IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Panel No. 2
Senior Airman (E-4), **LOGAN A. MCLEOD,** United States Air Force, *Appellant.*	)	No. ACM 40374
	)	5 January 2023

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 **15 March 2023**. The record of trial was docketed with this Court on 15 November 2022. From the date of docketing to the present date, 51 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]

DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

[redacted]

DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

6 January 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) LOGAN A. MCLEOD, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40374 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.

[redacted]

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

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 6 January 2023.

[redacted]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (SECOND)**
v.	)	Before Panel No. 2
Senior Airman (E-4), **LOGAN A. MCLEOD,** United States Air Force, *Appellant.*	)	No. ACM 40374
	)	8 March 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his second enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **14 April 2023**. The record of trial was docketed with this Court on 15 November 2022. From the date of docketing to the present date, 113 days have elapsed. On the date requested, 150 days will have elapsed.

On 24 January and 22-24 August 2022, Appellant was tried by a general court-martial composed of a military judge alone at Maxwell Air Force Base, Alabama, at which he entered mixed pleas. Record (R.) at 191-92. Consistent with his pleas, Appellant was convicted of one charge and ten specifications of various attempts, in violation of Article 80, Uniform Code of Military Justice (UCMJ);[1] and one charge and one specification of obstruction of justice, in violation of Article 131b, UCMJ. R. at 303. Contrary to his pleas, the military judge found Appellant guilty of an additional six specifications of attempt. R. at The military judge also acquitted Appellant of three specifications of attempt. *Id*. Finally, three more specifications of attempt were withdrawn and dismissed before arraignment. R. at 20. The military judge sentenced

[1] The specifications of attempt are captured in Charge I and the Additional Charge.

Appellant to a reprimand, reduction to E-1, a total of 35 years confinement, and a dishonorable discharge. R. at 532. The military judge awarded 341 days pretrial confinement credit. *Id*.

The record of trial consists of eight volumes. The transcript is 533 pages. There are 43 Prosecution Exhibits, two Defense Exhibits, and 38 Appellate Exhibits. Appellant is currently in confinement.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his 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]

DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 8 March 2023.

Respectfully submitted,

[redacted]

DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

8 March 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) LOGAN A. MCLEOD, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40374 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.

[redacted]

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

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 8 March 2023.

[redacted]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (THIRD)**
v.	)	Before Panel No. 2
Senior Airman (E-4), **LOGAN A. MCLEOD,** United States Air Force, *Appellant.*	)	No. ACM 40374
	)	6 April 2023

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

Pursuant to Rule 23.3(m)(3) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his third enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **14 May 2023**. The record of trial was docketed with this Court on 15 November 2022. From the date of docketing to the present date, 142 days have elapsed. On the date requested, 180 days will have elapsed.

On 24 January and 22-24 August 2022, Appellant was tried by a general court-martial composed of a military judge alone at Maxwell Air Force Base, Alabama, at which he entered mixed pleas. Record (R.) at 191-92. Consistent with his pleas, Appellant was convicted of one charge and ten specifications of various attempts, in violation of Article 80, Uniform Code of Military Justice (UCMJ);[1] and one charge and one specification of obstruction of justice, in violation of Article 131b, UCMJ. R. at 303. Contrary to his pleas, the military judge found Appellant guilty of an additional six specifications of attempt. R. at 465. The military judge also acquitted Appellant of three specifications of attempt. *Id*. Finally, three more specifications of attempt were withdrawn and dismissed before arraignment. R. at 20. The military judge sentenced

[1] The specifications of attempt are captured in Charge I and the Additional Charge.

Appellant to a reprimand, reduction to E-1, a total of 35 years confinement, and a dishonorable discharge. R. at 532. The military judge awarded 341 days pretrial confinement credit. *Id*.

The record of trial consists of eight volumes. The transcript is 533 pages. There are 43 Prosecution Exhibits, two Defense Exhibits, and 38 Appellate Exhibits. Appellant is currently in confinement.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his 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]

DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 6 April 2023.

Respectfully submitted,

[redacted]

DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

6 April 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) LOGAN A. MCLEOD, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40374 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.

[redacted]

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

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 6 April 2023.

[redacted]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FOURTH)**
v.	)	Before Panel No. 2
Senior Airman (E-4), **LOGAN A. MCLEOD,** United States Air Force, *Appellant.*	)	No. ACM 40374
	)	5 May 2023

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

Pursuant to Rule 23.3(m)(3) and 23.3(m)(6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his fourth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **13 June 2023**. The record of trial was docketed with this Court on 15 November 2022. From the date of docketing to the present date, 171 days have elapsed. On the date requested, 210 days will have elapsed.

On 24 January and 22-24 August 2022, Appellant was tried by a general court-martial composed of a military judge alone at Maxwell Air Force Base, Alabama, at which he entered mixed pleas. Record (R.) at 191-92. Consistent with his pleas, Appellant was convicted of one charge and ten specifications of various attempts, in violation of Article 80, Uniform Code of Military Justice (UCMJ);[1] and one charge and one specification of obstruction of justice, in violation of Article 131b, UCMJ. R. at 303. Contrary to his pleas, the military judge found Appellant guilty of an additional six specifications of attempt. R. at 465. The military judge also acquitted Appellant of three specifications of attempt. *Id*. Finally, three more specifications of

[1] The specifications of attempt are captured in Charge I and the Additional Charge.

attempt were withdrawn and dismissed before arraignment. R. at 20. The military judge sentenced Appellant to a reprimand, reduction to E-1, a total of 35 years confinement, and a dishonorable discharge. R. at 532. The military judge awarded 341 days pretrial confinement credit. *Id*.

The record of trial consists of eight volumes. The transcript is 533 pages. There are 43 Prosecution Exhibits, two Defense Exhibits, and 38 Appellate Exhibits. Appellant is currently in confinement.

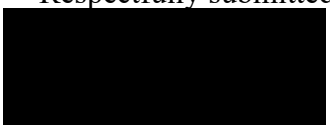
Counsel is currently assigned 18 cases; 7 cases are pending initial AOEs before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and yet to complete review of Appellant's case. Accordingly, an enlargement of time is necessary to fully review Appellant's case and advise Appellant regarding potential issues. Two cases have priority over the present case:

1. *United States v. Leipart*, ACM 39711/Misc. Dkt. No. 2021-03: The appellant's supplement to the petition for grant of review is due to the Court of Appeals for the Armed Forces on 22 May 2023.
2. *United States v. Gause-Radke*, ACM 40343: The record of trial consists of eight volumes. The transcript is 1,167 pages. There are 14 Prosecution Exhibits, two Defense Exhibits, 42 Appellate Exhibits, and four Court Exhibits. Counsel is drafting the Brief on Behalf of Appellant.

Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,

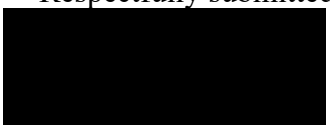


DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force


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 5 May 2023.

Respectfully submitted,



DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force


5 May 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) LOGAN A. MCLEOD, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40374 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.

[redacted]

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

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 5 May 2023.

[redacted]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FIFTH)**
v.	)	Before Panel No. 2
Senior Airman (E-4), **LOGAN A. MCLEOD,** United States Air Force, *Appellant.*	)	No. ACM 40374
	)	6 June 2023

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

Pursuant to Rule 23.3(m)(3) and 23.3(m)(6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his fifth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **13 July 2023**. The record of trial was docketed with this Court on 15 November 2022. From the date of docketing to the present date, 203 days have elapsed. On the date requested, 240 days will have elapsed.

On 24 January and 22-24 August 2022, Appellant was tried by a general court-martial composed of a military judge alone at Maxwell Air Force Base, Alabama, at which he entered mixed pleas. Record (R.) at 191-92. Consistent with his pleas, Appellant was convicted of one charge and ten specifications of various attempts, in violation of Article 80, Uniform Code of Military Justice (UCMJ);[1] and one charge and one specification of obstruction of justice, in violation of Article 131b, UCMJ. R. at 303. Contrary to his pleas, the military judge found Appellant guilty of an additional six specifications of attempt. R. at 465. The military judge also acquitted Appellant of three specifications of attempt. *Id*. Finally, three more specifications of

[1] The specifications of attempt are captured in Charge I and the Additional Charge.

attempt were withdrawn and dismissed before arraignment. R. at 20. The military judge sentenced Appellant to a reprimand, reduction to E-1, a total of 35 years confinement, and a dishonorable discharge. R. at 532. The military judge awarded 341 days pretrial confinement credit. *Id*.

The record of trial consists of eight volumes. The transcript is 533 pages. There are 43 Prosecution Exhibits, two Defense Exhibits, and 38 Appellate Exhibits. Appellant is currently in confinement.

Counsel is currently assigned 30 cases; 15 cases are pending initial AOEs before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and yet to complete review of Appellant's case. Accordingly, an enlargement of time is necessary to fully review Appellant's case and advise Appellant regarding potential issues. Three cases have priority over the present case:

1. *In Re HVZ*, Misc. Dkt. No. 2023-03: As counsel for the real party in interest, a brief is due to this Court on 8 June 2023. Counsel is drafting the Brief on Behalf of the Real Party in Interest.
2. *United States v. Gause-Radke*, ACM 40343: The record of trial consists of eight volumes. The transcript is 1,167 pages. There are 14 Prosecution Exhibits, two Defense Exhibits, 42 Appellate Exhibits, and four Court Exhibits. Counsel is drafting the Brief on Behalf of Appellant.
3. *United States v. Daddario*, ACM 40351: The record of trial consists of three volumes. The transcript is 77 pages. There are four Prosecution Exhibits, no Defense Exhibits, and five Appellate Exhibits. Counsel is drafting the Brief on Behalf of Appellant.

Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,

[redacted]

DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 6 June 2023.

Respectfully submitted,

[redacted]

DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

8 June 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) LOGAN A. MCLEOD, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40374 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.

[redacted]

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

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 8 June 2023.

[redacted]

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

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40374**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Logan A. MCLEOD	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 6 June 2023, counsel for Appellant submitted a Motion for Enlargement of Time (Fifth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure. Accordingly, it is by the court on this 9th day of June, 2023,

ORDERED:

Appellant's Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant shall file any assignments of error not later than **13 July 2023**.

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

FOR THE COURT

[redacted]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (SIXTH)**
v.	)	Before Panel No. 2
Senior Airman (E-4), **LOGAN A. MCLEOD,** United States Air Force, *Appellant.*	)	No. ACM 40374
	)	5 July 2023

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

Pursuant to Rule 23.3(m)(3) and 23.3(m)(6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his sixth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **12 August 2023**. The record of trial was docketed with this Court on 15 November 2022. From the date of docketing to the present date, 232 days have elapsed. On the date requested, 270 days will have elapsed.

On 24 January and 22-24 August 2022, Appellant was tried by a general court-martial composed of a military judge alone at Maxwell Air Force Base, Alabama, at which he entered mixed pleas. Record (R.) at 191-92. Consistent with his pleas, Appellant was convicted of one charge and ten specifications of various attempts, in violation of Article 80, Uniform Code of Military Justice (UCMJ);[1] and one charge and one specification of obstruction of justice, in violation of Article 131b, UCMJ. R. at 303. Contrary to his pleas, the military judge found Appellant guilty of an additional six specifications of attempt. R. at 465. The military judge also acquitted Appellant of three specifications of attempt. *Id*. Finally, three more specifications of

[1] The specifications of attempt are captured in Charge I and the Additional Charge.

attempt were withdrawn and dismissed before arraignment. R. at 20. The military judge sentenced Appellant to a reprimand, reduction to E-1, a total of 35 years confinement, and a dishonorable discharge. R. at 532. The military judge awarded 341 days pretrial confinement credit. *Id*.

The record of trial consists of eight volumes. The transcript is 533 pages. There are 43 Prosecution Exhibits,[2] two Defense Exhibits, and 38 Appellate Exhibits. Appellant is currently in confinement.

Counsel is currently assigned 34 cases; 14 cases are pending initial AOEs before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and yet to complete review of Appellant's case. Accordingly, an enlargement of time is necessary to fully review Appellant's case and advise Appellant regarding potential issues. Five cases have priority over the present case:

1. *United States v. Martinez*, ACM 39973: After the CAAF's decision in *United States v. Anderson*, __ M.J. __, 2023 CAAF LEXIS 439 (C.A.A.F. 29 Jun. 2023), counsel is working to prepare a consolidated petition for a writ of certiorari for filing at the Supreme Court of the United States.
2. *United States v. Thompson*, ACM 40019 (rem): The appellant's petition for grant of review is due to the CAAF on 12 July 2023.
3. *United States v. Gause-Radke*, ACM 40343: Counsel will draft a reply brief for this Court in July 2023.
4. *United States v. Daddario*, ACM 40351: Counsel will draft a reply brief for this Court in August 2023.

[2] Some of the prosecution exhibits are hundreds of pages in length and not included in the size of the record because they are presented on disc in the record of trial. *See, e.g.*, Prosecution Exhibit 1 (476 pages).

5. *United States v. Nestor*, ACM 40250: The appellant's petition for grant of review is due to the CAAF on 29 August 2023.

Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,

[redacted]

DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

[redacted]

DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

7 July 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Second Lieutenant (O-1) AUSTIN J. VAN VELSON, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S AMENDED MOTION FOR ENLARGEMENT OF TIME ACM 40401 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 Amended 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.

[redacted]

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 7 July 2023.

[redacted]
OLIVIA B. HOFF, Capt, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
[redacted]4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION TO WITHDRAW AS COUNSEL**
v.	)	Before Panel No. 2
Senior Airman (E-4), **LOGAN A. MCLEOD,** United States Air Force, *Appellant.*	)	No. ACM 40374
	)	4 August 2023

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

Pursuant to Rule 12.4 and 23.3(h) of this Honorable Court's Rules of Practice and Procedure, Major David Bosner hereby requests to withdraw as counsel for Appellant. Ms. Megan Marinos, the Air Force Appellate Defense Division's Senior Civilian Counsel, has been detailed as successor appellate defense counsel. She filed a motion for enlargement of time today, constituting her notice of appearance. *See* R. 12(a) ("The filing of any pleading relative to a case which contains the signature of counsel pursuant to Rule 14 constitutes notice of appearance of such counsel."). Major Bosner hereby affirms that a thorough turnover of the record between counsel has been completed.

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

Respectfully submitted,

[redacted]

DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 4 August 2023.

Respectfully submitted,

[redacted]

DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40374**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF PANEL CHANGE**
Logan A. MCLEOD	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	

It is by the court on this 8th day of August, 2023,

ORDERED:

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

This panel letter supersedes all previous panel assignments.

FOR THE COURT

[redacted]

TANICA S. BAGMON
Appellate Court Paralegal

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (SEVENTH)**
v.	)	Before Panel No. 2
Senior Airman (E-4), **LOGAN A. MCLEOD,** United States Air Force, *Appellant.*	)	No. ACM 40374
	)	4 August 2023

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

Pursuant to Rule 23.3(m) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for a seventh enlargement of time to file Assignments of Error. Appellant requests a 30-day enlargement, which will end on **11 September 2023**. The record of trial was docketed with this Court on 15 November 2022. From the date of docketing to the present date, 262 days have elapsed. On the date requested, 300 days will have elapsed.

On 24 January and 22-24 August 2022, Appellant was tried by a general court-martial composed of a military judge alone at Maxwell Air Force Base, Alabama, at which he entered mixed pleas. R. at 191-92. Consistent with his pleas, Appellant was convicted of one charge and ten specifications of various attempts, in violation of Article 80, Uniform Code of Military Justice (UCMJ);[1] and one charge and one specification of obstruction of justice, in violation of Article 131b, UCMJ. R. at 303. Contrary to his pleas, the military judge found Appellant guilty of an additional six specifications of attempt. R. at 465. The military judge also acquitted Appellant of three specifications of attempt. *Id*. Finally, three more specifications of attempt were withdrawn and dismissed before arraignment. R. at 20. The military judge sentenced Appellant to a

[1] The specifications of attempt are captured in Charge I and the Additional Charge.

reprimand, reduction to E-1, a total of 35 years' confinement, and a dishonorable discharge. R. at 532. The military judge awarded 341 days' pretrial confinement credit. *Id*.

