submit R.C.M. 405(l)(5) objections to the PHO report. (*See generally* ROT Vol. 2.)

### **B. Appellant's Court-Martial**

On 10 May 2021, the SPCMCA recommended the General Court-Martial Convening Authority (GCMCA) refer the Charge and its Specification to a general court-martial. (*Forwarding of Court-Martial Charges*, 10 May 2021, ROT Vol. 2.) On 4 June 2021, the GCMCA referred the Charge and its Specification to a general court-martial. (*Charge Sheet*, ROT Vol. 1.)

On 10 August 2021, Appellant submitted an Offer for Plea Agreement. (App. Ex. II.) In relevant part, Appellant offered to plead guilty to the Charge and its Specification, enter into a reasonable stipulation of fact, waive all waivable motions, and elect trial by military judge alone, in exchange for a 12-month cap on any sentence to confinement. (Id. at 1-2.) The GCMCA approved and accepted the Offer for Plea Agreement on 19 August 2021. (Id. at 4.)

Appellant's court-martial took place on 8 September 2021. (R. at 1.) Consistent with his plea agreement, Appellant elected trial by military judge alone, pled guilty to the Charge and its Specification, and entered into a stipulation of fact. (R. at 9-13.) In the stipulation of fact, Appellant admitted that on or about 1 March 2019, and again on or about 30 September 2019, he touched VG's vulva over her clothes for approximately ten minutes to arouse his sexual desire. (Pros. Ex. 1 at 2-3.) Appellant admitted VG was 10 years old at the time of the offenses and VG did not invite or consent to the touching. (Id.) The military judge discussed the stipulation of fact with Appellant. (R. at 11-13.) Appellant agreed everything in the stipulation was true and

correct to the best of his knowledge and belief. (R. at 13.) The stipulation of fact was admitted into evidence without objection from the Defense. (Id.)

During his providence inquiry, Appellant admitted to sexually abusing VG on or about 1 March 2019 and again on or about 30 September 2019. (R. at 16.) During the discussion of his plea agreement, Appellant stated he freely and voluntarily agreed to the provision of his plea agreement in which he waived all waivable motions. (R. at 25.) In accordance with Appellant's pleas, the military judge found Appellant guilty of the Charge and its Specification. (R. at 32.) The military judge sentenced Appellant to confinement for 12 months, a dishonorable discharge, total forfeitures, reduction to the grade of E-1, and a reprimand. (R. at 69.)

### **C. The Record of Trial**

The record of trial contains the PHO Report, the continuation pages of the PHO Report,<sup>3</sup> PHO Exhibits 1-3, and PHO Exhibits 5-7.<sup>4</sup> (ROT Vol. 2.) The PHO Exhibit 4 contained in this Court's copy of the record of trial contains a CFI of VG's sister.<sup>5</sup> (PHO Ex. 4, ROT Vol. 2.) Neither the Defense nor the Government offered the CFI of VG's sister during the preliminary hearing, and the PHO did not consider the CFI of VG's sister in drafting his report. (*See Continuation Pages of PHO Report*, 5 May 2021, ROT Vol. 2.) The correct PHO Exhibit 4—the CFI of VG—is absent from the record of trial. The recording of the preliminary hearing is also absent from the record of trial.

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<sup>3</sup> The Government's copy of the record of trial contains portions of the PHO report's continuation pages that were ordered sealed by the PHO. (*Continuation Pages of PHO Report*, 5 May 2021, ROT Vol. 2 at 5, 8.) Pursuant to this Court's order, the Government will destroy these portions of the PHO report in the Government's possession once this Court completes its Article 66, UCMJ review of Appellant's case. (Order, No. ACM 40239, 21 September 2022, at 2.)

<sup>4</sup> The Government's copy of the record of trial does not contain PHO Exhibits 3 and 5.

<sup>5</sup> The Government's copy of the record of trial does not contain PHO Exhibit 4.



## ARGUMENT

### APPELLANT’S RECORD OF TRIAL IS COMPLETE.

#### *Standard of Review*

This Court reviews de novo whether a record of trial is complete. United States v. Davenport, 73 M.J. 373, 376 (C.A.A.F. 2014) (citing United States v. Henry, 53 M.J. 108, 110 (C.A.A.F. 2000)).

#### *Law*

A complete record of proceedings must be prepared for any general court-martial that results in a punitive discharge or more than six months of confinement. Article 54(c)(2), UCMJ. “A record of trial is complete if it complies with the requirements of [R.C.M. 1112(b)].” R.C.M. 1112(d). According to R.C.M. 1112(b), a record of trial must include: (1) a substantially verbatim recording of the court-martial proceedings; (2) the charge sheet; (3) the convening order; (4) an accused’s request for trial by military judge alone or election to be tried by members; (5) an accused’s election for sentencing by members instead of the military judge; (6) exhibits that were received in evidence and any appellate exhibits; (7) the statement of trial results; (8) any action by the convening authority; and (9) the entry of judgment. R.C.M. 1112(b)(1)-(9).

R.C.M. 1112(f) lists matters that must be attached to the record before the certified record of trial is forwarded for appellate review. Among these matters is the Article 32, UCMJ preliminary hearing report. R.C.M. 1112(f)(1)(A). The preliminary hearing report must include the recording of the preliminary hearing. R.C.M. 405(1)(2)(B).

When assessing a claim that a record of trial is incomplete, the threshold question is “whether the omitted material was ‘substantial,’ either qualitatively or quantitatively.” Davenport, 73 M.J. at 377 (quoting United States v. Lashley, 14 M.J. 7, 9 (C.M.A. 1982)). “An

omission is qualitatively substantial when it directly relates to the sufficiency of the government's evidence on the merits and cannot be recalled with any degree of fidelity." United States v. Tate, 82 M.J. 291, 295 (C.A.A.F. 2022) (citation omitted). An omission is quantitatively insubstantial if "[t]he totality of the omissions in [the] record becomes so unimportant and so uninfluential when viewed in the light of the whole record, that it approaches nothingness." United States v. Nelson, 13 C.M.R. 38, 43 (C.M.A. 1953).

