

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

UNITED STATES)	No. ACM 40478
<i>Appellee</i>)	
)	
v.)	
)	ORDER
Brian D. HOWARD)	
Airman (E-2))	
U.S. Air Force)	
<i>Appellant</i>)	Panel 1

On 7 September 2024, Appellant was tried by general court-martial at Misawa Air Base, Japan. Contrary to his pleas, a panel of officer and enlisted members found Appellant guilty of one specification of assault upon a superior commissioned officer, in violation of Article 89, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 899; one specification of willfully disobeying a superior commissioned officer, in violation of Article 90, UCMJ, 10 U.S.C. § 890; one specification of insubordinate conduct toward a noncommissioned officer, in violation of Article 91, UCMJ, 10 U.S.C. § 891; and three specifications of willful dereliction of duty, in violation of Article 92, UCMJ, 10 U.S.C. § 892.¹

On 29 March 2024, Appellant submitted a “Motion for Leave to File and Motion for Remand” to this court, identifying several discrepancies within the record.² The Government does not oppose the motion for the reasons stated below.

Appellant first argues that the general court-martial transcription is incomplete and not verbatim. Specifically, Appellant points out that an entire Article 39(a), UCMJ, 10 U.S.C. § 839(a), hearing where the military judge issues her oral rulings denying the trial defense’s request for two findings instructions, is missing from the transcription when compared to the audio recording. This hearing can be found on a compact disc identified as “Audio File: Test_20221028-0734_01d8ea9fc8ac8a00 (00:00-07:44).” Appellant claims that this portion should be in the transcript after a prior Article 39(a), UCMJ,

¹ References to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.).

² The court notes that Appellant’s motion states he was found guilty of *two* specifications of insubordinate conduct toward a noncommissioned officer, in violation of Article 91, UCMJ; however, according to the entry of judgment and the record of trial, Appellant was found guilty of only *one* specification of this offense.

hearing concluded at 1741 on 27 October 2022. R. at 747. Appellant further points out the transcript is also missing a ruling by the military judge as to an objection by trial defense counsel. *See* R. at 488–489.

Appellant further claims portions of the transcript are incorrect when compared with the audio recordings. *See* R. at 539, lines 8–10; R. at 843, lines 1–9. Appellant asks that this court issue an order to correct the court-martial proceeding transcription by completing a new, verbatim transcript.

Additionally, Appellant claims that the record of trial is missing the following documents:

- (1) An attachment identified as “Victim Input” to the Staff Judge Advocate’s Pretrial Advice letter;
- (2) Preliminary Hearing Officer (PHO) Exhibit 23, a “Itinerary for Flight Scheduled for 12 May, dated 9 May [20]22, 2 pages;” and
- (3) PHO Exhibit 24 which is a “Itinerary for Flight Scheduled for 12 May, dated 10 May [20]22, 2 pages.”³

On 3 April 2024, the Government submitted their answer to Appellant’s brief, and concurred that portions of the verbatim transcript are missing when compared to the audio recording, including, but not limited to, the military judge’s ruling denying trial defense counsel’s request for additional findings instructions. The Government also states that PHO Exhibits 23 and 24 were to be found under Prosecution Exhibit 4, “[b]ut Prosecution Exhibit 4 is only a two-page document.” The Government further concurs that the “Victim Input” attachment, is also missing from the record. Therefore, the Government agreed that remand of the record of trial under Rule for Courts-Martial (R.C.M.) 1112(d)(2) is appropriate.

Accordingly, it is by the court on this 9th day of April, 2024,

ORDERED:

Appellant’s “Motion for Leave to File and Motion for Remand” are **GRANTED**.

It is further ordered:

The record of trial in Appellant’s case is **REMANDED** to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the record, specifically to account for any missing portions of the verbatim transcript and documents,

³ Prosecution Exhibit 4 is PHO Exhibit 23, the 2-page Itinerary for Flight scheduled for 12 May, dated 9 May 2022. However, PHO Exhibit 24 is not located anywhere in the record.

including, but not limited to, the portions referenced above and any other missing documents. *See* Article 66(g), UCMJ, 10 U.S.C. § 866(g); R.C.M. 1112(d)(2)–(3). Thereafter, the record of trial will be returned to this court for completion of its appellate review under Article 66(d), UCMJ, 10 U.S.C. § 866(d), not later than **16 May 2024**.

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

Should the 16 May 2024 deadline not be met, the Chief Trial Judge, Air Force Trial Judiciary, or his designee, shall provide a memorandum for record not later than **17 May 2024** to the Government Trial and Appellate Operations Division (JAJG) to submit to this court as a motion to attach. *See* A.F. Ct. Crim. App. R. 23.3(b). Until the record of trial is returned to the court, a memorandum of record will be prepared every seven days thereafter.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court