The record of trial consists of eight volumes. The transcript is 533 pages. There are 43 Prosecution Exhibits,[2] two Defense Exhibits, and 38 Appellate Exhibits. Appellant is currently in confinement.

Undersigned counsel was detailed to this case on 25 July 2023 in anticipation of Major David Bosner's impending PCS. Undersigned counsel is currently only detailed to one additional case—*United States v. Witt*, No. 22-0090, 2023 CAAF LEXIS 379, (C.A.A.F. 2023). *Witt* must take priority as counsel is preparing a petition for a writ of certiorari for filing at the Supreme Court of the United States.

An enlargement of time is necessary to ensure newly-detailed counsel has sufficient time to fully review the record of trial, conduct legal research, advise her incarcerated client, and write assignments of error.

Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

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

[2] Some of the prosecution exhibits are hundreds of pages in length and not included in the size of the record because they are presented on disc in the record of trial. *See, e.g.*, Prosecution Exhibit 1 (476 pages).

Respectfully submitted,

MEGAN P. MARINOS
Senior Appellate Defense Counsel
Appellate Defense Division
United States Air Force


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 4 August 2023.

Respectfully submitted,

MEGAN P. MARINOS
Senior Appellate Defense Counsel
Appellate Defense Division
United States Air Force


7 August 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) LOGAN A. MCLEOD, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40374 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 opposition to Appellant's Motion for Enlargement of Time.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 300 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 8 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

[redacted]

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 7 August 2023.

[redacted]

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

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40374**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Logan A. MCLEOD	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 3**

On 4 August 2023, counsel for Appellant submitted a Motion for Enlargement of Time (Seventh) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure. Accordingly, it is by the court on this 9th day of August, 2023,

ORDERED:

Appellant's Motion for Enlargement of Time (Seventh) is **GRANTED**. Appellant shall file any assignments of error not later than **11 September 2023**.

Appellant's counsel is advised that given the number of enlargements granted thus far, the court will continue to closely examine any further requests for an enlargement of time.

FOR THE COURT

[redacted] FE, Capt, USAF
Deputy Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION TO WITHDRAW AS COUNSEL**
v.	)	Before Panel No. 3
Senior Airman (E-4), **LOGAN A. MCLEOD,** United States Air Force, *Appellant.*	)	No. ACM 40374
	)	15 August 2023

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

Pursuant to Rules 12(b), 12.4, and 23.3(h) of this Honorable Court's Rules of Practice and Procedure, Major David Bosner hereby requests to withdraw as counsel for Appellant. Appellant consents to this request; in fact, it is Appellant's desire. Recently, Appellant fired Major Bosner, explicitly requesting Major Bosner not engage in continued representation. Major Bosner facilitated that request and ensured the Judge Advocate General detailed substitute counsel. Appellant's express wishes that he not be further represented by Major Bosner, along with Major Bosner's forthcoming departure from the Appellate Defense Division, constitute the "reasons for the withdrawal." R. 12(b).

Ms. Megan Marinos, the Air Force Appellate Defense Division's Senior Civilian Counsel, has been detailed as successor appellate defense counsel. She filed a motion for enlargement of time, constituting her notice of appearance. Major Bosner hereby affirms that a thorough turnover of the record between counsel has been completed.

Major Bosner hereby confirms Appellant provided limited authorization to disclose that which was necessary to satisfy this Court's rules and the Court's previous order in this case pertaining to this issue.

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

Respectfully submitted,

[redacted]

DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 15 August 2023.

Respectfully submitted,

[redacted]

DAVID L. BOSNER, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40374**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Logan A. MCLEOD	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 3**

On 4 August 2023, detailed appellate defense counsel submitted a Motion to Withdraw. The Government did not oppose the motion.

Rule 12(b) of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals specifically states that a motion to withdraw by an appellate defense counsel "must indicate whether [Appellant] consents or objects to the withdrawal, the reasons for the withdrawal, and the provisions that have been made for continued representation of [Appellant]." A copy of the motion filed by appellate defense counsel "shall be delivered or mailed to [Appellant] by the moving counsel." JT. CT. CRIM. APP. R. 12(b).

Here, counsel did make provisions that have been made for continued representation of Appellant. However, counsel has not provided reasons for the withdrawal or whether Appellant objects or consents to the withdrawal as required. Accordingly, it is by the court on this 15th day of August, 2023,

ORDERED:

Appellant's Motion to Withdraw is **DENIED** without prejudice to resubmit a motion that complies with the applicable rule.

FOR THE COURT

[redacted]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (EIGHTH) OUT OF TIME**
v.	)	Before Panel No. 2
Senior Airman (E-4), **LOGAN A. MCLEOD,** United States Air Force, *Appellant.*	)	No. ACM 40374
	)	5 September 2023

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, Appellant hereby moves for his eighth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **11 October 2023**. The record of trial was docketed with this Court on 15 November 2022. From the date of docketing to the present date, 294 days have elapsed. On the date requested, 330 days will have elapsed.

On 24 January and 22-24 August 2022, Appellant was tried by a general court-martial composed of a military judge alone at Maxwell Air Force Base, Alabama, at which he entered mixed pleas. R. at 191-92. Consistent with his pleas, Appellant was convicted of one charge and ten specifications of various attempts, in violation of Article 80, Uniform Code of Military Justice (UCMJ);[1] and one charge and one specification of obstruction of justice, in violation of Article 131b, UCMJ. R. at 303. Contrary to his pleas, the military judge found Appellant guilty of an additional six specifications of attempt. R. at 465. The military judge also acquitted Appellant of three specifications of attempt. *Id*. Finally, three more specifications of attempt were withdrawn and dismissed before arraignment. R. at 20. The military judge sentenced Appellant to a reprimand,

[1] The specifications of attempt are captured in Charge I and the Additional Charge.

reduction to E-1, a total of 35 years confinement, and a dishonorable discharge. R. at 532. The military judge awarded 341 days pretrial confinement credit. *Id*.

The record of trial consists of eight volumes. The transcript is 533 pages. There are 43 Prosecution Exhibits,[2] two Defense Exhibits, and 38 Appellate Exhibits. Appellant is currently in confinement.

Counsel was detailed to this case on 25 July 2023. Counsel is currently detailed to one additional case—*United States v. Witt*, No. 22-0090, 2023 CAAF LEXIS 379 (C.A.A.F. 2023). *Witt* must take priority as counsel is preparing a petition for a writ of certiorari for filing at the Supreme Court of the United States due 2 November 2023.

An enlargement of time is necessary to ensure counsel has sufficient time to fully review the record of trial, conduct legal research, advise her incarcerated client, and write assignments of error.

This motion is filed out of time at no fault of the Appellant. Counsel failed to account for the Court closures over the holiday weekend when calculating the requisite seven-day lead period.

Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

[2] Some of the prosecution exhibits are hundreds of pages in length and not included in the size of the record because they are presented on disc in the record of trial. *See, e.g.*, Prosecution Exhibit 1 (476 pages).

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

Respectfully submitted,

[redacted]

MEGAN P. MARINOS
Senior Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

[redacted]

MEGAN P. MARINOS
Senior Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

7 September 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) LOGAN A. MCLEOD, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40374 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 opposition to Appellant's Motion for Enlargement of Time.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 330 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 7 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 7 September 2023.

[redacted]
PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
[redacted]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (NINTH)**
v.	)	Before Panel No. 3
Senior Airman (E-4), **LOGAN A. MCLEOD,** United States Air Force, *Appellant.*	)	No. ACM 40374
	)	3 October 2023

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, Senior Airman (SrA) Logan A. McLeod, Appellant, hereby moves for his eighth enlargement of time to file an Assignments of Error (AOE). SrA McLeod requests an enlargement for a period of 30 days, which will end on **10 November 2023**. The record of trial was docketed with this Court on 15 November 2022. From the date of docketing to the present date, 322 days have elapsed. On the date requested, 360 days will have elapsed.

On 24 January and 22-24 August 2022, SrA McLeod was tried by a general court-martial composed of a military judge alone at Maxwell Air Force Base, Alabama, at which he entered mixed pleas.[1] Consistent with his pleas, SrA McLeod was convicted of ten specifications of various attempts, in violation of Article 80, Uniform Code of Military Justice (UCMJ);[2] and one specification of obstruction of justice, in violation of Article 131b, UCMJ.[3] Contrary to his pleas, the military judge found SrA McLeod guilty of an additional six specifications of attempt.[4] The

[1] R. at 191-92.
[2] The specifications of attempt are captured in Charge I and the Additional Charge.
[3] R. at 303.
[4] R. at 465.

military judge also acquitted SrA McLeod of three specifications of attempt.[5] Finally, three more specifications of attempt were withdrawn and dismissed before arraignment.[6] The military judge sentenced SrA McLeod to a reprimand, reduction to E-1, a total of 35 years' confinement, and a dishonorable discharge.[7] The military judge awarded 341 days pretrial confinement credit.[8]

The record of trial consists of eight volumes. The transcript is 533 pages. There are 43 Prosecution Exhibits,[9] two Defense Exhibits, and 38 Appellate Exhibits. SrA McLeod is currently in confinement.

Counsel was detailed to this case on 25 July 2023. Counsel is currently detailed to one additional case—*United States v. Witt*, No. 22-0090, 2023 CAAF LEXIS 379 (C.A.A.F. 2023). SrA Witt was convicted at a capitally-referred general court-martial of two specifications of premeditated murder, in violation of Article 118, UCMJ, and one specification of attempted premeditated murder, in violation of Article 80, UCMJ. At a sentence rehearing, the members sentenced SrA Witt to, *inter alia*, confinement for life without the possibility of parole. *Witt* must take priority as counsel is preparing a petition for a writ of certiorari for filing at the Supreme Court of the United States due 2 November 2023.

Because Counsel has had to focus on *Witt*, she has only conducted a cursory review of SrA McLeod's record of trial. An enlargement of time is necessary to ensure counsel has sufficient time to fully review the record of trial, conduct legal research, advise her incarcerated client, and write assignments of error.

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[5] *Id.*
[6] R. at 20.
[7] R. at 532.
[8] *Id.*
[9] Some of the prosecution exhibits are hundreds of pages in length and not included in the size of the record because they are presented on disc in the record of trial. *See, e.g.*, Prosecution Exhibit 1 (476 pages).

SrA McLeod has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

WHEREFORE, SrA McLeod requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

[redacted]

MEGAN P. MARINOS
Senior Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 3 October 2023.

Respectfully submitted,

[redacted]

MEGAN P. MARINOS
Senior Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

4 October 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) LOGAN A. MCLEOD, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40374 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 opposition to Appellant's Motion for Enlargement of Time.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 360 days in length. Appellant's year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 6 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

[redacted]
PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
[redacted]

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 4 October 2023.

[redacted]

PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
[redacted]

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

NOTICE OF APPEARANCE

UNITED STATES v. Logan A. McLeod ACM: 40374 Panel 3

To the Clerk of this Court and all parties of record, the undersigned hereby enters an appearance as the appellate counsel for the appellant in the above-captioned case, pursuant to Rule 13 of the Rules of Practice and Procedure of the United States Air Force Court of Criminal Appeals.

I hereby certify that I am admitted to practice before this court.

9 November 2023`
Date

[redacted]
Signature

William E. Cassara [redacted]
Print Name Bar Number

[redacted]
Address

[redacted] [redacted] [redacted]
City State Zip Code

[redacted] [redacted]
Phone Number E-Mail

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (TENTH) OUT OF TIME**
v.	)	Before Panel No. 3
Senior Airman (E-4), **LOGAN A. MCLEOD,** United States Air Force, *Appellant.*	)	No. ACM 40374
	)	9 November 2023

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, Senior Airman (SrA) Logan A. McLeod, Appellant, hereby moves for his tenth enlargement of time to file an Assignments of Error (AOE). SrA McLeod requests an enlargement for a period of 30 days, which will end on **10 December 2023**. The record of trial was docketed with this Court on 15 November 2022. From the date of docketing to the present date, 359 days have elapsed. On the date requested, 390 days will have elapsed.

On 24 January and 22-24 August 2022, SrA McLeod was tried by a general court-martial composed of a military judge alone at Maxwell Air Force Base, Alabama, at which he entered mixed pleas.[1] Consistent with his pleas, SrA McLeod was convicted of ten specifications of various attempts, in violation of Article 80, Uniform Code of Military Justice (UCMJ);[2] and one specification of obstruction of justice, in violation of Article 131b, UCMJ.[3] Contrary to his pleas, the military judge found SrA McLeod guilty of an additional six specifications of attempt.[4] The

[1] R. at 191-92.
[2] The specifications of attempt are captured in Charge I and the Additional Charge.
[3] R. at 303.
[4] R. at 465.

military judge also acquitted SrA McLeod of three specifications of attempt.[5] Finally, three more specifications of attempt were withdrawn and dismissed before arraignment.[6] The military judge sentenced SrA McLeod to a reprimand, reduction to E-1, a total of 35 years' confinement, and a dishonorable discharge.[7] The military judge awarded 341 days pretrial confinement credit.[8]

The record of trial consists of eight volumes. The transcript is 533 pages. There are 43 Prosecution Exhibits,[9] two Defense Exhibits, and 38 Appellate Exhibits. SrA McLeod is currently in confinement.

Military counsel was detailed to this case on 25 July 2023. Detailed military counsel filed a Supreme Court petition for a writ of certiorari in the case of *United States v. Witt*, No. 22-0090, 2023 CAAF LEXIS 379 (C.A.A.F. 2023), on 31 October 2023. That same day, detailed military counsel fell ill with COVID19 and was out sick 1-7 November 2023, delaying her ability to begin her thorough review of SrA McLeod's record. Detailed military counsel will be on leave 13-17 November 2023. Upon her return, SrA McLeod's case will be her top priority.

Civilian defense counsel, Mr. Bill Cassara, was retained by SrA McLeod on 5 October 2023. Civilian defense counsel filed a Supreme Court petition for a writ of certiorari in *United States v. Anderson*, 83 M.J. 291 (C.A.A.F. 2023) on 23 October 2023. Civilian defense counsel currently has pending 28 cases: one case before this Court, 11 cases before the Army Court of Criminal Appeals [ACCA], one case before the Navy-Marine Corps Court of Criminal Appeals, seven cases before the Court of Appeals for the Armed Forces [CAAF], five cases before the Court

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[5] *Id.*
[6] R. at 20.
[7] R. at 532.
[8] *Id.*
[9] Some of the prosecution exhibits are hundreds of pages in length and not included in the size of the record because they are presented on disc in the record of trial. *See, e.g.*, Prosecution Exhibit 1 (476 pages).

of Federal Claims, and three petitions for a writ of habeas corpus. Civilian defense counsel has oral argument before the ACCA on 7 December 2023 and before the CAAF on an undetermined date in March 2024. This case is civilian defense counsel's top priority.

An enlargement of time is necessary to ensure both counsel have sufficient time to fully review the record of trial, conduct legal research, advise their incarcerated client, and write assignments of error.

This motion is filed out of time at no fault of the Appellant. Detailed military counsel failed to timely file this motion last week due to her being ill with COVID19.

SrA McLeod has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

WHEREFORE, SrA McLeod requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

[redacted]

MEGAN P. MARINOS
Senior Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 9 November 2023.

Respectfully submitted,

MEGAN P. MARINOS
Senior Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

15 November 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) LOGAN A. MCLEOD, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40374 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 opposition to Appellant's Motion for Enlargement of Time.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 390 days in length. Appellant's year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 5 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

[redacted]
PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
[redacted]

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 November 2023.

PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**CORRECTED MOTION FOR ENLARGEMENT OF TIME (ELEVENTH)**
v.	)	
	)	Before Panel No. 3
Senior Airman (E-4), **LOGAN A. MCLEOD,** United States Air Force, *Appellant.*	)	No. ACM 40374
	)	5 December 2023

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, Senior Airman (SrA) Logan A. McLeod, Appellant, hereby moves for his eleventh enlargement of time to file an Assignments of Error (AOE). Appellant requests to withdraw the previously submitted Motion for Enlargement of Time (Eleventh) filed with this Court on 1 December 2023 as it noted the incorrect number of days from the date of docketing to the date of motion.