If the Court finds that an omission is substantial, then the record of trial is incomplete "and raises a presumption of prejudice that the Government must rebut." Henry, 53 M.J. at 111 (citing United States v. McCullah, 11 M.J. 234, 237 (C.M.A. 1981)). In contrast, an insubstantial omission affects neither the record's characterization as a complete one, nor does it raise a presumption of prejudice. Id.

In Henry, our superior court listed examples of substantial and insubstantial omissions. Henry, 53 M.J. at 11. Substantial omissions included the omission of: unrecorded sidebar conferences involving the admission of evidence; argument concerning court member challenges; evidence presented by the Government at trial to show the accused's mens rea; a video presented by the defense during sentencing; and three defense exhibits. Id. (citations omitted). Insubstantial omissions included the omission of: prosecution exhibits depicting stolen property; a flier given to the members; a court member's written question; and an accused's personnel record. Id. (citations omitted). Turning to the case before it, the Court then considered whether the omission of four prosecution exhibits was substantial or insubstantial. Id. The Court concluded the omission of these four exhibits was insubstantial because the substance of the missing exhibits was corroborated by other exhibits in the record. Id.

In United States v. King, this Court recognized three areas in which an appellant might experience prejudice from an incomplete record: (1) at trial; (2) during clemency; and (3) on

appeal. ACM 39583, 2021 CCA LEXIS 415, at \*23-24 (A.F. Ct. Crim. App. 16 August 2021) (unpub. op.).

### *Analysis*

#### **A. The omissions of the recording of the preliminary hearing and VG's CFI are insubstantial.**

The Government acknowledges that the recording of the Article 32, UCMJ preliminary hearing and VG's CFI are absent from the record of trial. As an initial matter, notwithstanding these omissions, Appellant's record of trial is complete. R.C.M. 1112(d) provides that a record of trial is complete if it contains all matters listed in R.C.M. 1112(b). R.C.M. 1112(b) does not mention Article 32, UCMJ preliminary hearings, the recording of preliminary hearings, nor exhibits to preliminary hearings as matters that must be included in a record of trial. While R.C.M. 1112(f) requires the preliminary hearing report, including the recording of the hearing and any exhibits considered by the PHO, to be *attached* to the record of trial before it is forwarded for appellate review, failure to comply with this rule has no bearing on whether a record of trial is complete under R.C.M. 1112(d). Indeed, R.C.M. 1112(d) does not reference R.C.M. 1112(f) at all—"a record of trial is complete if it complies with the requirements of [R.C.M. 1112(b)]." R.C.M. 1112(d)(2).

Assuming this Court determines that the omissions of R.C.M. 1112(f) *attachments* to the record of trial should be analyzed in the same way as omissions from the record of trial, this Court should find the omissions insubstantial. First, the omitted material is both qualitatively and quantitatively insubstantial. Davenport, 73 M.J. at 377. The recording of the preliminary hearing and VG's CFI are qualitatively insubstantial because they do not relate to the sufficiency of the Government's evidence on the merits. Tate, 82 M.J. at 295. The preliminary hearing played no role in the Government's case at trial. And the Government did not offer nor rely on VG's CFI at trial. Hypothetically, if Appellant had entered a plea of not guilty; the Government

called VG as a witness; VG's CFI was entered into evidence; and VG's CFI was then omitted from the record of trial, Appellant would have an argument that the omission of VG's CFI was qualitatively substantial. But that did not happen in Appellant's case. Here, Appellant pleaded guilty, which obviated the need for the Government to call VG as a witness. Appellant also admitted during his providence inquiry to committing the crimes VG alleged in her CFI, and again admitted to the accuracy of VG's allegations in his stipulation of fact. (R. at 10, 16-20, Pros. Ex. 1.)

The omitted material is also quantitatively insubstantial. While the recording of the preliminary hearing and VG's CFI were omitted from the record of trial, they were adequately and accurately summarized in the written PHO report—as evidenced by trial defense counsel's lack of R.C.M. 405(1)(5) objections to the report. Because the substance of the omitted matters is corroborated by the PHO report, which is in the record, Henry, 53 M.J. at 11, the omissions are thereby insubstantial because they are “so unimportant and so uninfluential when viewed in light of the whole record, that [they] approach[] nothingness.” Nelson, 13 C.M.R. at 43.

Second, Appellant cannot demonstrate that the recording of the preliminary hearing and VG's CFI would add anything to the written PHO report. The recording would not contain witness testimony, because neither side called witnesses. (*Continuation Pages of PHO Report*, 5 May 2021, ROT Vol. 2 at 1.) The only evidence offered at the hearing was offered by the Government, in the form of documents and audio and video files. (*Id.*) Moreover, the preliminary hearing was not particularly contentious: the Defense called no witnesses, offered no evidence, apparently did not object to the Government's evidence, and filed no R.C.M. 405(1)(5) objections to the PHO report. (*See Continuation Pages of PHO Report*, 5 May 2021, ROT Vol. 2 at 1-9.) While the Defense did make an argument during the hearing, the PHO summarized this argument in his written report. (*Id.* at 7.) As to the recording of VG's CFI, the

PHO adequately summarized the CFI in his report. (Id. at 6-7.) Appellant claims the absence of VG's CFI in the record renders it "impossible to accurately assess . . . V.G.'s credibility," but the Defense did not present any evidence at the preliminary hearing challenging VG's credibility, nor did the Defense file R.C.M. 405(1)(5) objections challenging the PHO's finding that VG was credible. In any event, VG's credibility was not at issue during either the preliminary hearing or at trial—because Appellant pleaded guilty and admitted to the credibility of her allegations during the providence inquiry and in his stipulation of fact.

Finally, Appellant cites to no precedent standing for the proposition that omissions of matters *outside of the court-martial proceedings* could constitute substantial omissions. The common thread in all the substantial omission cases listed in Henry is the omission of matters that occurred *during the court-martial proceedings*. Henry, 53 M.J. at 11. Here, the omitted matters relate to the preliminary hearing, which was not a part of the court-martial proceedings but rather a hearing to determine whether, among other things, the Charge and its Specification should be referred to trial.

