

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

UNITED STATES)	No. ACM 39796
<i>Appellee</i>)	
)	
v.)	
)	ORDER
Maxwell A. MATTHEW)	
Staff Sergeant (E-5))	
U.S. Air Force)	
<i>Appellant</i>)	Panel 3

Appellant filed his assignments of error in the above-referenced case on 11 September 2020. The Government filed its answer on 7 October 2020. Appellant’s assignments of error include that the record of trial (ROT) is incomplete in that the ROT omits the Article 39(a), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 839(a), session containing Appellant’s arraignment held on 25 January 2019. The Government concedes the ROT does not include a transcript of Appellant’s arraignment, but argues despite the missing arraignment, the transcript is substantially verbatim.

Upon our review of the ROT, we agree that the transcript for Appellant’s arraignment was missing.

Appellant received an adjudged sentence of a dishonorable discharge, confinement for 17 months, and reduction to the grade of E-1. In accordance with Rule for Courts-Martial (R.C.M.) 1103* a verbatim transcript is required. The transcript of the arraignment which took place on 25 January 2019 has been omitted from the ROT.

R.C.M. 1104(d)—in effect at the time pertinent to this case—provides for correction of a ROT found to be incomplete or defective after authentication. R.C.M. 1104(d)(2)–(3) describes the procedure for the military judge to produce and then authenticate a certificate of correction. R.C.M. 1104(d)(2) requires notice and opportunity for the parties to examine and respond to the proposed correction. The certificate of correction must be authenticated as provided in R.C.M. 1104(a), which stipulates that the authentication (and thus certificate of correction) must be done by the military judge who presided at trial and was present at the end of the proceedings. R.C.M. 1104(a)(2)(A). R.C.M.

* All references in this order to the Uniform Code of Military Justice and Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2016 ed.).

1104(a)(2)(B) provides for substitute authentication should the military judge who presided at trial be unavailable. In such circumstances, the trial counsel present at trial will authenticate.

Accordingly it is by the court on this 23d day of December, 2020,

ORDERED:

Pursuant to R.C.M. 1104(d)(1), the ROT is returned to the convening authority, who will return it to the military judge who presided at Appellant's court-martial and was present at the end of the proceedings, for action consistent with R.C.M. 1104(d). That judge will determine whether the military judge who presided over the arraignment can authenticate a transcript of the Appellant's arraignment or whether substitute authentication may be completed under R.C.M. 1104(a)(2)(B).

If authentication or substitute authentication of the arraignment transcript can be obtained, the military judge who presided at the end of the proceedings will produce and authenticate a certificate of correction of the ROT. If authentication of the arraignment transcript cannot be obtained, the ROT will be returned to our court with an explanation from the Government as to why it cannot comply with this order.

If a certificate of correction is produced, the certificate and original ROT will be returned to the Military Justice Division (JAJM), who will in turn deliver the certificate to the Government Trial and Appellate Counsel Division (JAJA). The Government Trial and Appellate Counsel Division will then return the certificate of correction and any other accompanying documentation to the court via a Motion to Attach. The Military Justice Division will forward the ROT to the court.

The ROT will be returned to the court not later than **21 January 2021**. Thereafter, Article 66(c), UCMJ, 10 U.S.C. § 866(c), will apply.

If the ROT cannot be returned to the court by 21 January 2021, the Government will inform the court in writing no later than 15 January 2021 of the status of the Government's compliance with this order.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court