SrA McLeod requests an enlargement for a period of 30 days, which will end on **9 January 2024**. The record of trial was docketed with this Court on 15 November 2022. From the date of docketing to the present date, 385 days have elapsed. On the date requested, 420 days will have elapsed.

On 24 January and 22-24 August 2022, SrA McLeod was tried by a general court-martial composed of a military judge alone at Maxwell Air Force Base, Alabama, at which he entered mixed pleas.[1] Consistent with his pleas, SrA McLeod was convicted of ten specifications of various attempts, in violation of Article 80, Uniform Code of Military Justice (UCMJ);[2] and one

[1] R. at 191-92.
[2] The specifications of attempt are captured in Charge I and the Additional Charge.

specification of obstruction of justice, in violation of Article 131b, UCMJ.[3] Contrary to his pleas, the military judge found SrA McLeod guilty of an additional six specifications of attempt.[4] The military judge also acquitted SrA McLeod of three specifications of attempt.[5] Finally, three more specifications of attempt were withdrawn and dismissed before arraignment.[6] The military judge sentenced SrA McLeod to a reprimand, reduction to E-1, a total of 35 years' confinement, and a dishonorable discharge.[7] The military judge awarded 341 days pretrial confinement credit.[8]

The record of trial consists of eight volumes. The transcript is 533 pages. There are 43 Prosecution Exhibits,[9] two Defense Exhibits, and 38 Appellate Exhibits. SrA McLeod is currently in confinement.

Military counsel has not completed her review of the Record. Military counsel is the Senior Civilian Counsel for the Appellate Defense Division and is responsible for training and mentoring all appellate defense counsel as well as reviewing counsel's pleadings prior to filing. Since the filing of the last enlargement of time, detailed military counsel reviewed five substantive pleadings and participated in seven moots for counsel with oral arguments at both the AFCCA and CAAF. Detailed military counsel was on leave 13-17 November 2023. Military counsel has three other cases: (1) *Witt v. United States*, petition for writ of certiorari pending at the Supreme Court, (2) *In re Cossio*, petition for extraordinary relief pending at the CAAF, and (3) *United States v. Leipart*,

[3] R. at 303.
[4] R. at 465.
[5] *Id.*
[6] R. at 20.
[7] R. at 532.
[8] *Id.*
[9] Some of the prosecution exhibits are hundreds of pages in length and not included in the size of the record because they are presented on disc in the record of trial. *See, e.g.*, Prosecution Exhibit 1 (476 pages).

pending oral argument at the CAAF (second chair). SrA McLeod's case is military counsel's top priority.

Civilian defense counsel, Mr. Bill Cassara, was retained by SrA McLeod on 5 October 2023. Civilian defense counsel currently has pending 30 cases: one case before this Court; twelve cases before the ACCA; one case before the NMCCA; eight cases before the CAAF; five cases before the Court of Federal Claims; and three petitions for a writ of habeas corpus. Civilian defense counsel has only a copy of the transcript; he does not have any of the pretrial and allied papers, exhibits, and post-trial documents. On 17 and 21 November 2023, civilian defense counsel contacted SrA McLeod's First Sergeant to obtain SrA McLeod's copy of the entire ROT. As of this date, civilian defense counsel has not received the ROT. Civilian defense counsel has oral argument before the ACCA on 7 December 2023 and before the CAAF on an undetermined date in March 2024. This case is civilian defense counsel's top priority.

An enlargement of time is necessary to ensure both counsel have sufficient time to fully review the record of trial, conduct legal research, advise their incarcerated client, and write assignments of error.

SrA McLeod has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

WHEREFORE, SrA McLeod requests that this Court grant the requested enlargement of time.

Respectfully submitted,

[redacted]

MEGAN P. MARINOS
Senior Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

[redacted]

MEGAN P. MARINOS
Senior Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

5 December 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) LOGAN A. MCLEOD, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40374 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 opposition to Appellant's Motion for Enlargement of Time.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 420 days in length. Appellant's year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 4 months combined for the United States and this Court to perform their separate statutory responsibilities. Appellant's military counsel has only completed part of her review of this case, and his civilian counsel has completed even less of his review (all while maintaining a significant additional appellate case load). It appears this request for an enlargement of time will certainly not be the last, and future requests may well eclipse the aforementioned 18-month standard.

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

[redacted]
J. PETER FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
[redacted]

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 4 December 2023.

PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (TWELFTH) OUT OF TIME**
v.	)	Before Panel No. 3
Senior Airman (E-4), **LOGAN A. MCLEOD,** United States Air Force, *Appellant.*	)	No. ACM 40374
	)	3 January 2024

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, Senior Airman (SrA) Logan A. McLeod, Appellant, hereby moves for his twelfth enlargement of time to file an Assignments of Error. SrA McLeod requests an enlargement for a period of 30 days, which will end on **8 February 2024**. The record of trial was docketed with this Court on 15 November 2022. From the date of docketing to the present date, 414 days have elapsed. On the date requested, 450 days will have elapsed.

On 24 January and 22-24 August 2022, SrA McLeod was tried by a general court-martial composed of a military judge alone at Maxwell Air Force Base, Alabama, at which he entered mixed pleas.[1] Consistent with his pleas, SrA McLeod was convicted of ten specifications of various attempts, in violation of Article 80, Uniform Code of Military Justice (UCMJ);[2] and one specification of obstruction of justice, in violation of Article 131b, UCMJ.[3] Contrary to his pleas, the military judge found SrA McLeod guilty of an additional six specifications of attempt.[4] The

[1] R. at 191-92.
[2] The specifications of attempt are captured in Charge I and the Additional Charge.
[3] R. at 303.
[4] R. at 465.

military judge also acquitted SrA McLeod of three specifications of attempt.[5] Finally, three more specifications of attempt were withdrawn and dismissed before arraignment.[6] The military judge sentenced SrA McLeod to a reprimand, reduction to E-1, a total of 35 years' confinement, and a dishonorable discharge.[7] The military judge awarded 341 days pretrial confinement credit.[8]

The record of trial consists of eight volumes. The transcript is 533 pages. There are 43 Prosecution Exhibits,[9] two Defense Exhibits, and 38 Appellate Exhibits. SrA McLeod is currently in confinement.

Military counsel has reviewed the transcript but has not completed her review of the ancillary documents. Military counsel is the Senior Civilian Counsel for the Appellate Defense Division and is responsible for training and mentoring all appellate defense counsel as well as reviewing counsel's pleadings prior to filing. Since the filing of the last enlargement of time, detailed military counsel reviewed eight substantive pleadings, participated in four moots for counsel with oral arguments at both the AFCCA and CAAF, sat second chair at three CAAF arguments, and sat second chair at one AFCCA argument. Military counsel has one other case: *United States v. Leipart*, pending oral argument at the CAAF (second chair). SrA McLeod's case is military counsel's top priority.

Civilian defense counsel, Mr. Bill Cassara, was retained by SrA McLeod on 5 October 2023. On 17 and 21 November 2023, civilian defense counsel contacted SrA McLeod's First Sergeant to obtain SrA McLeod's copy of the entire Record. The First Sergeant mailed the Record

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[5] *Id.*
[6] R. at 20.
[7] R. at 532.
[8] *Id.*
[9] Some of the prosecution exhibits are hundreds of pages in length and not included in the size of the record because they are presented on disc in the record of trial. *See, e.g.*, Prosecution Exhibit 1 (476 pages).

on 4 December 2023. Civilian defense counsel received the Record on 18 December 2023. Because the hardcopy Record needed to be returned to SrA McLeod, civilian defense counsel's office scanned the Record. The scan was completed on 3 January 2024. Civilian defense counsel has reviewed the transcript but needs additional time to review the prosecution and appellate exhibits, including the military judge's rulings on the motions. Civilian defense counsel currently has approximately 30 pending cases. Civilian defense counsel has oral argument before the CAAF on an undetermined date in March 2024. This case is civilian defense counsel's top priority.

An enlargement of time is necessary to ensure both counsel have sufficient time to fully review the record of trial, conduct legal research, advise their incarcerated client, and write assignments of error.

This motion is filed out of time at no fault of the Appellant. Counsel failed to account for the Court's closures over the holiday period when calculating the requisite seven-day lead period.

SrA McLeod has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

WHEREFORE, SrA McLeod requests that this Court grant the requested enlargement of time.

Respectfully submitted,

[redacted]

MEGAN P. MARINOS
Senior Appellate Defense Counsel
Appellate Defense Division
United States Air Force

[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 3 January 2024.

Respectfully submitted,

MEGAN P. MARINOS
Senior Appellate Defense Counsel
Appellate Defense Division
United States Air Force
[redacted]

4 January 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME OUT OF TIME
v.	)	
Senior Airman (E-4) LOGAN A. MCLEOD, USAF, *Appellant.*	)	ACM 40374 Panel No. 3

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion for Enlargement of Time, Out of Time.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 450 days in length. Appellant's year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 3 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel have not completed review of the record of trial at this late stage of the appellate process.

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

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

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 4 January 2024.

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

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40374**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Logan A. MCLEOD	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 3**

On 3 January 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Twelfth) Out of Time requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

The court notes that this is the third out of time enlargement request in the last five requests. Counsel are reminded that they are expected to comply with all court rules and deadlines.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure.

Accordingly, it is by the court on this 4th day of January, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (Twelfth) is **GRANTED**. Appellant shall file any assignments of error not later than **8 February 2024**.

Appellant's counsel is advised that given the number of enlargements granted thus far, any further requests for an enlargement of time will not be granted absent extraordinary circumstances.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**CONSENT MOTION TO EXAMINE SEALED MATERIALS**
Appellee	)	
	)	
v.	)	
	)	Before Panel 3
Logan A. MCLEOD,	)	
Senior Airman (E-4)	)	No. ACM 40374
United States Air Force	)	
Appellant	)	7 February 2024

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 Rules 3.1 and 23.3(f)(1) of this Court's Rules of Practice and Procedure, Senior Airman Logan McLeod moves to examine the following materials sealed by the preliminary hearing officer: **Preliminary Hearing Officer Exhibits 9 and 12.**

FACTS

On 24 January and 22-24 August 2022, SrA McLeod was tried by a general court-martial composed of a military judge alone at Maxwell Air Force Base, Alabama, at which he entered mixed pleas.[1] Consistent with his pleas, SrA McLeod was convicted of ten specifications of various attempts, in violation of Article 80, Uniform Code of Military Justice (UCMJ);[2] and one specification of obstruction of justice, in violation of Article 131b, UCMJ.[3] Contrary to his pleas, the military judge found SrA McLeod guilty of an additional six specifications of attempt.[4] Prior to trial, an Article 32, UCMJ, 10 U.S.C. § 832, preliminary hearing was held where the preliminary hearing officer considered messages between "Blazer" and "Bunny" and additional

[1] R. at 191-92.
[2] The specifications of attempt are captured in Charge I and the Additional Charge.
[3] R. at 303.
[4] R. at 465.

messages with "Bunny." Record of Trial, Vol. 6. The PHO sealed this material in PHO Exhibits 9 and 12. *Id*.

LAW AND ANALYSIS

The above-noted exhibits were released to both trial and defense counsel at the preliminary hearing. Rule for Courts-Martial 1113(b)(3)(B)(i) requires "a colorable showing" that examination of these materials is reasonably necessary to fulfill appellate counsel's responsibilities. Viewing these exhibits is reasonably necessary to determine whether SrA McLeod is entitled to relief due to errors before, during, or after trial.

A review of the entire record of trial is also necessary because this Court is empowered by Article 66(d), UCMJ, 10 U.S.C. § 866(d), to grant relief based on a review and analysis of "the entire record." This Court's "broad mandate to review the record unconstrained by an appellant's assignments of error . . . does not reduce the importance of adequate representation. . . . [I]ndependent review is not the same as competent appellate representation." *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998). To determine whether the record of trial yields grounds for this Court to grant relief under Article 66(d), UCMJ, appellate defense counsel must also examine "the entire record" to ensure competent representation.

Accordingly, good cause exists in this case since counsel cannot fulfill their duty of representation under Article 70, UCMJ, 10 U.S.C. § 870, without first reviewing the complete record of trial.

Counsel believes this information may be duplicative of unsealed portions of the record, but the record is unclear. Counsel does not foresee this review delaying the filing of Appellant's Assignments of Error on 8 February 2024.

The Government consents to both parties viewing the sealed materials detailed above.

WHEREFORE, Appellant respectfully requests that this Court grant this motion and permit examination of the aforementioned sealed exhibits contained within the original record of trial.

Respectfully submitted,

[redacted]

MEGAN P. MARINOS
Senior Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 7 February 2024.

[redacted]
MEGAN P. MARINOS
Senior Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40374**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Logan A. MCLEOD	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 3**

On 7 February 2024, counsel for Appellant submitted a Consent Motion to Examine Sealed Materials, requesting both parties be allowed to examine Preliminary Hearing Officer (PHO) Exhibits 9 and 12. These exhibits were reviewed by trial counsel and trial defense counsel at the preliminary hearing.

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 has made a colorable showing that review of sealed materials is reasonably necessary for a proper fulfillment of appellate defense counsel's responsibilities. This court's order permits counsel for both parties to examine the materials.

Accordingly, it is by the court on this 7th day of February, 2024,

ORDERED:

Appellant's Consent Motion to Examine Sealed Materials is **GRANTED**.

Appellate defense counsel and appellate government counsel may view sealed **PHO Exhibits 9 and 12** 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.

FOR THE COURT

[redacted]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**BRIEF ON BEHALF OF APPELLANT**
Appellee	)	
	)	
v.	)	
	)	Before Panel No. 3
	)	
Senior Airman (E-4)	)	No. ACM 40374
LOGAN A. MCLEOD,	)	
United States Air Force	)	
Appellant	)	8 February 2024

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

WILLIAM E. CASSARA, Esq.
Appellate Defense Counsel
[redacted]

MEGAN P. MARINOS
Senior Appellate Defense Counsel
Air Force Appellate Defense Division
[redacted]

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Miscellaneous

ASSIGNMENTS OF ERROR[1]

I.

THE EVIDENCE IS LEGALLY AND FACTUALLY INSUFFICIENT TO SUPPORT THE FINDINGS OF GUILTY FOR ATTEMPTED MURDER OF "SARAH" AND ATTEMPTED CONSPIRACIES TO RAPE AND KIDNAP AB.

II.

THE SENTENCES TO CONFINEMENT ARE INAPPROPRIATELY SEVERE.

STATEMENT OF THE CASE

On 24 January, 27 April, and 22-24 August 2022, Senior Airman (SrA) Logan A. McLeod (Appellant) was tried at Maxwell Air Force Base (AFB), Alabama, before a military judge sitting as a general court-martial. Pursuant to his pleas, the military judge convicted SrA McLeod of attempted wrongful possession of a controlled substance, attempted rape, attempted kidnapping (two specifications), attempted rape of a minor, attempted wrongful distribution of child pornography, attempted wrongful production of child pornography, attempted aggravated assault of a minor (three specifications), and obstruction of justice, in violation of Articles 80 and 131b of the Uniform Code of Military Justice (UCMJ); 10 U.S.C. §§ 880 and 931b (2019).[2] Contrary to his pleas, the military judge convicted Appellant of attempted premeditated murder, attempted conspiracy to rape, attempted conspiracy to kidnap, and attempted aggravated assault

[1] Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), Appellant respectfully requests that this Court consider the matters contained in the Appendix.
[2] Unless otherwise indicated, all references to the UCMJ, the Military Rules of Evidence, and the Rules for Courts-Martial are to the Manual for Courts-Martial, United States (2019 ed.) [MCM].

of a minor (three specifications), in violation of Article 80, UCMJ, 10 U.S.C. § 880. (Entry of Judgment (EOJ)).[3]

The military judge sentenced SrA McLeod to a reprimand, reduction to the grade of E-1, confinement for thirty-five years, and a dishonorable discharge.[4] The military judge credited Appellant with 341 days of pretrial confinement credit toward the sentence to confinement. (EOJ.) On 14 September 2020, the convening authority took no action on the findings or sentence. (Convening Authority Decision on Action.)

STATEMENT OF THE FACTS

Background

In 2017, Ms. JO, a sex worker who lived in New York with her husband, became Facebook friends with Ms. BM, who lived in Alabama with her husband, SrA McLeod. (R. at 330, 362.) Both marriages were open relationships and, in January 2020, JO and BM started dating while still married to their respective spouses. (R. at 330, 355, 356.)