**B. There is no prejudice to appellant.**

Even if this Court assumes the omissions of the recording of the preliminary hearing and VG's CFI are substantial, Appellant suffered no prejudice at trial, during clemency, or on appeal. King, unpub. op. at \*23-24.

Appellant was not prejudiced by the omitted material at trial because this material was not at issue. Appellant did not file a motion claiming, for example, that the preliminary hearing was improperly conducted or that the PHO was biased against Appellant—which arguably would have caused the recording of the preliminary hearing to be at issue. As to VG's CFI, Appellant was not prejudiced at trial because of his guilty plea, his numerous admissions to the substance of VG's allegations, and the availability of the omitted CFI to Appellant and his trial defense

counsel during trial preparations. Furthermore, the CFI was not admitted in either the findings or sentencing portions of Appellant's trial. Therefore, no prejudice occurred at trial.

Nor was Appellant prejudiced by the omitted material during clemency. Appellant did not raise any issues regarding the preliminary hearing or VG's CFI in his clemency request.

*(Clemency Request, 18 September 2021, ROT Vol. 1.)*

Finally, Appellant has not suffered prejudice on appeal. As discussed above, neither the preliminary hearing nor VG's CFI played a role in Appellant's trial. Therefore, this Court does not need to consider these materials in determining whether the findings and sentence are factually and legally sufficient. Appellant argues the omission of these materials renders it impossible for him on appeal to accurately assess "the sufficiency of the preliminary hearing and the PHO's ultimate determinations, V.G.'s credibility, and the effectiveness of counsel below both in advising [Appellant] on the stipulations and plea agreement and in litigating the sentencing case." (App. Br., Appendix at 3.) But Appellant waived all waivable motions, including a motion to challenge the sufficiency of the preliminary hearing. (R. at 24; R.C.M. 905(e) (permitting the waiver of motions alleging defects in the preliminary hearing under R.C.M. 905(b)(1)). That leaves no error in the preliminary hearing for this Court to correct on appeal. United States v. Ahern, 76 M.J. 194, 197 (C.A.A.F. 2017) ("[A] valid waiver leaves no error to correct on appeal.") (citation omitted). Furthermore, VG's credibility was not an issue at trial, and therefore is not a matter before this Court. Finally, even without the omitted materials, the remainder of the record of trial and Appellant's own memory provide enough information for Appellant to lodge a claim of ineffective assistance against his trial defense counsel. To the extent this Court determines that Article 66, UCMJ, requires the Court to ensure the sufficiency of Appellant's preliminary hearing, the preliminary hearing report is an adequate substitute for

both the missing recording of the hearing and VG's CFI. Therefore, no prejudice occurred during appeal.

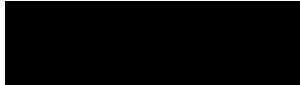
The Government has rebutted any presumption of prejudice at trial, clemency, and on appeal. Therefore, this Court should affirm Appellant's sentence.

**C. Assuming the omissions are substantial and Appellant suffered prejudice, this Court should return the record to the military judge.**

Should this Court determine that the omissions are substantial, and Appellant suffered prejudice as a result, the appropriate remedy is found in R.C.M. 1112(d)(2). This Rule authorizes this Court to "return a record of trial to the military judge for correction" if a record of trial is found to be incomplete or defective after certification. R.C.M. 1112(d)(2). The military judge may then reconstruct the portion of the record affected. R.C.M. 1112(d)(3)(A). Therefore, should this Court find prejudicial error, the record of trial should be returned to the military judge for appropriate action. But the United States reaffirms its position that such action is unnecessary because the record of trial is complete according to R.C.M. 1112(d), the omissions are insubstantial, and Appellant has suffered no prejudice.

**CONCLUSION**

**WHEREFORE**, the United States respectfully requests this Honorable Court deny Appellant's requested relief and affirm the sentence. Should this Court find prejudicial error, the United States respectfully requests this Honorable Court return the record of trial to the military judge for correction.

  
JAY S. PEER, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations  
United States Air Force  


[REDACTED]  
MARY ELLEN PAYNE  
Associate Chief  
Government Trial and Appellate Operations  
United States Air Force  
[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 October 2022.

[REDACTED]  
JAY S. PEER, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations  
United States Air Force  
[REDACTED]



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	<b>MOTION TO FILE</b>
<i>Appellee,</i>	)	<b>UNDER SEAL</b>
	)	
v.	)	Before Panel No. 2
	)	
Staff Sergeant (E-5)	)	No. ACM 40239
<b>CHARLES D. GARRON,</b>	)	
United States Air Force	)	23 September 2022
<i>Appellant</i>	)	

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

Pursuant to Rule 13.2(b), 17.2(c)(2), and 23.3(o) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel hereby moves to file the following portions of SSgt Garron’s Brief on Behalf of Appellant under seal: (1) the portion of the second sentence of the first complete paragraph on page 5 of the Brief on Behalf of the Appellant, beginning with the word after “contains” and including through the end of the sentence; and (2) the portion of the second sentence on page 3 of the Appendix, beginning with the word after “erroneous” and including through the word immediately before “, and”.

These portions of Appellant’s submissions reference material contained in the current version of PHO Exhibit 4 in the record of trial (ROT). Other portions of the record indicate that the material in the current version of PHO Exhibit 4 is not the evidence that was submitted or considered during the preliminary hearing; in other words, the current version of PHO Exhibit 4 never should have been included in the record. The material in the current version of PHO Exhibit 4 is not the actual evidence the PHO considered and sealed at the preliminary hearing, PHO Exhibit 4 itself was nevertheless ordered sealed.



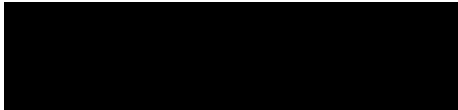

**GRANTED**  
**5 OCT 2022**

The current version of PHO Exhibit 4 in the ROT is an interview of a witness containing statements of a sensitive nature, some of which are akin to the material contained in the correct version of PHO Exhibit 4 that the PHO sealed. Due to the sensitive nature of its contents, the age of the witness, and the fact that neither party intended to submit the evidence contained in the current version of PHO Exhibit 4 at the preliminary hearing, any information relating to the current version of PHO Exhibit 4 should remain sealed.