In June 2020, JO stayed with BM and Appellant for a week. (R. at 331, 355.) The trio engaged in consensual sexual activity. (R. at 332, 355.)

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[3] The military judge acquitted SrA McLeod of attempted wrongful possession of a controlled substance and attempted assault of a child (two specifications). Three additional specifications for attempt were withdrawn and dismissed before arraignment. (EOJ.)

[4] The military judge sentenced Appellant to confinement for one year for Specification 2 of Charge I; fifteen years for Specification 4 of Charge I; thirty-five years for Specification 5 of Charge I; ten years for Specification 8 of Charge I; ten years for Specification 9 of Charge I; twenty years for Specification 10 of Charge I; six years for Specification 11 of Charge I; nine years for Specification 12 of Charge I; six months for The Specification of Charge II; seven years for Specification 1 of the Additional Charge; four years for Specification 2 of the Additional Charge; three years for Specification 3 of the Additional Charge; three years for Specification 4 of the Additional Charge; four years for Specification 5 of the Additional Charge; five years for Specification 6 of the Additional Charge; three years for Specification 7 of the Additional Charge; and five years for Specification 10 of the Additional Charge, with confinement to run concurrently. (R. at 532; EOJ.)

In September 2020, BM stayed with JO and her family for about two weeks. (R. at 332, 356.) According to JO, this visit was awful because her husband and BM engaged in a sex act that JO disapproved of, BM wanted to share a bed with JO and her husband, and BM talked about these sex acts in public, thereby tarnishing JO's name and professional reputation. (R. at 357-58.) Additionally, JO disapproved of BM having consensual sex with JO's ex-boyfriend. (R. at 358.) When JO confronted BM, BM accused JO's husband of raping her. (R. at 333, 359.) BM cut JO out of her life. (R. at 333, 359-60.) JO felt angry and mistreated. (R. at 360.)

In October 2020, SrA McLeod and BM started texting each other. (R. at 333, 360.) JO called SrA McLeod "Ace" in these messages and he called her "Bunny." (R. at 340, 398; Pros. Exs. 1, 2.) Within days, their conversations turned sexual. (R. at 334.) Senior Airman McLeod was in love with JO and she knew it. (R. at 373.)

Appellant's fantasies did not shock JO because her profession routinely involved discussions of bondage, sadomasochism, and other sexual topics. (R. at 362-63.) Indeed, she encouraged SrA McLeod to let his mind run free when discussing fantasies. (R. at 364.) Sometimes JO suggested ideas to him, such as cutting off someone's hands after being handcuffed. (R. at 364, 365-66; Pros. Ex. 1.)

In late July or early August 2021, SrA McLeod initiated conversations involving kidnapping fantasies. (R. at 335; Pros. Ex. 1.) JO testified, "[H]e was asking me questions about kidnap fantasies, would I kidnap my own sister, would I let my own sisters kidnap me, would I do anything with family members." (R. at 335.) She added, "I thought it was weird, but you know it wasn't illegal. So I just told him I wasn't really interested in that, but I didn't think too much of it honestly." (R. at 335.)

Allegations Involving AB

AB was JO's "closest friend." (R. at 348.) Nonetheless, in early August 2021, JO suggested to SrA McLeod that AB would be "his ideal kidnap victim." (R. at 349.) They discussed JO renting an Airbnb in Alabama, bringing AB to the house, drugging AB with Xanax, sexually abusing her, and taking photographs of her. (R. at 349, 424.) When asked whether Appellant gave her money "for the plan for [AB]," JO testified, "He did. For [AB], I'm not sure. I know he gave money for the drugs to the agent[5] but – and he gave money for the going down to Alabama, but I can't remember for her." (R. at 350.) She clarified that the money was for the bus to Alabama and the Airbnb rental. (R. at 350.)

JO Contacts Law Enforcement

In early August 2021, SrA McLeod told JO about a kidnapping and rape fantasy involving a fourteen or fifteen-year-old child. (R. at 336.) This fantasy concerned JO, so she filed an online report with the Air Force Office of Special Investigations (AFOSI) on or about 4 August 2021. (R. at 337.) At trial, however, JO admitted that she baited SrA McLeod during discussion of this particular fantasy. (R. at 369.)

A few days later, Special Agent (SA) JP flew to New York and made JO a confidential informant. (R. at 338, 389, 417.) As part of this arrangement, SA JP installed an app on JO's phone that allowed him to monitor the communications between JO and Appellant and to record phone calls between them. (R. at 338, 341, 369, 389; Pros. Ex. 3.) SA JP asked JO to keep talking to SrA McLeod and to "follow [SA JP's] lead and instruction." (R. at 338.)

[5] The military judge acquitted SrA McLeod of attempted wrongful possession of Xanax with the intent to distribute in Specification 1 of Charge I. (EOJ.)

Allegations Involving "Caitlin" and "Sarah"

After SA JP enlisted JO as a confidential informant, they concocted a plan in which SA JP pretended to be a human trafficker known as "Blazer." (R. at 366, 390.) JO, "Blazer," and SrA McLeod planned for Appellant to purchase "Sarah" and "Caitlin" so that they could be his sex slaves at a rented house in Alabama. (R. at 348, 366-67; Pros. Exs. 1, 2, 4.) "Sarah" and "Caitlin" were not real people; they were characters—a mother and daughter—conjured by "Blazer." (R. at 420.)

Over text messages and phone calls, JO and SrA McLeod fantasized about tying "Sarah" and "Caitlin" together, "snuffing" "Sarah" by suffocating her to death while having sex with her, videotaping sexual acts with "Caitlin," and assaulting "Caitlin" in various ways. (R. at 392-93.) SrA McLeod discussed "the possible killing of [AB], as well as Sarah." (R. at 412, 413.)

On 25 August 2021, SrA McLeod felt apprehensive about the plan; he felt that it was not "airtight." (R. at 375; Pros. Ex. 3.) JO told him that the only thing that was not "airtight" was him and that he kept doubting and second-guessing the plan. (R. at 375.)

On 8 September 2021, SrA McLeod expressed apprehension about the plan and feared that it was a set-up. (R. at 345.) He told JO that he needed to get help and he wanted to back out of the plan because it was one thing to fantasize, but another thing to actually do it. (R. at 345, 372.) Senior Airman McLeod did not think that he could become someone who would do these things. (R. at 372.) He told JO that he did not know what he had been thinking and he feared that "Blazer" would kill him for backing out of the plan. (R. at 371.)

Senior Airman McLeod texted "Blazer" about abandoning the plan. (R. at 421; Pros. Ex. 4.) He asked if "backing out was acceptable." *Id*. "Blazer" knew that Appellant expressed hesitation about snuffing, or killing, "Sarah" and disposing of her body. (R. at 422; Pros. Ex. 2.)

In a 9 September 2021 phone call, JO conveyed her surprise and anger at SrA McLeod's hesitation. (R. at 345, 347; Pros. Ex. 3.) Appellant asked her, "Are you sure about going through with this?" (R. at 345; Pros. Ex. 3.) She answered, "I mean, I feel really confident, you know. I mean, I'm not trying to pressure you or nothing, you know. It's your – it's your choice as well, but like I did put a lot of money on this. Like I put more than 2 grand into this, you know." (R. at 345, 373; Pros. Ex. 3.) She continued to express her surprise at SrA McLeod's cold feet. (R. at 346; Pros. Ex. 3.) He answered, "Yeah. I was saying that just to have it on the record in case this was a fucking cop set-up basically." *Id.*

On 10 September 2021, SA BS, of Homeland Security Investigations, played the part of "Blazer" for an in-person meeting with SrA McLeod. (R. at 391-92, 428, 429; Pros. Ex. 5.) Senior Airman McLeod told "Blazer" that he was not interested in the mother and that he was only interested in the daughter. (R. at 430.) Appellant gave "Blazer" $150.00 in cash. (R. at 392, 393, 429; Pros. Ex. 16.) SA BS testified:

> He gave me a hug, and he handed me an envelope. It had three $50 bills in it. We spoke for a few minutes, and then I showed him pictures that I had on my phone. One was of a girl that was underage or he was being told that she was underage. He looked at it. Also, I showed him the mother. He said he wasn't interested in the mother, that he would only be interested in meeting with the girl.

(R. at 429-30.)

"Blazer" gave SrA McLeod a blue plastic dinosaur. (R. at 393, 430; Pros. Exs. 5, 16.) The purpose of the dinosaur was for Appellant to take a photo of it upon "Blazer's" demand as a means of proving his identity. (R. at 393, 404, 430.)

Senior Airman McLeod and JO Abandon the Plan for AB

SA JP testified that, sometime after he assumed "Blazer's" identity, SrA McLeod and JO discussed whether to execute the schemes for AB and "Sarah" and "Caitlin." (R. at 419.) The following colloquy occurred:

> Defense Counsel [DC]: And at the time in which you came onto the investigation, [JO] had already suggested her friend [AB] as a victim, correct?
>
> SA JP: That is correct.
>
> DC: And that was before you ever became involved?
>
> SA JP: That is correct.
>
> DC: And then you assumed the identity of Blazer, correct, the human trafficker?
>
> SA JP: In September, I did, yes.
>
> DC: And the plan at that point in time for [AB] was canceled, right?
>
> SA JP: Senior Airman McLeod discussed with [JO] after I came into the picture, so to speak, if they should try to do both, if they should try to trade or sell [AB] or if they should cancel [AB] altogether. And ultimately, they made the decision to cancel [AB].
>
> DC: So, the answer is, yes?
>
> SA JP: Yes.
>
> DC: Okay, they cancel on [AB]?
>
> SA JP: Yes, they did.

(R. at 419.)

SA JP testified that the plan regarding AB was abandoned in favor of pursuing the plan regarding "Sarah" and "Caitlin." (R. at 424.) He maintained that the cash that SrA McLeod gave "Blazer" was initially meant for the plan with AB. (R. at 424.)

Senior Airman McLeod's Apprehension

On 18 September 2021, JO arrived in Alabama. (R. at 350.) SA JP took her to the rented Airbnb and then to an unknown location where she called SrA McLeod and pretended that "Caitlin" and "Sarah" had escaped. (R. at 350; Pros. Ex. 2.) She told Appellant to go to the Airbnb. (R. at 350.) He did and was apprehended by AFOSI and local law enforcement officers. (R. at 350, 394; Pros. Ex. 14.)

The trunk of SrA McLeod's car contained a number of items, including a balaclava, sunglasses, chains, a straitjacket, noseclips, glue, and tape. (R. at 403, 406, 411; Pros. Exs. 22, 37.) SA JP testified, "Blazer informed Senior Airman McLeod that he needed to have a covering of his face any time that he made videos with Caitlin to obscure his identity . . . ." (R. at 406.) Similarly, the purpose of the sunglasses was "to hide his identity on video." (R. at 411.) As for the tape found in the trunk, SA JP testified that Appellant had talked about using it "to permanently suffocate Sarah." (R. at 407, 40-10; Pros. Exs. 26, 33.) Although "Blazer" had instructed SrA McLeod to purchase trash bags to dispose of "Sarah's" body, there were no trash bags in the trunk. (R. at 422-23; Pros. Exs. 4, 15.)

While in custody, SrA McLeod called his wife, BM, and the call was recorded. (Pros. Ex. 41.) Appellant informed BM that the charges included attempted rape and attempted murder. (Pros. Ex. 41.) He told BM: "One of the charges is attempted murder but I promise I was not going to do that," "But I swear I was not going to kill anyone," and "I promise I was not going to kill anyone." (Pros. Ex. 41 at 0:06:59, 0:07:14.) BM asked SrA McLeod why he showed up at the rented house and he answered, "When they actually came, I wasn't even sure what I was gonna do." (Pros. Ex. 41 at 0:09:10.)

Additional facts necessary to resolve the assigned errors are contained in the arguments below.

ERRORS AND ARGUMENT

I.

THE EVIDENCE IS LEGALLY AND FACTUALLY INSUFFICIENT TO SUPPPORT THE FINDINGS OF GUILTY FOR ATTEMPTED MURDER OF "SARAH" AND ATTEMPTED CONSPIRACIES TO RAPE AND KIDNAP AB.

Standard of Review

Questions of legal and factual sufficiency are reviewed de novo. *United States v. Bright*, 66 M.J. 359, 363 (C.A.A.F. 2008); *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002).

Law

Legal Sufficiency

The test for legal sufficiency is "whether, considering the evidence in a light most favorable to the prosecution, a reasonable factfinder could have found all the essential elements beyond a reasonable doubt." *United States v. Walters*, 58 M.J. 391 (C.A.A.F. 2003); *United States v. Pabon*, 42 M.J. 404, 405 (C.A.A.F. 1995) (*quoting Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The test for factual sufficiency is, "whether after weighing the evidence in the record of trial, and making allowances for not having personally observed the witnesses, [this Court is] convinced of [appellant's] guilt beyond a reasonable doubt." *Walters*, 58 M.J. at 396 (*citing United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987)). This Court must be convinced of appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325.

Factual Sufficiency

For cases in which every finding of guilty in the Entry of Judgment is for an offense that occurred on or after 1 January 2021, as here, the amended Article 66(d)(1)(B), 10 U.S.C. § 866(d)(1)(B), applies to a CCA's factual sufficiency review. National Defense Authorization Act for Fiscal Year 2021 [FY21 NDAA], Pub. L. No. 116-283, § 542(b), 134 Stat. 3611-12, 3612 (1 Jan. 2021); *United States v. Scott*, No. 20220450, 2023 CCA LEXIS 456, at *3-4, 83 M.J. 778 (A. Ct. Crim. App. 27 Oct. 2023); *United States v. Harvey*, 83 M.J. 685, 690-92 (N-M. Ct. Crim. App. 23 May 2023), *rev. granted*, 2024 CAAF LEXIS 13 (C.A.A.F. 10 Jan. 2024); *United States v. Ellard*, No. 202200051, 2023 CCA LEXIS 363 (N-M. Ct. Crim. App. 31 Aug. 2023) (unpub. op.). *See also United States v. Porterie*, No. ACM S32735, 2023 CCA LEXIS 229, at n.* (A.F. Ct. Crim. App. 30 May 2023) (unpub. op.) ("We did not consider factual sufficiency in Appellant's appeal because Appellant did not comply with 10 U.S.C. § 866(d)(1)(B)(i) in that Appellant did not make 'a specific showing of a deficiency in proof.'" (citing FY21 NDAA, Pub. L. No. 116-283, § 542, 134 Stat. 3388, 3612)).

The amended statute provides:

> (B) FACTUAL SUFFICIENCY REVIEW
>
> (i) In an appeal of a finding of guilty under subsection (b), the Court of Criminal Appeals may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.
>
> (ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to –
>
> (1) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and

> (2) appropriate deference to findings of fact entered into the record by the military judge.
>
> (iii) If, as a result of the review conducted under clause (ii), the court is clearly convinced that the finding of guilty was against the weight of the evidence the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

Article 66(d)(1)(B), UCMJ, 10 U.S.C. § 866(d)(1)(B).

In *Harvey*, the Navy-Marine Corps CCA explained:

> Congress undoubtedly altered the factual sufficiency standard in amending the statute, making it more difficult for a court of criminal appeals to overturn a conviction for factual insufficiency. In the past, we evaluated factual sufficiency of a conviction to determine "whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, [we] are . . . convinced of [an appellant's] guilt beyond a reasonable doubt." In conducting this unique appellate function, we took "a fresh, impartial look at the evidence," applying "neither a presumption of innocence nor a presumption of guilt" to "make [our] own independent determination as to whether the evidence constitutes proof of each required element beyond a reasonable doubt." Proof beyond a "[r]easonable doubt, however, [did] not mean the evidence must be free from conflict." And we were required to apply this standard of review for each charge and specification regardless of whether an appellant challenged the factual sufficiency of any of his convictions.
>
> Now, to trigger factual sufficiency review under the present Article 66(d)(1)(B), Congress requires two circumstances be present: (1) a request of the accused; and (2) a specific showing of a deficiency in proof. In amending Article 66, Congress has therefore eliminated this Court's duty, and power, to review a conviction for factual sufficiency *absent* an appellant (1) asserting an assignment of error, and (2) showing a specific deficiency in proof.

83 M.J. 691 (footnotes omitted) (emphasis in original) (citing *Turner*, 25 M.J. at 325 (C.M.A. 1987), *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002), *United States v. Rankin*, 63 M.J. 552, 557 (N-M. Ct. Crim. App. 2006)).

The Army and Navy-Marine Corps CCAs differ in their approaches to the new factual

sufficiency standard. The Navy-Marine Corps CCA found:

> [T]he revised statute requires a departure from the prior practice, and the standard for factual sufficiency has become harder for an appellant to meet. It is clear that the factual sufficiency standard in the revised Article 66, UCMJ, statute has altered this Court's review from taking a fresh, impartial look at the evidence requiring this Court to be convinced of guilt beyond a reasonable doubt, to a standard where an appellant has the burden to both raise a specific factual issue, and to show that his or her conviction is against the weight of the evidence admitted at trial. Thus, Congress has implicitly created a rebuttable presumption that in reviewing a conviction, a court of criminal appeals presumes that an appellant is, in fact, guilty.

Harvey, 83 M.J. at 693.[6]

The Army CCA disagreed that the amended statute created a rebuttable presumption on CCA review that an appellant is guilty. *Scott*, 2023 CCA LEXIS 456 at *5. That court held that it conducts a "de novo review of the controverted questions of fact." *Id*. It continued, "While we hold the new burden with its required deference makes it more difficult for one to prevail on appeal, we stop short of finding an implicit creation of a rebuttable presumption of guilt and will continue to adhere to the de novo standard of review articulated by our superior court." *Id*. at *5-6.

Appellant is unaware of any decisions by this Court, whether published or not, that squarely address the post-1 January 2021 factual sufficiency standard, although that issue is now before the CAAF in *Harvey*. For the reasons articulated by the Army CCA in *Scott* and because nothing in the statute indicates that Congress created a rebuttable presumption of guilt, Appellant respectfully requests that this Court conduct a de novo review of the controverted questions of fact and continue to adhere to the de novo standard of review articulated by the CAAF.

[6] The CAAF has granted review of whether the Navy-Marine CCA erroneously interpreted and applied the amended sufficiency standard under Article 66(d)(1)(B), UCMJ. *United States v. Harvey*, 2024 CAAF LEXIS 13 (C.A.A.F. 10 Jan. 2024) (order granting review).

The Elements of Attempt

The military judge convicted Appellant of attempted premeditated murder in Specification 5 of Charge I, attempted conspiracy to rape in Specification 1 of the Additional Charge, and attempted conspiracy to kidnap in Specification 2 of the Additional Charge.

The elements of attempt, in violation of Article 80(a), UCMJ, 10 U.S.C. § 880(a), are:

> (1) That the accused did a certain overt act;
>
> (2) That act was done with the specific intent to commit a certain offense under the UCMJ;
>
> (3) That the act amounted to more than mere preparation; and
>
> (4) That the act apparently tended to effect the commission of the intended offense.

MCM, pt. IV, ¶ 4.b.

An attempt requires "a specific intent to commit the offense accompanied by an overt act which directly tends to accomplish the unlawful purpose." *Id*. at ¶ 4.c.(1).

The overt act:

> goes beyond preparatory steps and is a direct movement toward the direction of the offense. For example, a purchase of matches with the intent to burn a haystack is not an attempt to commit arson, but it is an attempt to commit arson to apply a burning match to a haystack, even if no fire results. The overt act need not be the last act essential to the consummation of the offense. For example, an accused could commit an overt act, and then voluntarily decide not to go through with the intended offense. An attempt would nevertheless have been committed, for the combination of a specific intent to commit an offense, plus the commission of an overt act directly tending to accomplish it, constitutes the offense of attempt. Failure to complete the offense, whatever the cause is, is not a defense.

Id. at ¶ 4.c.(2).

For an act to amount to more than mere preparation, the accused must take a substantial step toward accomplishing the completed offense. *United States v. Payne*, 73 M.J. 19, 24 (C.A.A.F. 2014). There is an "elusive line separating mere preparation from a substantial step." *United States v. Winckelmann*, 70 M.J. 403, 407 (C.A.A.F. 2011) (internal quotation marks omitted) (citation omitted). In *Winckelmann*, the CAAF noted:

> Federal courts of appeals have defined a "substantial step" as "more than mere preparation, but less than the last act necessary before actual commission of the crime." *See, e.g., United States v. Chambers*, 642 F.3d 588, 592 (7th Cir. 2011). We have adopted a similar approach. *See, e.g., United States v. Byrd*, 24 M.J. 286, 290 (C.M.A. 1987) ("'[A] substantial step must be conduct strongly corroborative of the firmness of the defendant's criminal intent.'") . . . . Accordingly, the substantial step must "'unequivocally demonstrat[e] that the crime will take place unless interrupted by independent circumstances.'" *United States v. Goetzke*, 494 F.3d 1231, 1237 (9th Cir. 2007).

Id. (alterations in original) (citations omitted).

Voluntary abandonment is a defense to an attempt offense when:

> the person voluntarily and completely abandoned the intended crime, solely because of the person's own sense that it was wrong, prior to the completion of the crime. The voluntary abandonment defense is not allowed if the abandonment results, in whole or in part, from other reasons, for example, the person feared detection or apprehension, decided to await a better opportunity for success, was unable to complete the crime, or encountered unanticipated difficulties or unexpected resistance.

MCM, pt. IV, ¶ 4.c.(4).

The Elements of Premeditated Murder

In Specification 5 of Charge I, the military judge convicted Appellant of attempting, with premeditation, to murder a person he believed to be "Sarah," by means of suffocating her on or about 18 September 2021. (R. at 465; EOJ).

The elements of premeditated murder, in violation of Article 118(1), UCMJ, 10 U.S.C. § 918(1), are:

> (1) That a certain named or described person is dead;
>
> (2) That the death resulted from the act or omission of the accused;
>
> (3) That the killing was unlawful; and
>
> (4) That, at the time of the killing, the accused had a premeditated design to kill.

MCM, pt. IV, ¶ 56.b.

The Elements of Conspiracy

In Specification 1 of the Additional Charge, the military judge convicted Appellant of attempting to conspire with JO to rape AB by penetrating her vulva with his penis, by using unlawful force, and in order to effect the object of the conspiracy, Appellant provided funding for a lodging rental between on or about 1-5 August 2021. (R. at 465; EOJ.)

In Specification 2 of the Additional Charge, the military judge convicted Appellant of attempting to conspire with JO to kidnap AB and, to effect the object of the conspiracy, Appellant provided funding for a lodging rental between on or about 1-5 August 2021. *Id.*

The elements of conspiracy, in violation of Article 81(a), UCMJ, 10 U.S.C. § 881(a), are:

> (1) That the accused entered into an agreement with one or more persons to commit an offense under the UCMJ; and
>
> (2) That, while the agreement continued to exist, and while the accused remained a party to the agreement, the accused or at least one of the co-conspirators performed an overt act for the purpose of bringing about the object of the conspiracy.

MCM, pt. IV, ¶ 5.b.(1).

The Elements of Rape

The elements of rape by unlawful force, in violation of Article 120(a)(1), UCMJ, 10 U.S.C. § 920(a)(1), are:

(1) That the accused committed a sexual act upon another person; and

(2) That the accused did so with unlawful force.

Id. at ¶ 60.b.(1)(a).

The Elements of Kidnapping

The elements of kidnapping, in violation of Article 125, UCMJ, 10 U.S.C. § 925, are:

(1) That the accused seized, confined, inveigled, decoyed, or carried away a certain person;

(2) That the accused then held such person against that person's will; and

(3) That the accused did so wrongfully.

Id. at ¶ 74.b.

Argument

This is a case about fantasy and intent and where the line between the two is, especially when the charged offenses are attempted acts and not completed acts. Conversations about specific fantasies, no matter how dark and disturbing they are, are not criminal when the evidence is insufficient to prove intent and the charged overt acts are not substantial steps toward the completion of the offenses.

In *United States v. Valle*, the Second Circuit addressed the line between fantasy and criminal intent when affirming the district court's judgment of acquittal on a count of conspiracy to kidnap:

> Although it is increasingly challenging to identify that line in the Internet age, it still exists and it must be rationally discernible in order to ensure that "a person's inclinations and fantasies are his own and beyond the reach of the government." *Jacobson v. United States*, 503 U.S. 540, 551-52 (1992). We are loath to give the government the power to punish us for our thoughts and not our actions. *Stanley v. Georgia*, 394 U.S. 557, 565 (1969). That includes the power to criminalize an individual's expression of sexual fantasies, no matter how perverse or disturbing. Fantasizing about committing a crime, even a crime of violence against a real person whom you know, is not a crime.
>
> This does not mean that fantasies are harmless. To the contrary, fantasies of violence against women are both a symptom of and a contributor to a culture of exploitation, a massive social harm that demeans women. Yet we must not forget that in a free and functioning society, not every harm is meant to be addressed with the federal criminal law.

807 F.3d 508, 511 (2d Cir. 2015) (citations omitted).

This Court cannot affirm SrA McLeod's convictions for attempted murder of "Sarah" and for attempted conspiracies to rape and kidnap AB because the evidence, no matter how disturbing it was, is legally and factually insufficient for the reasons stated below.

1. Specification 5 of Charge I – Attempted Murder of "Sarah" by Suffocation

During closing argument, the second Special Trial Counsel [STC2] summarized the Government's view of the conversation: "Killing a mother while he's ejaculating into her with her daughter tied to her face-to-face, leaving the daughter there overnight to torture her. That's his specific intent." (R. at 440.) The STC2 discussed SrA McLeod's "intent" based on his texts to JO:

> We also see a number of text messages where he talks about this plot. On 1 September he says, "**Maybe** we could do the thing where we kill the mother and tie her to the daughter." 4 September, "Do you want to tie her to her daughter and kill her **sometime**?" "After the killing," 16 September 2021, "I want to put an O-ring on ["Caitlin"] . . . and "fuck her mouth while she's still screaming about it." This is important because he's delineating two different

> behaviors for two different people. He wants to rape and torture both the mother and the daughter, but just kill the mother. That shows his intent that he wants to do two different things with two different people.

(R. at 441.) (emphasis added.)

The Government incorrectly conflated fantasy with intent. Senior Airman McLeod and JO's texts were replete with fantasies about "snuff" and "snuffing someone." (Pros. Ex. 1.) Their conversations involved elaborate fantasies about what ideas turned them on. They peppered their texts with emojis, GIFs, and cartoon images. (Pros. Ex. 1.) These fantasies, as dark and depraved as other people may find them, consisted of nothing but hypothetical scenarios and wishes: "What would you do if this happened?" "What do you think about this?" "Well, what if we did this instead?" "What's your ideal scenario?" The darker and more depraved the fantasies became, the more they complimented each other on their ingenuity. They sought to impress each other with their depravity. Senior Airman McLeod asked JO, "Can I tell you my taboo fantasy? . . . . So does this turn you on? And what all are your thoughts about it?" (Pros. Ex. 1 at 379.) Essentially, their conversations amounted to an effort to out-do each other, to shock each other, and to be more outrageous than the other one.

While SrA McLeod purchased and transported a number of items, including glue, noseclips, tape, a straitjacket, chains, and locks (Pros. Exs. 6-15, 17-39), he did not bring the trash bags that "Blazer" had instructed him to bring as recently as the day before the arranged apprehension for disposal of "Sarah's" body. (Pros. Ex. 4 at 30, 35, 48; Pros. Ex. 15.) In all the communication between SrA McLeod and "Blazer," "Blazer" was in charge and he dominated SrA McLeod so much that SrA McLeod feared "Blazer's" reaction if he backed out of the plan.[7]

[7] During the providence inquiry, SrA McLeod stated, "I recognized during the planning of this and the on-going communication with Blazer that he was not someone I wanted to have an on-

(R. at 371.) On 6 September 2021, "Blazer" warned SrA McLeod that "if you were trying to really fuck me over . . . well don't try that because you'd regret it I promise. (Pros. Ex. 4.) SrA McLeod answered, "Believe me, I definitely don't want to deal with the consequences of that." *Id*. And yet, even though SrA McLeod feared for his own life should he disobey or disappoint "Blazer," he did not bring the trash bags because he did not intend to kill "Sarah." There was no need for the 55-gallon trash bags because there would be no snuffing and no body to dispose of.

The night before the arranged apprehension, SrA McLeod instructed JO to "[b]all gag the bitch mother immediately when she arrives. And keep her blindfold on. It's really important that she not see you." (Pros. Ex. 2 at 222.) If SrA McLeod intended to kill "Sarah," then there was no need for "her" to be blindfolded. If he did not intend to kill "her," then he needed to ensure that "she" could not identify him or JO. This text is evidence that SrA McLeod did not intend to kill "Sarah."

The STC2 exposed the weaknesses in the Government's case when he highlighted SrA McLeod's 1 September 2021 text to JO—"**Maybe** we could do the thing where we kill the mother and tie her to the daughter"—and his text three days later in which he asked if JO wanted to kill the mother "**sometime**." These texts evinced SrA McLeod's lack of intent, his hesitation, and his doubt that their fantasies would come to fruition. These texts contained wishes, not intent. Senior Airman McLeod's words were perverse and disturbing, but his fantasy about committing a crime was not itself a crime.

Additionally, as the date for the plan got closer, SrA McLeod repeatedly expressed his apprehension and doubts to JO. On 8 September 2021, he told JO that he did not think he could

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going business partnership with. I feared him and was fearful of making him upset. I feared for my own safety as well as my wife's safety." (R. at 243.)

do the things they had fantasized about. He risked inflaming "Blazer's" anger when he asked "Blazer" if "backing out was acceptable."

JO was furious because she wanted retribution against SrA McLeod, whose wife, BM, had shattered JO's trust, broken her heart, and tarnished her professional reputation when BM engaged in consensual sexual activity with JO's husband and her ex-boyfriend and then divulged these activities to people in the community.

The Government maintained that SrA McLeod's 9 September 2021 statement to JO—that his apprehension the previous day was a ruse in case the plan was actually a sting operation—confirmed his intent. (R. at 446-47.) The Government failed to acknowledge that, on 10 September 2021, SrA McLeod met "Blazer" and told him that he was not interested in the mother. "Blazer" showed SrA McLeod a photo of only the girl. (R. at 430.) He did not show SrA McLeod a photo of the mother because SrA McLeod had explicitly abandoned any plan for "Sarah."

Finally, during the recorded call with his wife while he was in jail, SrA McLeod admitted that he had betrayed her trust by communicating with JO even though he knew that JO's husband had violated her. He admitted that he made countless terrible choices and that his fantasies were dark, but he wanted BM to know that he did not intend to kill anyone. He told her, "When ["Sarah" and "Caitlin"] actually came, I wasn't even sure what I was gonna do." The evidence adduced at trial is clear that SrA McLeod did not intend to murder "Sarah."

On this record, no reasonable factfinder could conclude beyond a reasonable doubt that SrA McLeod possessed the specific intent to murder "Sarah."

In addressing the alleged overt acts, the STC2 described SrA McLeod's "first step" as his research to find a rental home and the transfer of money for that home. (R. at 442.) According

to the STC2, the next steps involved paying "Blazer" $150.00 and getting a COVID test. (R. at 442.) The "final step" occurred when SrA McLeod drove to the rental home on the appointed day "with all those items . . . in his trunk[:] bags, duct tape, chains, sponge, leash, collar, padlocks, all of it." (R. at 443.) As discussed above, SrA McLeod did not have the trash bags that "Blazer" instructed him to bring because he did not intend to murder "Sarah" and dispose of her body. Senior Airman McLeod demanded that JO wear a mask so that "Sarah" could not identify her or him because he did not intend to murder "Sarah" and dispose of her body.

On this record, no reasonable factfinder could conclude beyond a reasonable doubt that SrA McLeod took a substantial step toward completion of the offense.

Even with the appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence, this Court cannot be clearly convinced that the finding of guilty was against the weight of the evidence. Accordingly, this Court cannot be convinced of SrA McLeod's guilt beyond a reasonable doubt.