The above referenced portions will be delivered in hard copy to the Court and Appellate Government. The remainder of the Assignment of Error and Appendix, redacted for ease of review and reference, will be filed separately via email on 23 September 2022.

**WHEREFORE**, undersigned counsel respectfully requests that this Honorable Court grant the motion.

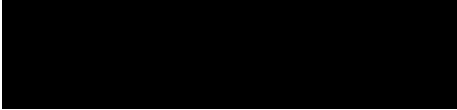
Respectfully submitted,

  
ALEXANDRA K. FLESZAR, 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 were sent via email to the Court and served on the Appellate Government Division on 23 September 2022.

Respectfully submitted,

  
ALEXANDRA K. FLESZAR, Capt, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



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

<b>UNITED STATES</b>	)	<b>No. ACM 40239</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>ORDER</b>
<b>Charles D. GARRON</b>	)	
<b>Staff Sergeant (E-5)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 8 September 2021, Appellant was tried by a general court-martial at Francis E. Warren Air Force Base (F.E. Warren AFB), Wyoming. He was convicted, consistent with his pleas and pursuant to a plea agreement, of one charge and one specification of sexual abuse of a child under 16 years of age (VG), in violation of Article 120b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920b.<sup>1</sup> The military judge sentenced Appellant to a dishonorable discharge, confinement for 12 months, reduction to the grade of E-1, forfeiture of all pay and allowances, and a reprimand.

On 23 September 2022, Appellant submitted an assignment of error brief in which he alleges that the record of trial is substantially incomplete in that it omits the recording of the preliminary hearing and a preliminary hearing exhibit.<sup>2</sup> Appellant requests we disapprove the punitive discharge, or in the alternative, “remand his case to the military judge to complete the record by including the preliminary hearing recording and originally submitted [Preliminary Hearing Officer (PHO)] Exhibit 4.” On 21 October 2022, the Government filed an answer acknowledging the correct PHO Exhibit 4 and a recording of the preliminary hearing are both “absent from the record of trial.” The Government argues Appellant’s requested relief should be denied, but requests that if the court finds prejudicial error, the record of trial be remanded for correction.

During Appellant’s preliminary hearing, PHO Exhibit 4 was provided to and reviewed by the PHO. In the preliminary hearing report, the PHO described the exhibit as a recording of VG’s child forensic interview consisting of two video files. The PHO sealed PHO Exhibit 4. Appellate counsel for both

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<sup>1</sup> All references in this order to the UCMJ and Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2019 ed.).

<sup>2</sup> Appellant personally raises this issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

parties agree that PHO Exhibit 4 in the court's record is not a recording of VG's child forensic interview. Rather, the disc erroneously contains a recording of another child forensic interview which was not introduced at the preliminary hearing. Additionally, the PHO report fails to include a recording of the proceeding as an attachment. Thus, it appears that PHO Exhibit 4 and the recording of the preliminary hearing, and by extension the preliminary hearing report as a whole, have not been properly attached to the record. *See* Rule for Courts-Martial (R.C.M.) 1112(f)(1)(A).<sup>3</sup>

Accordingly, it is by the court on this 2d day of December, 2022,

**ORDERED:**

The Government will obtain the following items:

- (1) The recording of Appellant's preliminary hearing conducted on 23 April 2021; and
- (2) The recording of VG's child forensic interview consisting of two video files offered by the Government at Appellant's preliminary hearing as PHO Exhibit 4, which were considered by the PHO.

The Government will also provide an affidavit, declaration, or an amended Certification of Record of Trial by the court reporter with items (1) and (2) as attachments, attesting to the authenticity of items (1) and (2) above. *See* R.C.M. 1112(f).

Items (1) and (2) and certification by the court reporter will be provided to the court, through a motion to attach, not later than **15 December 2022**. If the Government cannot comply with this order, the Government will inform the court in writing of the status of compliance not later than **13 December 2022**.

**It is further ordered:**

Item (2), and any information derived from item (2), shall be filed sealed in accordance with the PHO's direction to seal the exhibit. *See generally* R.C.M. 1113.



FOR THE COURT



CAROL K. JOYCE  
Clerk of the Court

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<sup>3</sup> Specifically, the preliminary hearing report shall be attached to the record of trial if not used as a trial exhibit. The court notes that neither the preliminary hearing report nor PHO Exhibit 4 appear to have been used as an exhibit at trial.

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

UNITED STATES,	)	
<i>Appellee</i>	)	GOVERNMENT MOTION TO ATTACH
	)	
v.	)	
	)	
Staff Sergeant (E-5)	)	Before Panel No. 2
<b>CHARLES D. GARRON, USAF</b>	)	
<i>Appellant</i>	)	No. ACM 40239

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

Pursuant to Rule 23.3(b) of this Court’s Rules of Practice and Procedure, the United States moves the Court to attach the following document to this motion:

- Declaration of Capt Ariel N. Noffke with two attachments, dated 12 December 2022 (1 page and 4 discs (8 files) total)

The attached declaration and attachments are responsive to this Court’s order to obtain and provide the following items: (1) The recording of Appellant’s preliminary hearing conducted on 23 April 2021; and (2) The recording of VG’s forensic interview consisting of two video files offered by the Government at Appellant’s preliminary hearing as PHO Exhibit 4, which were considered by the PHO. (*Court Order*, dated 2 December 2022.) The attached declaration contains 4 discs as attachments – PHO Exhibit 4 is sealed and consists of part one and part two, on two separate discs, and the recording of the preliminary hearing consists of the open session with 4 files and the closed session with 2 files, on two separate discs.

Capt Ariel N. Noffke is an Assistant Staff Judge Advocate assigned to the 90th Missile Wing at F.E. Warren Air Force Base, Wyoming. In her declaration, Capt Noffke stated she located PHO Exhibit 4 and the recording of the preliminary hearing on the office share drive and the copy of the Record of Trial maintained at 90th Missile Wing Staff Judge Advocate office.

Our Superior Court held matters outside the record may be considered “when doing so is necessary for resolving issues raised by materials in the record.” United States v. Jessie, 79 M.J. 437, 444 (C.A.A.F. 2020). The Court concluded that “based on experience . . . ‘extra-record fact determinations’ may be ‘necessary predicates to resolving appellate questions.’” Id. at 442. (quoting United States v. Parker, 36 M.J. 269, 272 (C.M.A. 1993)). It is the Government’s position that the issue of an incomplete record of trial was directly raised by materials in the record. This document is relevant to address this Court’s 2 December 2022 order.

**WHEREFORE**, the United States respectfully requests this Court grant this Motion to Attach the Document.

[REDACTED]

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

[REDACTED]

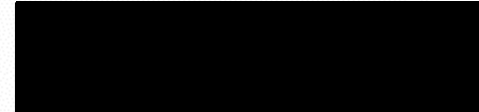
[REDACTED]

MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Counsel Division  
Air Force Legal Operations Agency  
United States Air Force

[REDACTED]

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the declaration was delivered via e-filing and a copy of the open session recording of the preliminary hearing was delivered in-person to the Court and to the Appellate Defense Division on 14 December 2022. While a copy of the sealed materials and closed session was delivered in-person to the Court on 14 December 2022.



BRITTANY M. SPEIRS, Maj, USAF  
Appellate Government Counsel  
Air Force Legal Operations Agency  
United States Air Force





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

<b>UNITED STATES</b>	)	<b>No. ACM 40239</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>ORDER</b>
<b>Charles D. GARRON</b>	)	
<b>Staff Sergeant (E-5)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 8 September 2021, Appellant was tried by a general court-martial at Francis E. Warren Air Force Base (F.E. Warren AFB), Wyoming. He was convicted, consistent with his pleas and pursuant to a plea agreement, of one charge and one specification of sexual abuse of a child under 16 years of age (VG), in violation of Article 120b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920b.<sup>1</sup> The military judge sentenced Appellant to a dishonorable discharge, confinement for 12 months, reduction to the grade of E-1, forfeiture of all pay and allowances, and a reprimand.

On 23 September 2022, Appellant submitted an assignment of error brief in which he alleges that the record of trial is substantially incomplete in that the recording of the preliminary hearing and a preliminary hearing exhibit is omitted.<sup>2</sup> On 21 October 2022, the Government filed an answer acknowledging the correct PHO Exhibit 4 and a recording of the preliminary hearing are both “absent from the record of trial.” The Government argues Appellant’s requested relief should be denied, but requests that if the court finds prejudicial error, the record of trial be remanded for correction.

On 2 December 2022, this court ordered the Government to obtain (1) the recording of Appellant’s preliminary hearing conducted on 23 April 2021; and (2) the recording of VG’s child forensic interview consisting of two video files offered by the Government at Appellant’s preliminary hearing as PHO Exhibit 4, which were considered by the PHO. The court also ordered the Government to “provide an affidavit, declaration, or an amended Certification of Record of Trial *by the court reporter* with items (1) and (2) as attachments, attesting to

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<sup>1</sup> All references in this order to the UCMJ and Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2019 ed.).

<sup>2</sup> Appellant personally raises this issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

the authenticity of items (1) and (2) above,” (emphasis added), *see* R.C.M. 1112(f), and that such certification and items were to be provided through a motion to attach.

On 14 December 2022, the Government moved to attach a declaration from Captain AN, an assistant staff judge advocate stationed at F.E. Warren AFB. Attached to the declaration are two items identified as: (1) Article 32 Preliminary Hearing Recording (6 files), and (2) PHO Exhibit 4.

The court finds that the Government’s motion fails to comply with the court’s 2 December 2022 order because it does not include “an affidavit, declaration, or an amended Certification of Record of Trial by the court reporter with [the required documents] as attachments, attesting to the authenticity of [the required documents].” The Government provided no explanation, moreover, why the court reporter could not provide such an affidavit, declaration, or amended certification.

Accordingly, it is by the court on this 19th day of December, 2022,

**ORDERED:**

The Government’s Motion to Attach, dated 14 December 2022, is **DE-NIED**.<sup>3</sup> Any future motions to attach will comply with the court’s 2 December 2022 order, and be submitted not later than **28 December 2022**.



FOR THE COURT



CAROL K. JOYCE  
Clerk of the Court

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<sup>3</sup> The court recognizes that Appellant has not yet responded to the Government’s motion, and that the period to file a response has not yet elapsed. *See* A.F. CT. CRIM. APP. R. 23.2. However, the panel has determined that good cause exists to suspend this rule and issue this order prior to any response. *See* JT. CT. CRIM. APP. R. 32.

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

UNITED STATES,	)	
<i>Appellee</i>	)	MOTION FOR ENLARGEMENT OF
	)	TIME, OUT OF TIME
v.	)	
	)	
Staff Sergeant (E-5)	)	
<b>CHARLES D. GARRON, USAF</b>	)	Before Panel No. 2
<i>Appellant</i>	)	
		No. ACM 40239

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

Pursuant to Rule 23.3(m) of this Court’s Rules of Practice and Procedure, the United States moves for an enlargement of time, out of time, of 10 days – until 7 January, to comply with this Court’s 19 December 2022 order. The United States misunderstood this Court’s original 2 December 2022 order and believed that it could comply by filing a declaration signed by any person who could attest to the authenticity of the documents missing from the record of trial. The United States did not understand that the Court required the declaration to be completed by the court reporter specifically, rather than any person who could sign a declaration attesting to the authenticity. The United States is attempting to comply with this Court’s latest order.

This request is being submitted out-of-time due to significant events within the Appellant Government office this December. The original counsel assigned to this case, Maj Peer, went on paternity leave as of 12 December 2022. The substitute counsel on this case, Maj Speirs, gave birth and went on maternity leave earlier than expected on 25 December 2022. Undersigned counsel was/is taking use-or-lose leave from 16-26 and 29-30 December 2022 – during which time the court’s latest order in this case was issued. JAJG’s appellate paralegal, Ms. Lockard, who normally handles the court’s deadlines was on sick leave yesterday, 28 December 2022. In the course of this



**GRANTED**  
**5 JAN 2023**

upheaval over the holidays, the deadline for responding to this Court's order passed without government compliance.