2. Specifications 1 and 2 of the Additional Charge – Attempted Conspiracies to Rape and Kidnap AB

The bulk of the Government's evidence for Specifications 1 and 2 of the Additional Charge consisted of texts between SrA McLeod and JO and his payment of $150.00 to JO for the rental of house in Alabama. (Pros. Ex. 2, 16.) Senior Airman McLeod and JO's conversations about AB involved a plethora of ideas about what it would be like to bring her to Alabama under the pretense of a visit to SrA McLeod and dark fantasies about intentionally impregnating her. (Pros. Exs. 1, 2.) The fantasies amounted to multiple scenarios: "What if we did this?" "What would it be like if we tried that?" "Imagine if we did this." The fantasies—that JO would offer up her "closest friend" to SrA McLeod for the opportunity of impregnating her, or "breed[ing] her" (Pros. Ex. 1 at 144, 283), and keeping her as a sex slave in Alabama were ridiculous, as was

his wish that JO would do "what you can to brainwash [AB] into loving me." (Pros. Ex. 2 at 27.) Senior Airman McLeod knew it would be a longshot to convince AB to "visit such a boring state." (Pros. Ex. 1 at 134.) Where the alleged co-conspirators plans are so farfetched to be impossible, there is no intent to accomplish the offense. *Valle*, 807 F.3d at 514.

Senior Airman McLeod doubted that their fantasy would be realized. (Pros. Ex. 1 at 135.) He asked, "Are you sure I'm not being delusional about trying to have a daughter with [AB]?" (Pros. Ex. 2 at 15.) Each time SrA McLeod expressed these doubts, he and JO nonetheless continued to create scenarios and make contingency plans if this plan failed or if AB got suspicious. The contingency plans, such as dumping AB in the "mad swamps" of Florida (Pros. Ex. 1 at 143), were utterly unrealistic and not feasible. Both JO and SrA McLeod admitted that their fantasies were disturbing and would shock other people. JO texted SrA McLeod, "That's the fun thing about roleplay and fantasies tho. U can get ur rocks off and not hurt anyone". (Pros. Ex. 1 at 10.) These texts about sexual fantasies, as depraved as they were, amounted to nothing more than SrA McLeod's desire to engage in these acts.

Next, SA JP confirmed that JO and SrA McLeod cancelled their fantasy to kidnap and rape AB. In other words, SrA McLeod voluntarily abandoned the plan. On this record, no reasonable factfinder could conclude beyond a reasonable doubt that SrA McLeod possessed the specific intent to conspire to rape and kidnap AB.

The Government alleged that the overt act for both attempted conspiracies was that SrA McLeod provided funding for a lodging rental. (Charge Sheet.) While SA JP was confident that SrA McLeod had given JO money for the Airbnb rental, JO was not sure. She knew that Appellant had given money "for the going down to Alabama, but I can't remember for [AB]." (R. at 350.) Even assuming that SrA McLeod gave JO money to rent a house in Alabama, this

did not amount to a substantial step toward completion of the offense. The "substantial step must unequivocally demonstrat[e] that the crime will take place unless interrupted by independent circumstances." *Winckelmann*, 70 M.J. at 407 (citation and internal quotation marks omitted). The mere provision of money to JO was not a substantial step toward actually kidnapping and raping AB because SrA McLeod and JO abandoned the plan involving her. In other words, the plan was interrupted by the cancellation of the plan.

On this record, no reasonable factfinder could conclude beyond a reasonable doubt that SrA McLeod took a substantial step toward completion of the offenses.

Even with the appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence, this Court cannot be clearly convinced that the finding of guilty was against the weight of the evidence. Accordingly, this Court cannot be convinced of SrA McLeod's guilt beyond a reasonable doubt.

Conclusion

WHEREFORE, because of error prejudicial to the substantial rights of SrA McLeod, he respectfully requests that this Honorable Court set aside and dismiss the finding of guilty for Specification 5 of Charge I and disapprove the sentence of confinement for thirty-five years. Senior Airman McLeod respectfully requests that this Honorable Court set aside and dismiss the findings of guilty for Specifications 1 and 2 of the Additional Charge and disapprove the sentence of confinement for seven years for Specification 1 and confinement for four years for Specification 2.

II.

THE SENTENCES TO CONFINEMENT ARE INAPPROPRIATELY SEVERE.

Facts

The Government Sentencing Case

The government's sentencing case consisted of SrA McLeod's Personal Data Sheet and two Enlisted Performance Reports (EPRs). (R. at 472; Pros. Exs. 42, 43.) Appellant did not object to the Government's request that the military judge consider his statements from the providence inquiry. (R. at 471.) The Government argued that an appropriate sentence consisted of confinement for "at least 50 years" and that any sentence to confinement should run consecutively. (R. at 512, 513, 519, 520.)

The Defense Sentencing Case

The defense sentencing case consisted of (1) testimony from SrA McLeod's mother, Ms. HW (R. at 476); (2) testimony from his father, Mr. SD (R. at 497); (3) SrA McLeod's written unsworn statement (Def. Ex. B); (4) his verbal unsworn statement (R. at 507); and (5) photos with friends and family (Def. Ex. A).

HW and SD, both Air Force veterans, met in the Philippines in 1989. (R. at 477.) They had two sons, SrA McLeod and DM. (R. at 477.)

HW felt concerned about SrA McLeod's interest in sexual behaviors from the time he was three years old. (R. at 476, 479.) In 2000, HW finally decided to divorce SD, in large part because of his physical and verbal abuse toward SrA McLeod. (R. at 480.) SD teased and taunted SrA McLeod because he was sickly and did not enjoy the same outdoor activities as his dad. (R. at 480.) SD called SrA McLeod a "wuss" and ordered him to "stop being a wuss, be a man." (R. at 481.)

Shortly after the divorce, HW married Mr. AM. (R. at 481.) AM frequently viewed pornography on his computer. (R. at 482.) Because AM did not prohibit or restrict SrA McLeod from using this computer, SrA McLeod saw his stepfather's pornography collection. (R. at 482.) When SrA McLeod was thirteen years old, AM gave him a sex toy to make masturbation easier and feel better. (R. at 482.) Although she was angry and felt this behavior crossed the line, HW did not address it with her son. (R. at 482.) She testified that she regretted not discussing sexual behavior and sexual health with SrA McLeod when he was younger. (R. at 482.)

AM adopted a son during his prior marriage. (R. at 483.) This son, R, was two years older than SrA McLeod. (R. at 483.) When R was ten years old, he exhibited sexually inappropriate behavior toward girls in his class, and his teacher reported him to the state for monitoring and counseling. (R. at 483.) At home, R grabbed SrA McLeod's testicles, but AM did not punish him. (R. at 757.) In high school, R wrote a sexually explicit letter to a female classmate. (R. at 485.) HW reported this incident to the state. (R. at 484.) HW feared that R would rape someone if he did not receive adequate assistance; in 2010, RM was convicted of raping a child. (R. at 485.) During this period, HW often neglected SrA McLeod and DM because she gave her attention to R and his problems. (R. at 484, 491.)

HW recalled a conversation with SrA McLeod after he moved out of the house. (R. at 488.) Senior Airman McLeod wanted to know if bondage or being tied up was a normal fantasy. (R. at 488.) HW advised him to use sex toys with Velcro. (R. at 488.)

HW believed that SrA McLeod could be rehabilitated with love, support, and counseling. (R. at 492.)

SD recalled telling SrA McLeod about his assignment guarding Iraqi detainees. (R. at 498.) The guards placed bags with hoods over the detainees' heads and restrained them with handcuffs to demoralize them ahead of interrogations. (R. at 498-99.)

SD admitted that he harshly disciplined SrA McLeod and DM with corporal punishment and that he called SrA McLeod his "wimpy kid." (R. at 499-500, 501.) He remembered grabbing SrA McLeod so hard that his son could not breathe; in that moment, SD knew that his punishment was excessive. (R. at 500-501.) SD also remembered denying the physical abuse to Family Advocacy. He testified, "I had to say, '[SrA McLeod's] lying,' otherwise, you know, that was my career. That was my livelihood to support them, so." (R. at 501.)

SD revealed that he suffered a mental breakdown when he and HW divorced. (R. at 503.) He received treatment but did not tell his children because mental health was "just not something you talk about . . . with other people." (R. at 504.) He worried about the "genetic factor to depression" and wished that he had talked to SrA McLeod about it. (R. at 504.)

SD believed that he could utilize his master's degree in counseling and psychology to help SrA McLeod. (R. at 503, 504.) He vowed to hold his son accountable and to keep him on track for treatment any conditions imposed after confinement. (R. at 504-505.)

Senior Airman McLeod made an unsworn statement. (R. at 507.) He acknowledged that he "caused great harm to the lives of my friends, my family, and especially my wife. I have dishonored the Air Force by my actions." (R. at 507.) He continued, "I know what I attempted would have been the most heinous crimes imaginable." (R. at 507.) He felt ashamed for his actions and thoughts and vowed to get help for his dark thoughts and desires. (R. at 508.) Senior Airman McLeod discussed his deep depression and unsuccessful efforts to receive treatment

during the pandemic. (R. at 508.) He accepted responsibility for his misconduct and committed himself to healing, no matter how much pain and humiliation the process brought. (R. at 508.)

Senior Airman McLeod stated:

> My crimes are not the fault of my family or anyone else. I've only provided information about my background, relationships, and experiences because I know a just sentence requires context of understanding the whole person. Me and my whole family have many faults and demons. This whole situation including this trial has brought us together and helped us all to begin the process of positive change, open communication, and mutual support. I am deeply ashamed and full of guilt over what I have done. I have no one to blame but myself. This shame will haunt me for life. I will forever be on the sex offender registration registry. My punishment will never end until I die. . . . I can never take back the evil I did. I can only aspire to outweigh it with kindness and compassion. I will prove that these actions are not who I am.

(R. at 509.)

Although ten people submitted letters for the military judge's consideration, SrA McLeod requested that his attorneys not introduce them into evidence "as taking responsibility for myself as necessary as my rehabilitation." (R. at 508.)

In his written unsworn statement, SrA McLeod vowed to continue on the path of "real remorse" and to reject the easier path of being defensive and blaming others. (Def. Ex. B.) In order for the military judge to understand how "people don't wake up one day in this situation," SrA McLeod discussed his father's crushing abuse, the genesis of his bondage fantasies, the onset of his depression, his torment at being bullied, and his early sexual experiences, which he knew were inappropriate. (Def. Ex. B.) He described a complicated relationship with his stepbrother, R. (Def. Ex. B.) Senior Airman McLeod detested R for his perverted behavior but also liked him because R played video games with him. (Def. Ex. B.) He also felt sorry for R, who endured physical and emotional abuse from HW. (Def. Ex. B.) He wrote:

> Only [AM] and I were sympathetic towards [R]. I recognized that he had a mental disorder. My mother never acknowledged her cruelty toward [R]. He may have been sociopath, but he was still just a child. It felt like all the people around me, adults and kids, were cruel in one way or another. Thinking back, there was a lot of sadness about a lot of life.

(Def. Ex. B.)

Senior Airman McLeod recalled the cruelty of his stepfather. (Def. Ex. B.) He discussed the sex toy and pornography his stepfather gave him. (Def. Ex. B.) He recalled that his stepmother kissed him and let him use handcuffs on her, tape her mouth shut, and kiss her gagged lips. (Def. Ex. B.) He felt turned on by her behavior and later learned that she knew about his fetish and about his collection of bondage pornography. (Def. Ex. B.)

Senior Airman McLeod admitted that he struggled to acclimate to the Air Force. (Def. Ex. B.) Amidst his professional and personal struggles, he found comfort in JO, who gave him the positive reinforcement he longed for. (Def. Ex. B.) Nonetheless, SrA McLeod fell into a deeper depression and contemplated suicide. (Def. Ex. B.)

Senior Airman McLeod expressed his shame and took responsibility for his actions. (Def. Ex. B.)

Appellant's defense counsel requested that the military judge adjudge a sentence of confinement for no more than twenty years. (R. at 522, 527, 528).

Standard of Review

This court reviews sentence appropriateness de novo. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).

Law

The Courts of Criminal Appeals [CCAs] have the power to determine whether a sentence is appropriate as a matter of fact. *United States v. Kelly*, 77 M.J. 404, 406 (C.A.A.F. 2018);

United States v. Campbell, 71 M.J. 19, 26 (C.A.A.F. 2012). Article 66(d)(1)(A), UCMJ, 10 U.S.C. § 866(d)(1)(A), provides that this Honorable Court "may affirm only the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved." This sentence appropriateness provision is "a sweeping Congressional mandate to ensure 'a fair and just punishment for every accused.'" *United States v. Baier*, 60 M.J. 382, 384 (C.A.A.F. 2005) (citations omitted). Indeed, this power over sentence appropriateness "'has no direct parallel in the federal civilian sector,'" and no other federal appellate court, including the Court of Appeals for the Armed Forces [CAAF], possesses this power. *Kelly*, 77 M.J. at 407 (quoting *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999)).

"A Court of Criminal Appeals must determine whether it finds the sentence to be appropriate. It may not affirm a sentence that the court finds inappropriate, but not 'so disproportionate as to cry out' for reduction." *Baier*, 60 M.J. at 384. "Sentence appropriateness involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves." *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988). Sentence appropriateness requires individualized consideration of the particular appellant, the nature and seriousness of the offense, appellant's record of service, and all matters contained in the record of trial, including matters submitted in clemency. *Id.* at 395-96; *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Anderson*, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009) (*per curiam*). Sentence appropriateness is distinguishable from clemency, which is the practice of "bestowing mercy—treating an accused with less rigor than he deserves." *Healy*, 26 M.J. at 395.

The CCAs have the power to, "in the interests of justice, substantially lessen the rigor of a legal sentence." *United States v. Tardif*, 57 M.J. 219, 223 (C.A.A.F. 2002) (quoting *United States v. Lanford*, 6 C.M.A. 371 (C.M.A. 1955)). "The charter of Courts of Criminal Appeals on sentence review is to 'do justice.'" *Id.* at 223 (quoting *United States v. Claxton*, 32 M.J. 159, 162 (C.M.A. 1991)).

Additional facts necessary to resolve the assigned error are contained in the argument below.

Argument

The sentence of confinement for thirty-five years for attempted murder of "Sarah," fifteen years for attempted rape of "Sarah," ten years for attempted kidnapping of "Sarah," twenty years for attempted rape of "Caitlin," ten years for attempted kidnapping of "Caitlin," nine years for attempted wrongful production of child pornography, six years for attempted wrongful distribution of child pornography, seven years for attempted conspiracy to rape AB, and four years for attempted conspiracy to kidnap AB is unduly harsh and inappropriately severe when considering this particular Appellant, the nature and seriousness of the offenses, his service record, and all matters contained in the record.

The aforementioned allegations of misconduct are unquestionably serious and somber. Appellant's defense counsel acknowledged as much when he argued that, although there was no actual injury in this case, SrA McLeod's crimes eroded the foundations of a peaceful, law-abiding society. (R. at 526.) That being said, "Sarah" and "Caitlin" were fictitious characters created by a law enforcement officer and SrA McLeod (and JO) abandoned the plan regarding AB. *See* Assignment of Error I, *supra*. There was no victim for the offenses involving "Sarah" and "Caitlin" and the Government offered no evidence during the pre-sentencing hearing about

the offenses involving these fictitious victims. Additionally, AB could have testified, but did not. She could have submitted a victim impact statement, but did not. Indeed, the only mention of AB in the Government's sentencing argument consisted of a request that any sentence to confinement for "Sarah," "Caitlin," and AB run consecutively. (R. at 513.) There was no evidence that AB even knew about JO and SrA McLeod's conversations and fantasies about her, much less any evidence about what impact, if any, the fantasies had on her. Overall, the sentences to confinement are excessive and unreasonable, but especially those involving AB.

Senior Airman McLeod served satisfactorily in the Air Force, even as he struggled to adapt to military life. He met all expectations and was an effective flight mentor who also continually sought opportunities for personal development. (Def. Ex. A.)