The court reporter needed to sign the required declaration is not co-located at F.E. Warren AFB. The base notified JAJG today that they have not been able to comply with the Court's order because of manning issues over the holidays. They expect to be able to comply by early next week. To ensure compliance, the United States respectfully requests 10 additional days to comply with the Court's order.

The United States respectfully requests this Court grant this motion for enlargement of time, out of time.

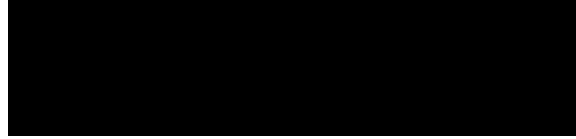
[REDACTED]

MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Counsel Division  
Air Force Legal Operations Agency  
United States Air Force

[REDACTED]  
[REDACTED]  
[REDACTED]

**CERTIFICATE OF FILING AND SERVICE**

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



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Counsel Division  
Air Force Legal Operations Agency  
United States Air Force



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

UNITED STATES,	)	MOTION FOR
<i>Appellee,</i>	)	RECONSIDERATION
	)	
v.	)	
	)	No. ACM 40239
Staff Sergeant (E-5),	)	
CHARLES D. GARRON, USAF,	)	
<i>Appellant.</i>	)	Panel 2
	)	

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

Pursuant to Rules 23.3(k) and 31(b) of this Court’s Rules of Practice and Procedure, the United States moves this Court to reconsider its 19 December 2022 order requiring the United States to “provide an affidavit, declaration, or an amended Certification of Record of Trial by the court reporter” attesting to the authenticity of certain materials related to the Article 32 hearing that were missing from Appellant’s record of trial (ROT). (Order, dated 19 Dec 22). This Court has jurisdiction to consider this motion because the United States timely submits this motion within 30 days of this Court’s original order. (*See* A.F. CT. CRIM. APP. R. 31(b)). The Court of Appeals for the Armed Forces has not acquired jurisdiction over this case.

This Court originally issued an order on 2 December 2022 requiring “an affidavit, declaration, or an amended Certification of Record of Trial by the court reporter” attesting to the authenticity of the missing materials. (Order, dated 2 Dec 22.) The United States initially misread the order and did not understand the Court’s intention that any affidavit or declaration – rather than just a Certificate of Record of Trial – must also be signed by the court reporter from Appellant case. The United States moved to attach the missing materials with a declaration by an assistant staff judge advocate from the base legal office that processed Appellant’s case, but

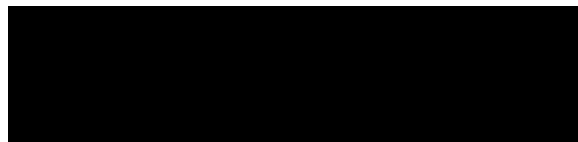
this Court rejected it as noncompliant with the Court's 2 December 2022 order. (Order, dated 19 Dec 2022).

On 3 January 2022, the court reporter from Appellant's case signed a declaration stating that he had no familiarity with the missing materials from the record of trial, since he was not present at Appellant's Article 32 hearing. (Motion to Attach, dated 5 Jan 22). As a result, the court reporter does not feel he is able to comply with this Court's order requiring him to attest to the material's authenticity. (Id.)

Since the court reporter has stated his inability to comply with this Court's 19 December 2022 order, the United States respectfully asks this Court to reconsider the order. The United States requests that this Court either accept the United States' previously submitted motion to attach the missing materials or remand the case to a military judge for correction under R.C.M. 1112(d)(2).

**CONCLUSION**

The United States respectfully asks this Court to reconsider its order.

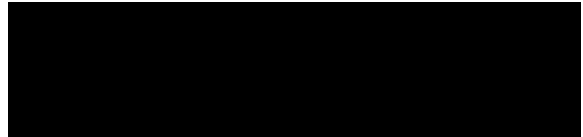


MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Appellate Defense Division on 5 January 2023.



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





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

UNITED STATES,	)	
<i>Appellee</i>	)	GOVERNMENT MOTION TO ATTACH
	)	
v.	)	
	)	
Staff Sergeant (E-5)	)	Before Panel No. 2
<b>CHARLES D. GARRON, USAF</b>	)	
<i>Appellant</i>	)	No. ACM 40239

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

Pursuant to Rule 23.3(b) of this Court’s Rules of Practice and Procedure, the United States moves the Court to attach the following document to this motion:

- Declaration of Mr. DR, dated 3 January 2023 (1 page)

The attached declaration supports the United States’ simultaneously filed Motion for Reconsideration. The court reporter from this case does not believe that he has the ability to provide a declaration, affidavit, or certificate attesting to the authenticity of the missing materials from the Article 32 hearing in this case. The declaration is relevant to this Court’s handling of the incomplete record in this case.

**WHEREFORE**, the United States respectfully requests this Court grant this Motion to Attach the Document.

[Redacted Signature]

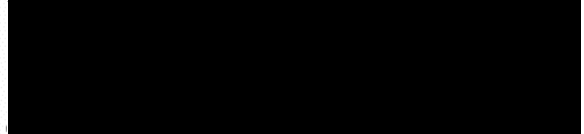
MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Counsel Division  
Air Force Legal Operations Agency  
United States Air Force

[Redacted Address]



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Appellate Defense Division on 5 January 2023.



MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Counsel Division  
Air Force Legal Operations Agency  
United States Air Force



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

<b>UNITED STATES</b>	)	<b>No. ACM 40239</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>ORDER</b>
<b>Charles D. GARRON</b>	)	
<b>Staff Sergeant (E-5)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 5 January 2023, the Government moved this court to reconsider its 19 December 2022 order “requiring the [Government] to ‘provide an affidavit, declaration, or an amended Certification of Record of Trial by the court reporter’ attesting to the authenticity of certain materials related to the Article 32 hearing that were missing from Appellant’s record of trial (ROT).” Contemporaneously, the Government filed a Motion to Attach. Appellant filed no opposition to the Government’s motion for reconsideration or Motion to Attach.

On 2 December 2022, this court ordered the Government to obtain (1) the recording of Appellant’s preliminary hearing conducted on 23 April 2021; and (2) the recording of VG’s child forensic interview consisting of two video files offered by the Government at Appellant’s preliminary hearing as PHO Exhibit 4, which were considered by the preliminary hearing officer (PHO). The court also ordered the Government to “provide an affidavit, declaration, or an amended Certification of Record of Trial *by the court reporter* with items (1) and (2) as attachments, attesting to the authenticity of items (1) and (2) above,” *see* R.C.M. 1112(f), and that such certification and items were to be provided through a motion to attach.

On 14 December 2022, the Government moved to attach a declaration from Captain (Capt) AN, an assistant staff judge advocate assigned to F. E. Warren Air Force Base. Attached to the declaration were two items identified as: (1) Article 32, UCMJ, 10 U.S.C. § 832, Preliminary Hearing Recording (6 files), and (2) PHO Exhibit 4. According to Capt AN, these attachments were “true and accurate versions” of the preliminary hearing recording and PHO Exhibit 4 “[t]o the best of [his] recollection.” We denied the Government’s motion on 19 December 2022 finding:

The Government’s motion fail[ed] to comply with the court’s 2 December 2022 order because it [did] not include “an affidavit, declaration, or an amended Certification of Record of Trial *by the court reporter* with

[the required documents] as attachments, attesting to the authenticity of [the required documents].” The Government provided no explanation, moreover, why the court reporter could not provide such an affidavit, declaration, or amended certification.

In addition to denying the Government’s Motion to Attach, we ordered that “[a]ny future motions to attach will comply with the court’s 2 December 2022 order.”

On 5 January 2022, the Government filed a Motion to Attach a one-page declaration from Mr. DR. Mr. DR’s declaration states he was the court reporter assigned to Appellant’s court-martial but “was not assigned to and/or present for [Appellant’s] Article 32 Preliminary Hearing conducted on 23 April 2021.” Therefore, Mr. DR “cannot attest to the authenticity of the preliminary hearing audio and/or any exhibits that were offered and/or admitted during those proceedings.”

In the reconsideration motion, the Government states they “initially misread the order and did not understand the [c]ourt’s intention that any affidavit or declaration – rather than just a Certificate of Record of Trial – must also be signed by the court reporter from Appellant[’s] case.” The Government then explains the court reporter “does not feel he is able to comply with this [c]ourt’s order requiring him to attest to the material’s authenticity” because he was not present at the Article 32 hearing and “ha[s] no familiarity with the missing materials from the record of trial.” The Government requests we “either accept the [Government’s] previously submitted motion to attach the missing materials or remand the case to a military judge for correction under R.C.M. 1112(d)(2).” The Government argues it is unable to comply with our 19 December 2022 order, which requires compliance with our 2 December 2022 order.

According to Mr. DR’s affidavit, it is obvious that he was *not the court reporter* for Appellant’s Article 32 proceeding. Nevertheless, we see no indication that the Government has taken the additional step in locating who was responsible for recording Appellant’s Article 32 proceeding, and therefore who, other than Mr. DR, was responsible for ensuring the correct Article 32 recording and PHO Exhibit 4 were included in the record.\* However, in the absence of specific defense objections, in the interest of judicial economy and to avoid further delay in reviewing Appellant’s case, this court will accept Capt AN’s affidavit, and its attached materials. We emphasize the importance of the Government’s

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\* At the Article 32 hearing the PHO specifically identified the case paralegal, SSgt DF, as the person recording the Article 32 proceeding and handling Appellant’s case during this time.

responsibilities in accounting for those individuals who take part in assembling an appellant's record of trial.

Pursuant to Rule 31 of The Joint Rules of Appellate Procedure for Courts of Criminal Appeals, the court's 19 December 2022 order have been reconsidered. The panel of Senior Judge Posch, Judge Richardson, and Judge Cadotte voted 3–0 to grant panel reconsideration.

Accordingly, it is by the court on this 18th day of January, 2023,

**ORDERED:**

The Government's 5 January 2023 Motion for Reconsideration is **GRANTED**.

The Government's 5 January 2023 Motion to Attach is **GRANTED**.

The Government's 14 December 2022 Motion to Attach is **GRANTED**.



FOR THE COURT



CAROL K. JOYCE  
Clerk of the Court

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

UNITED STATES	)	No. ACM 40239
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Charles D. GARRON	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 21 September 2022, this court granted Appellant’s motion to examine sealed materials. In that motion, counsel for Appellant requested to examine Preliminary Hearing Officer Exhibits 3 and 4 and the sealed portions of the Preliminary Hearing Officer Report.

The court subsequently determined that Preliminary Hearing Officer Exhibit 4 and audio from sealed portions of the hearing were not attached to the record of trial. These items have since been attached to the record.

On 30 January 2023, counsel for Appellant filed a Second Motion to Examine Sealed Materials. Counsel acknowledged the court’s 21 September 2022 order but noted she was filing this subsequent motion out of an abundance of caution. Also on 30 January 2023, the Government indicated that it does not oppose the motion and requested the court grant it.

Accordingly, it is by the court on this 1st day of February, 2023,

**ORDERED:**

Appellant’s Second Motion to Examine Sealed Materials, dated 30 January 2023, is **MOOT**. Pursuant to the court’s 21 September 2022 order, counsel for both parties may view the sealed portions of the Preliminary Hearing Officer Report and Preliminary Hearing Officer exhibits, subject to the conditions and limitations of that order.

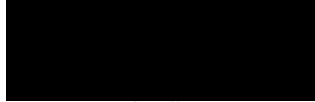
**It is further ordered:**

Any party wishing to examine sealed materials in Appellant’s case, or

submit any filings related to those materials, shall do so **not later than 7 February 2023**.



FOR THE COURT



ANTHONY F. ROCK, Maj, USAF  
Deputy Clerk of the Court



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

<b>UNITED STATES</b>	)	<b>SECOND MOTION TO EXAMINE</b>
	)	<b>SEALED MATERIALS</b>
v.	)	
	)	Before Panel No. 2
	)	
Staff Sargent (E-5)	)	No. ACM 40239
<b>CHARLES D. GARRON</b>	)	
United States Air Force	)	30 January 2023
<i>Appellant</i>	)	

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

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and 23.3(f)(1) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel hereby moves to examine the Preliminary Hearing Officer’s (PHO) Exhibit 4 attached to the record by this Court’s Order dated 18 January 2023. PHO Exhibit 4 is a sealed recording of the named child witness’ (VG) Child Forensic Interview (CFI). This Court previously granted review of the version of PHO Exhibit 4 contained in the record prior to the Government’s Motion to Attach, however, counsel is submitting the instant Motion to Examine in an abundance of caution, as the newly attached PHO Exhibit 4 only became a part of the record by this Court’s Order on 18 January 2023.