Senior Airman McLeod suffered from decades of physical and verbal abuse by his parents and stepfather and was the victim of sexual abuse by his stepbrother and his stepmother. His stepfather introduced him to pornography at an exceptionally young and vulnerable age. Senior Airman McLeod's father shared disturbing stories about intentionally humiliating detainees with hoods and handcuffs. Senior Airman McLeod knew that he was sick but could not get the help he needed during the pandemic, a period of time which preceded his misconduct. Senior Airman McLeod does not argue that the military judge should not have sentenced him to confinement, only that when considering his character, childhood, and decades-long depression; the nature and seriousness of the offenses; the legal and factual insufficiency of the evidence for Specification 5 of Charge I and Specifications 1 and 2 of the Additional Charge; Appellant's satisfactory service record; and all matters contained in the record of trial, the sentences to confinement are unduly harsh and inappropriately severe. This Court has the power to correct the injustice of the approved sentence.

Had this been a case with panel members deciding the sentence, the military judge would have instructed, "You should bear in mind that our society recognizes five principle reasons for the sentence of those who violate the law. They are rehabilitation of the wrongdoer, punishment of the wrongdoer, protection of society from the wrongdoer . . . ." Dep't of Army, Pam. 27-9, Legal Services: Military Judges' Benchbook, para. 2-5-21 (29 Feb. 2020). Rehabilitation is listed as the first sentencing consideration before punishment. Yet, the sentence to confinement completely disregards even the possibility of rehabilitation, just as it disregards the mitigation evidence, SrA McLeod taking responsibility for his actions by pleading guilty, that two victims were fictitious, and the absence of any sentencing evidence for AB.

Conclusion

WHEREFORE, because of errors prejudicial to the substantial rights of SrA McLeod, he respectfully requests that this Honorable Court set aside and reassess the sentences to confinement.

PRAYER FOR RELIEF

WHEREFORE, SrA McLeod respectfully requests that this Honorable Court grant the requested relief.

William E. Cassara
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[redacted]

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[redacted]

APPENDIX

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

DID THE GOVERNMENT VIOLATE SENIOR AIRMAN LOGAN MCLEOD'S ARTICLE 10, UNIFORM CODE OF MILITARY JUSTICE, SPEEDY-TRIAL RIGHT BY FAILING TO ACT WITH REASONABLE DILIGENCE?

Statement of Facts

A. Pretrial confinement day 1: After being interrogated by two AFOSI agents, SrA McLeod was arrested and confined in county jail.

On 18 September 2021, SrA McLeod was arrested in Montgomery, Alabama. (App. Ex. XX at 20, 24.) Pursuant to a warrant, agents executed a search of SrA McLeod's residence and seized a variety of electronic evidence. (App. Ex. XX at 408-27.) That evening, two AFOSI agents interviewed SrA McLeod. (App. Ex. XX at 395.) This interrogation carried over into the following morning. (App. Ex. XX at 395.) On 19 September 2021, SrA McLeod was placed in pretrial confinement. (App. Ex. XX at 20, 25.) In the immediate days following SrA McLeod's arrest, AFOSI followed-up with his family and friends and collected receipts for items found in SrA McLeod's car when he was arrested. (App. Ex. XX at 448-65.)

B. Pretrial confinement day 5: A pretrial confinement hearing was held.

On 23 September 2021, a pretrial confinement hearing was held, and SrA McLeod was kept in confinement. (App. Ex. II at 20-21.)

C. Pretrial confinement day 20: AFOSI requests Defense Cyber Crime Center (DC3) analyze the seized electronics.

On 8 October 2021, 21 days after SrA McLeod's arrest and the seizure of his property, AFOSI routed a request to Department of Defense Cyber Crime Center (DC3) requesting that they examine the seized electronic devices. (App. Ex. XX at 434-47.)

D. Pretrial confinement day 62: SrA McLeod was charged with violating Articles 80 and 131b, UCMJ.

On 19 November 2021, the Government preferred one charge and 12 specifications of attempt, in violation of Article 80, UCMJ, and one charge and specification of obstruction, in violation of Article 131b, UCMJ, against SrA McLeod. (Charge Sheet.) The attempt specifications included two specifications of attempted murder, three specifications of attempted rape, three specifications of attempted kidnapping, two specifications of attempted drug distribution, one specification of producing child pornography, and one specification of distributing child pornography. (Charge Sheet.)

E. Pretrial confinement day 80: An Article 32, UCMJ, preliminary hearing was held on 6 December 2021.

A Preliminary Hearing Officer (PHO) was appointed on 23 November 2021. (App. Ex. XX at 24, 51.) The Article 32, UCMJ, preliminary hearing was conducted via video teleconference on 6 December 2021. (App. Ex. XX at 24-25, 51.) The parties submitted supplemental matters to the PHO on 7-8 December 2021. (App. Ex. XX at 51.) The PHO issued his report on 15 December 2021. (App. Ex. XX at 24-51.)

F. Pretrial confinement day 94: DC3 issues report on seized electronic devices.

DC3 did not complete its report until 21 December 2021—74 days after AFOSI routed its request for review and 95 days after the devices were seized—noting that only two items provided anything of evidentiary value. (App. Ex. XX at 434-47.)

G. Pretrial confinement day 95: The Government preferred an additional charge and 10 specifications on 22 December 2021.

After the Article 32 hearing, an additional charge and 10 specifications were preferred against SrA McLeod, including two specifications of attempted conspiracy and eight specifications of attempted assault. (Charge Sheet.)

H. Pretrial confinement day 102: The Government referred charges on 29 December 2021.

The Convening Authority referred all charges and specifications on 29 December 2021. SrA McLeod was served with the referred Charges on 4 January 2022. (Charge Sheet.) During docketing, the Government said that its ready date for trial was 13 January 2022. (App. Ex. XX at 470.) The defense ready date was 22 August 2022. (App. Ex. XX at 470.)

I. Pretrial confinement day 128: SrA McLeod was arraigned.

The Government proposed 13 January 2022 for arraignment, but Defense Counsel was unavailable. (App. Ex. XX at 52-59.) SrA McLeod was arraigned on 24 January 2022. (R. at 1-12.) Defense agreed to exclude the time between 13 January 2022 and 24 January 2022 for purposes of R.C.M. 707. (App. Ex. XX at 52-58.)

J. Pretrial confinement day 186: The Government withdrew and dismissed three specifications.

On 23 March 2022, the Government withdrew and dismissed Specifications 3, 6, and 7 of Charge I. (App. Ex. XX at 59.)

K. Pretrial confinement day 306: Military judge denies Defense motion to dismiss for violating SrA McLeod's speedy-trial rights under Article 10, UCMJ.

On 11 April 2022, Defense filed a motion to dismiss for violating Article 10, UCMJ. (App. Ex. XX.) On 19 April 2022, the Government files a response to Defense's motion. (App. Ex. XXI.) On 21 July 2022, the military judge denied Defense's motion. (App. Ex. XXVI.)

L. Pretrial confinement day 338: SrA McLeod was convicted and sentenced.

SrA McLeod entered mixed pleas. (R. at 191-92.) His guilty plea inquiry was conducted on 22-23 August 2022, and his guilty pleas were accepted on 23 August 2022. (R. at 192-300.) SrA McLeod's contested case began on 23 August 2022, and he was convicted and sentenced on 24 August 2022. (R. at 465, 532.)

Table of Relevant Dates

The following table reflects relevant dates and coordinating pretrial confinement days articulated in the above Facts Section.

Date	Event	Days in Pretrial Confinement[8]
18-19 Sep 21	SrA McLeod arrested and interrogated	0
19 Sep 21	SrA McLeod enters pretrial confinement	1
23 Sep 21	Pretrial confinement hearing conducted	4
24 Sep 21	Pretrial confinement review officer issues decision memorandum	5
8 Oct 21	AFOSI requests DC3 examine seized electronic devices	20
19 Nov 21	Preferral of Charges	62
6 Dec 21	Article 32 hearing	79
15 Dec 21	Article 32 report complete	88
21 Dec 21	DC3 issues report on seized electronic devices	94
22 Dec 21	Preferral of Additional Charge	95
29 Dec 21	Referral of all charges and specifications	102
24 Jan 22	SrA McLeod is arraigned	128
22 Aug 22	Trial begins	338
24 Aug 22	SrA McLeod is sentenced	339

[8] Based on 18 U.S.C. § 3585 and 28 C.F.R. § 2.10(a), "any part of a day in pretrial confinement must be calculated as a full day for purposes of pretrial confinement credit under [*United States v. Allen*, 17 M.J. 126 (C.M.A. 1984)] except where a day of pretrial confinement is also the day the sentence is imposed." *United States v. DeLeon*, 53 M.J. 658, 660 (A. Ct. Crim. App. 2020)).

Argument

I.

SrA McLeod's findings and sentence should be set aside because the Government failed to act with reasonable diligence in bringing SrA McLeod to trial, violating his right to speedy trial under Article 10, UCMJ.

Standard of Review

Whether an accused received a speedy trial is a question of law that is reviewed *de novo*. *United States v. Cooley*, 75 M.J. 247, 259 (C.A.A.F. 2016) (quoting *United States v. Cossio*, 64 M.J. 254, 256 (C.A.A.F. 2007)). A military judge's findings of fact will be given "substantial deference" and will only be reversed if "clearly erroneous." *United States v. Mizgala*, 61 M.J. 122, 127 (C.A.A.F. 2005) (citing *United States v. Cooper*, 58 M.J. 54, 57-59 (C.A.A.F. 2003); *United States v. Doty*, 51 M.J. 464, 465 (C.A.A.F. 1999)). "[L]ess deference will be accorded" a military judge who "fails to place his findings and analysis on the record." *United States v. Flesher*, 73 M.J. 303, 312 (C.A.A.F. 2014).

Law & Analysis

A. <u>The military judge made a clearly erroneous finding of fact.</u>

The military judge issued a written ruling on the speedy-trial issue. (App. Ex. XXIV.) The military judge primarily adopted the facts from the Defense's motion. (App. Ex. XXIV at 1.) But the military judge erred when he found that SrA McLeod was placed in pretrial confinement on 6 October 2021. (App. Ex. XXIV at 1.) The Defense and Government agree—and documentation supports—that SrA McLeod entered pretrial confinement on 19 September 2021.[9] (App. Ex. XX at 2-3, 20, 25; App. Ex. XXI at 1.) The military judge's finding of fact is

[9] The Charge Sheet listed 18 September 2021 as the start of pretrial confinement, but the confinement paperwork states 19 September 2021. (App. Ex. XX at 20, 25.)

clearly erroneous. This court should adopt the comprehensive facts included above as well as the facts agreed to by the parties and incorporated by the military judge. (App. Ex. XX at 2-8; App. Ex. XXI at 1; App. Ex. XXVI at 1.)

B. The speedy-trial rights afforded under Article 10, UCMJ, are broader than R.C.M. 707 and more stringent than the Sixth Amendment.

"In the military justice system, an accused's right to a speedy trial flows from various sources, including the Sixth Amendment, Article 10 of the Uniform Code of Military Justice, and R.C.M. 707 of the Manual for Courts-Martial." *Cooper*, 58 M.J. at 57. These three sources "provide a cohesive and sometimes overlapping framework for the protection of an accused's speedy trial rights." *United States v. Wilder*, 75 M.J. 135 (C.A.A.F. 2016) (citing *United States v. Tippit*, 65 M.J. 69, 72-73 (C.A.A.F. 2007)).

Article 10, UCMJ, provides in pertinent part: "When any person subject to this chapter is placed in . . . confinement prior to trial, *immediate steps shall be taken* to inform him of the specific wrong of which he is accused and *to try him* or *to dismiss the charges and release him*." 10 U.S.C. § 810 (emphasis added). Article 10 "imposes [on the Government] a more stringent speedy-trial standard than that of the Sixth Amendment." *United States v. Kossman*, 38 M.J. 258, 259 (C.M.A. 1993). The standard of diligence under which Article 10 violations are reviewed "is not constant motion, but reasonable diligence in bringing the charges to trial." *Mizgala*, 61 M.J. at 127 (quoting *United States v. Tibbs*, 35 C.M.R. 322, 325 (C.M.A. 1965)). "Short periods of inactivity are not fatal to an otherwise active prosecution." *Id.* at 127 (citing *Tibbs*, 35 C.M.R. at 325). Courts evaluate "the proceeding as a whole and not mere speed." *Id.* at 129 (quoting *United States v. Mason*, 45 C.MR. 163, 167 (C.M.A. 1972)).

Article 10, unlike R.C.M. 707, does not limit its protection to the period extending up to arraignment, "it imposes an open-ended duty on the Government and the military judge

immediately to 'try' the accused, a task that is by no means complete at arraignment." *Cooper*, 58 M.J. at 59. Article 10 "protections continue until the actual trial commences." *Id.* at 60.

"A change in the speedy-trial landscape" occurs at arraignment, *Id.*—"the power of the military judge to process the case increases, and the power of the [Government] to affect the case decreases." *Doty*, 51 M.J. at 465-66. "[O]nce an accused is arraigned, . . . [t]he military judge has the power and responsibility to force the Government to proceed with its case if justice so requires." *Cooper*, 58 M.J. at 60. Despite this shift in authority, "the mandate of Article 10 imposing an affirmative obligation of reasonable diligence upon the Government does not change." *Id.*

C. The *Barker* factors weigh in favor of SrA McLeod, revealing how the Government failed to use reasonable diligence in bringing SrA McLeod to trial.

The factors outlined in *Barker v. Wingo* "are an apt structure for examining the facts and circumstances surrounding an alleged Article 10 violation." *Mizgala*, 61 M.J. at 127 (citations omitted). Courts must analyze the following four factors when determining whether the Government proceeded with "reasonable diligence": (1) the length of the delay; (2) the reasons for the delay; (3) whether the appellant made a demand for a speedy trial; and (4) prejudice to the appellant." *Id.* at 129 (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)) (additional citations omitted). The Supreme Court provided the following test for prejudice:

> Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.

Barker, 407 U.S. at 532.

The *Barker* factors are not "talismanic" and "must be considered together with such other circumstances as may be relevant." *United States v. Wilson*, 72 M.J. 347, 351 (C.A.A.F. 2013) (quoting *Barker*, 407 U.S. at 533).

1. The length of delay was substantial.

The length of delay "is to some extent a triggering mechanism"—"unless there is a period of delay that appears, on its face, to be unreasonable under the circumstances, 'there is no necessity for inquiry into the other factors that go into the balance.'" *Cossio*, 64 M.J. at 257 (quoting *United States v. Smith*, 94 F.3d 204, 208-09 (6th Cir. 1996) (quoting *Barker*, 407 U.S. at 530))). In *United States v. Cossio*, the Court of Appeals for the Armed Forces (CAAF) held that a 117-day period of pretrial confinement was sufficient to trigger the full *Barker* inquiry. *Id.* *See also, United States v. Thompson*, 68 M.J. 308, 312 (C.A.A.F. 2010) (finding 145 days in pretrial confinement "is sufficient to trigger an Article 10 inquiry); *Simmons*, No. 20070486, 2009 CCA LEXIS 301 at *12 (A. Ct. Crim. App. Aug. 12, 2009) (finding 107 days in pretrial confinement was sufficient to trigger full *Barker* analysis); *Mizgala*, 61 M.J. at 123 (finding 109 days in pretrial confinement attributable to the Government was sufficient to trigger full *Barker* analysis).

Here, SrA McLeod was placed in pretrial confinement on 19 September 2021. (App. Ex. XX at 20, 25.) He was in pretrial confinement for 128 days by the time he was finally arraigned on 24 January 2022. (R. at 1-12.) He remained in pretrial confinement for 338 days before his trial began on 22 August 2022. (R. at 303.) In accordance with CAAF precedent, this length of delay is more than sufficient to trigger the full *Barker* inquiry.

2. The Government provided inadequate reasons for the substantial delay.

a. *Confinement to preferral.*

First, 62 days elapsed between the day SrA McLeod entered pretrial confinement and the preferral of charges—even though all substantive evidence had already been collected and SrA McLeod had made incriminating statements during a recorded interrogation and in a written statement. (App. Ex. XX at 394-407.) AFOSI's investigation was effectively complete when SrA McLeod entered pretrial confinement.