On 23 September 2022, Appellant assigned as error that the PHO Exhibit 4 contained in the record was not a CFI of VG, but rather a CFI of VG’s sister. On 2 December 2022, this Court ordered the Government to obtain, *inter alia*, the recording of VG’s CFI as originally submitted as PHO Exhibit 4 during the Article 32, Preliminary Hearing. The Government moved to attach the corrected sealed PHO Exhibit 4 on 14 December 2022. This Court later granted the Government’s motion, following reconsideration, on 18 January 2023.

PHO Exhibit 4 was entered as evidence in support of the charged offense at the Article 32, Uniform Code of Military Justice (UCMJ), preliminary hearing in the case. It was reviewed by

both trial and defense counsel and sealed by the PHO. Record (R.) at Vol. 2, DD Form 457 at \*1-2 (item 13a noting that the accused, who was represented by counsel throughout the hearing per item 11a, “was permitted to examine” each of the statements, documents, or matters listed in the continuation of item 13a); R. at Vol. 2, Continuation of DD Form 457 at \*1 (denoting each of the considered and sealed exhibits, and that each was offered by government counsel); *see also* R.C.M. 405(h)(1)(B) (requiring parties to provide “notice of any other evidence that the party intends to offer at the preliminary hearing”); R. at Vol. 2, Acknowledgements of Receipt (indicating that defense counsel received a copy of the Article 32, Preliminary Hearing Report). The PHO did not review any material *in camera*, nor did the military judge review any material *in camera* or order any material at trial be sealed.<sup>1</sup> *See generally* Record (R.) at Vol. 2, DD Form 457 and Continuation; R. at 1-69.

In accordance with R.C.M. 1113(b)(3)(B)(i), which requires a colorable showing that examination of these materials is reasonably necessary to appellate counsel’s responsibilities, undersigned counsel asserts that review of the newly attached PHO 4 is necessary to conduct a complete review of the record of trial and be in a position to advocate competently on behalf of Appellant. Pursuant to his pleas, Appellant was convicted of sexually abusing a child in violation of Article 120b(c), UCMJ, 10 U.S.C. § 920b(c) (2019). (R. at 10, 32). PHO Exhibit 4 contains the full CFI, including VG’s descriptions of the alleged conduct. DD Form 457 and Continuation.

As a general matter of competent representation and complete review of the case, undersigned counsel must review the CFI to adequately evaluate the PHO’s determination of probable cause, charging recommendations, and the evidence available to litigants prior to entering into the plea agreement. While certain portions of information gathered during the

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<sup>1</sup> Counsel has reviewed the entirety of the record of trial, including the transcript and all volumes.

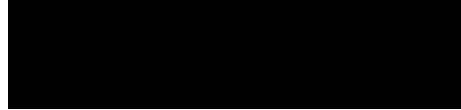
AFOSI investigation (PHO Exhibit 3) and the CFI (PHO Exhibit 4) founded the basis of the stipulation of fact, neither were entered at trial in full. *See* Prosecution Exhibit (PE) 1, \*1-3; R. at Vol. 2, Continuation of DD Form 457, at \*4, 24-76.

The Court previously granted Appellant's motion to view PHO Exhibit 4 based on all parties understanding that it contained VG's CFI. Appellant specifically adopts the facts and reasoning delineated in his prior motion as support for viewing the newly attached PHO Exhibit 4. In particular, counsel must review the entire record in order to adequately evaluate 1) the alleged nexus of Appellant's conduct to the sentencing evidence; 2) the PHO's determinations, including that he "consider[ed] V.G. to be credible"; and 3) the credibility of V.G.'s reports. Though Appellant has at this point submitted his AOE, counsel must review the newly attached evidence to determine if there is any basis for filing additional assignments of error out of time based on the good cause of the prior unavailability of PHO Exhibit 4.

Finally, a review of the entire record of trial is necessary because this Court is empowered by Article 66, Uniform Code of Military Justice (UCMJ), to grant relief based on a review and analysis of "the entire record." To determine whether the record of trial yields grounds for this Court to grant relief under Article 66, UCMJ, appellate defense counsel must, therefore, examine "the entire record." The sealed materials referenced above must be reviewed to ensure undersigned counsel provides "competent appellate representation." *United States v. May*, 47 M.J. 478, 481, (C.A.A.F. 1998). Accordingly, examination of the newly attached PHO Exhibit 4 is reasonably necessary, since counsel cannot fulfill her duty of representation under Article 70, UCMJ, without first reviewing the complete record of trial.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court grant the motion.

Respectfully submitted,



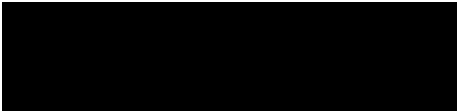

ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 30 January 2023.

Respectfully submitted,

  
ALEXANDRA K. FLESZAR, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  


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

UNITED STATES,	)	UNITED STATES' RESPONSE
<i>Appellee,</i>	)	TO APPELLANT'S SECOND
	)	MOTION TO EXAMINE SEALED
v.	)	MATERIALS
	)	
Staff Sergeant (E-5)	)	ACM 40239
CHARLES D. GARRON, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2
	)	

**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 does not oppose Appellant's Second Motion to Examine Sealed Materials.

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

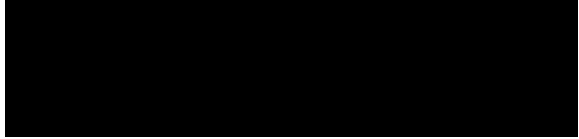


MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
Military Justice and Discipline  
United States Air Force



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Appellate Defense Division on 30 January 2023.



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