AFOSI casually followed-up with SRA McLeod's wife and two friends in late September and October 2021. (App. Ex. XX at 448-65.) AFOSI also collected two receipts for items found in SrA McLeod's car on the day of his arrest. (App. Ex. XX at 448-65.) This kind of *de minimus* investigative word does not necessitate delay.

As to the digital evidence, AFOSI had forensic professionals available to collect and forensically extract electronic devices on 18 September 2021. But for some unknown reason, AFOSI waited 21 days to send the seized electronics to DC3 for review. Even if the DC3 report was necessary, that report was completed on 21 October 2021—day 33 of pretrial confinement. (App. Ex. XX at 434-47.) There were no complicating factors to justify a 62-day delay. Regardless, the Government did not wait until these devices were analyzed—they proceeded to prefer charges 32 days before the report was released. (Charge Sheet, Nov. 19, 2021.) Accordingly, there is no credibility to the assertion that the examination of digital evidence prevented the Government from moving forward and bringing SrA McLeod to trial. This carelessness demonstrates that the delays were not due to reasonable forensic analysis, but instead to a failure of the Government to promptly provide the evidence and information needed to marshal the analysis with reasonable diligence.

In *United States v. Simmons,* the Government tried to justify delay by claiming the investigation was ongoing. 2009 CCA LEXIS 301 at *50-52. But the ACCA noted that the main interviews were already completed and "the case did not involve complex evidentiary issues." *Id*. The Government in *Simmons* did not have to worry about co-accused, procedural complexities, or granting immunity. *Id.* at *51. Similarly, here, SrA McLeod's case does not involve a co-accused, procedural complexities, or grants of immunity. The Army Court explained that "we fully expect the government to continue to investigate charged or potential offenses up to and even during trial on those offenses. However, the additional investigation undertaken in this case after [investigators] completed most of [their] interviews . . . was *de minimus*." *Id.* at *52. The record in SrA McLeod's case reflects the same: *de minimus* investigative activity after SrA McLeod entered pretrial confinement—insufficient investigative activity to justify 62 days of delay before preferral of charges.

b. *Article 32 Report to Referral*

In the Article 32 Report, the PHO recommended the dismissal of one specification, the alteration of two others, and the addition of battery charges. In its subsequent preferral on 22 December 2021, the Government did not follow these recommendations. Instead, the Government added two specifications of attempted conspiracy and eight specifications of attempted assault. (Charge Sheet, Dec. 22, 2021.) Fifteen days elapsed between the PHO Report and the referral of charges on 29 December 2021. In total, SrA McLeod spent 102 days in pretrial confinement before charges were referred. One-hundred-twenty-eight days elapsed before arraignment. While Defense conceded that its availability impacted the date of

arraignment by 11 days, the Government's availability of 13 January 2022 would still have resulted in an unreasonably delay of 117 days.

c. *Total time in confinement prior to being brought to trial.*

Finally, SrA McLeod's trial did not commence until 22 August 2022—after he languished in pretrial confinement for 338 days.

The Government did not move SrA McLeod's case forward with reasonable diligence. The case lagged without explanation or justification. The investigation was straightforward and essentially complete at the time of SrA McLeod's arrest and confinement—the Government had admissions, physical evidence, messages, recordings, corroborating statements, and prior investigative steps. "[F]actors such as staffing issues, responsibilities for other cases, and coordination with civilian officials reflect the realities of military criminal practice that typically can be addressed by adequate attention and supervision, consistent with the Government's Article 10 responsibility." *Thompson*, 68 M.J. at 313. The second *Barker* factor weighs in favor of SrA McLeod.

3. SrA McLeod did not demand a speedy trial prior to filing an Article 10 motion.

SrA McLeod had not made a formal demand for speedy trial when he filed his motion to dismiss for Article 10 violations. During an Article 39 hearing, defense counsel explained that Defense thought the speedy trial request was included in a discovery request, but it was not. (R. at 165.) Defense counsel elaborated, "This was an administrative error on our part." (R. at 165.) But this *Barker* factor should not count against SrA McLeod.

While the Government contended their "ready date" was 13 January 2022, only 16 days after SrA McLeod was served with the referred charges, this begs the question: What took so long? While the Government attempted to justify the delay in its Response to Defense's Article

10 motion, it falls short. (App. Ex. XXI.) It is unclear what necessary investigative or procedural steps took place between imposition of pretrial confinement and arraignment to justify 128 days of delay. It is unclear what the Government can point to, to show that a 62-day delay between pretrial confinement and preferral was warranted.

4. SrA McLeod was prejudiced by the delay.

a. *Anxiety from oppressive pretrial confinement.*

While pretrial confinement "almost certainly cause[s] anxiety, stress, and the loss of ability to carry on a normal lifestyle," *United States v. Danylo,* 73 M.J. 183, 188 (C.A.A.F. 2014), SrA McLeod's pretrial confinement became oppressive and caused above average amounts of stress and anxiety.

While in pretrial confinement, SrA McLeod was assaulted and had to deal with severe and persistent anxiety. (App. Ex. XX at 17.) The assault involved another inmate jumping on SrA McLeod and repeatedly striking him in the head and face. *Id.* This goes above-and-beyond the anxiety one must feel when confronted with these kinds of charges. Additionally, other inmates had become aware of the charges SrA McLeod was facing. *Id.* He was left living in constant fear.

b. *Impaired defense.*

SrA McLeod's pretrial confinement restricted his ability to communicate with his Defense Counsel and assist in his own defense. While the confinement facility took inbound phone call for inmates, having a client locked away in a cell makes communication difficult. (App. Ex. XX at 17.) SrA McLeod's incarceration at the Lowndes County Jail—located more than 30 minutes away by car for local Defense Counsel—made it more difficult for Defense to prepare for SrA McLeod's court-martial. (App. Ex. XX at 17.)

D. Conclusion and requested relief.

The excessive delay demonstrates a lack of reasonable diligence on behalf of the Government and violated SrA McLeod's Article 10, UCMJ, speedy-trial right. The *Barker* factors weigh in SrA McLeod's favor. The substantial delay created unduly oppressive pretrial confinement, unreasonable stress and anxiety, and impaired his ability to aid in his defense. SrA McLeod respectfully requests that this Court set aside his findings and sentence.[10]

[10] *See Kossman*, 38 M.J. at 262 ("The remedy for an Article 10 violation must remain dismissal with prejudice of the affected charges. . . . Where the circumstances of delay are not excusable . . . it is no remedy to compound the delay by starting all over.")

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 8 February 2024.

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IN THE UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES, Appellee,	)	**UNITED STATES' ANSWER TO ASSIGNMENTS OF ERROR**
v.	)	Before Panel 3
Senior Airman (E-4) **LOGAN A. McLEOD**, USAF Appellant.	)	No. ACM 40374
	)	11 March 2024

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

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

ASSIGNMENTS OF ERROR

I.

[WHETHER] THE EVIDENCE IS LEGALLY AND FACTUALLY INSUFFICIENT TO SUPPORT THE FINDINGS OF GUILTY FOR ATTEMPTED MURDER OF "SARAH" AND ATTEMPTED CONSPIRACIES TO RAPE AND KIDNAP AB.

II.

[WHETHER] THE SENTENCES TO CONFINEMENT ARE INAPPROPRIATELY SEVERE.

III.[1]

DID THE GOVERNMENT VIOLATE [APPELLANT'S] ARTICLE 10, UNIFORM CODE OF MILITARY JUSTICE, SPEEDY-TRIAL RIGHT BY FAILING TO ACT WITH REASONABLE DILIGENCE?

STATEMENT OF THE CASE

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

[1] Appellant raised this third assignment of error pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

STATEMENT OF FACTS

A. Testimony of Ms. J.O.

Ms. J.O. testified at the court-martial. She is an exotic dancer in New York, and she is Ms. B.M.'s ex-girlfriend. They met in 2017 through Facebook and in-person in June 2020 in Montgomery, Alabama. Ms. J.O. had a husband and kids at the same time. She and her husband had an open relationship, as did Ms. B.M. and her husband. (R. at 329-30.) Ms. J.O. met Ms. B.M.'s husband, Appellant, during her June 2020 weeklong trip to Montgomery during which she stayed in Appellant's and Ms. B.M.'s house. (R. at 331.) During the trip, Ms. J.O. had a sexual relationship with both Appellant and Ms. B.M. In September 2020, Ms. B.M. traveled to Ms. J.O.'s home in Binghamton, New York. (R. at 332.) However, they broke up, because Ms. B.M. accused Ms. J.O.'s husband of "violating (raping) her" and Ms. B.M. stopped speaking with Ms. J.O. (R. at 333.)[2]

In October 2020, Appellant started texting with Ms. J.O. (R. at 333.) Their conversation turned sexual in nature within a day or two. (R. at 334.) In late July or early August 2021, Appellant started asking Ms. J.O. about his kidnap fantasies involving her and her family. (R. at 335.)

Ms. J.O. and Appellant also discussed Ms. A.B., Ms. J.O.'s closest friend. (R. at 348.) In one of their plans, Ms. J.O. would bring Ms. A.B. with her to an Alabama AirBnB, Appellant would come over, they would drug Ms. A.B., and they would sexually abuse Ms. A.B. and take photographs. (R. at 349.) Originally, Appellant and Ms. J.O. discussed killing Ms. A.B. and

[2] Ms. J.O. was also upset with Ms. B.M., because Ms. J.O.'s husband finished their group sex with Ms. B.M., Ms. B.M. wanted to sleep in the bed between Ms. J.O. and Ms. J.O.'s husband, Ms. B.M. talked about the situation publicly around Binghamton, and Ms. B.M. continued a sexual relationship with Ms. J.O.'s ex-boyfriend behind her back and lied to Ms. J.O. about it. (R. at 357-59.)

dumping her body, but the plan changed to keeping her tied up in the basement for Appellant to come and abuse her whenever he wanted to do so, and they would use drugs to keep her subdued. (Id.)

Ms. J.O. reported Appellant to the Air Force Office of Special Investigations (AFOSI) the first week of August 2021, because he told her his ideal kidnap victim would be age 14 or 15, possibly Ms. J.O.'s children, and he would rape them. (R. at 336-37, 362-63.) She spoke with an AFOSI investigator, who flew up and met with her. He installed something on her phone to record her calls, and he gave her instructions about how to speak with Appellant. (R. at 338, 341-42.) Additionally, Ms. J.O. introduced Appellant to an undercover AFOSI agent posing as "Blazer," who coordinated the planned "purchase" of two people, Sarah and her daughter Caitlin. (R. at 366-67.)

Ms. J.O. came down to Montgomery because, acting under the direction of AFOSI, she helped Appellant stage a kidnaping during which a human trafficker would drop off "sex slaves" at an AirBnB property she and Appellant had rented with Appellant's money. (R. at 348.) Ms. J.O. came to Alabama and met with the AFOSI agents at the bus station. She called Appellant and told him the "slaves" were escaping, so he needed to come to the AirBnB immediately. Once Appellant arrived at the AirBnB property, law enforcement arrested him. (R. at 350.)

B. <u>Appellant's Text Messages and Phone Calls</u>

Prosecution Exhibit 2 contained 230 pages of text messages between Appellant and Ms. J.O from 17 August through 18 September 2021.[3] As of 17 August 2021, Appellant and Ms. J.O. discussed keeping Ms. A.B. as a sex slave in Ms. J.O.'s house, but Appellant was concerned that

[3] Prosecution Exhibit 1 contains 476 pages of screen shots of text messages between Appellant and J.O. from at least as early as 27 July through 17 November 2021.

people would look for her there. (Pros. Ex. 2, p. 1.) Appellant voiced concerns about avoiding consequences of getting caught. (Id.) He texted Ms. J.O. that his "main concern is that [Appellant and Ms. J.O. are] being over confident with all this." (Id., p13.) On 18 August 2021, Appellant wrote to Ms. J.O., "Are you sure I'm not being delusional about trying to have a daughter with [Ms. A.B.]?" (Id., p. 15.) Later that day, Appellant wrote, "Nah she could possibly break the door. We'd have to find something more to secure to anchor her to." (Id., p. 16.) "But I was thinking of getting a heavy chain to wrap around her neck and padlock it. Anchor her to the bed at night." (Id.) "We definitely need a spider gag so I can cum down [her] throat. Can't risk her biting me with a normal blowjob." (Id.) Also on 18 August, Appellant wrote, "I forget, are we telling her before, during, or after her first raping that she's going to be your permanent slave." (Id., p. 18.) On 27 August 2021, Appellant wrote, "So if we for some reason had to snuff [Ms. A.B.], how would we dispose of her?" (Id., p. 50.) On 29 August 2021, Appellant wrote, "But you're absolutely sure no one will come looking for [Ms. A.B.]?" (Id., p. 62.)

On 31 August 2021, Appellant wrote, "Behave for now let's not overwhelm ourselves with other plans. Right now our main focus is [Ms. A.B.] in two weeks and that's what we need to be putting all of our energy into right now." (Pros. Ex. 2, p. 73.) On 1 September 2021, Appellant wrote, "I would honestly prefer just the child. [Ms. A.B.] would probably do her best to report us when a child is involved. But how sure are you that we can get one? And would we be buying or renting?" (Id., p. 78.) Later that day, he wrote, "Just make sure this is a guarantee before canceling on [Ms. A.B.]. I wouldn't want you to spend all this time and money coming down and not be able to live out our fantasy." (Id.) On 4 September 2021, Appellant wrote, "Should I ask about selling [Ms. A.B.] and getting her down here as originally planned?" (Id., p. 110.) Later that day, after mentioning buying a mother and daughter for $150 each, Appellant wrote, "No [Ms. A.B.] for

now. [Blazer is] not comfortable enough with me yet. . . . He needs to see how this [with the mother and daughter] goes first. . . . Damn just imagine if we can get both mother and daughter." (Id., p. 111.)

On 7 September 2021, Appellant wrote, "Do you think I should inform the two of them right before I suffocate the mother, or let them both figure it out as she begins running out of air?" and "But they can't know until I plug her nose for the suffocation. I want it to be a surprise." (Pros. Ex. 2, p. 128.) On 14 September, in listing for Ms. J.O. the supplies he had purchased for their scheme, Appellant wrote, "Oh and nose clips for breathplay." (Id., p. 190.)

On 16 September 2021, Ms. J.O. wrote, "are we still snuffing her [Sarah] the night before I have to leave?" Appellant responded, "Yes, is that alright?" Ms. J.O. replied, "Yeah just checking! U said Eliza [Caitlin][4] woulda need it and I didn't know how long we were planning on keeping her after we kill her mom. . . ." Appellant responded, "Yeah. I feel kinda bad for Eliza, honestly." Ms. J.O. wrote, "But ur gonna be her new daddy and she'll learn to love u and only belong to u anyways. It'll be ok." Appellant replied, "What kind of mom would even tolerate their daughter getting mixed up in all this though? She kind of has it coming." (Pros. Ex. 2, p. 207.)

Prosecution Exhibit 3 includeed clips from calls with Appellant on 20 August and 2, 5, and 9 September 2021. (R. at 343-47.) In the 20 August clip, Appellant and Ms. J.O. discussed, among other things, obtaining Xanax pills to sedate Ms. A.B. to incapacitate her and put her in a "twilight sleep" or deeper sleep so she does not remember or know whether she was being raped, as well as a mouth gag and various types of restraints. (Pros. Ex. 3, 8 Aug 2021 clip at 04:00-7:10).[5]

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[4] 13 and 14 September 2021, Appellant started using "Eliza" as the name he and Ms. J.O. would use for the daughter victim. (Pros. Ex. 2, pp. 185 ("What do you think of Eliza for her name?", 196 ("Since I'm taking this girl and molding her into my perfect slave, I thought it would be fitting to name her after Eliza, the woman from My Fair Lady.").)

[5] Citations to times throughout this Answer refer to the running time on the media player software.

In the 2 September clip, Appellant and Ms. J.O. discussed executing their new plan with Caitlin and Sarah in a couple of weeks. Early in the call, Appellant said, "I just can't believe I'm going to get to fuck a kid, you know." (Pros. Ex. 3, 2 Sep 2021 clip at 01:20-01:26). When Ms. J.O. said, "It's like your greatest dream finally coming true," Appellant confirmed. (Id. at 01:27-01:23.) He discussed choking the child with a chain, taping her mouth shut, and putting a plastic bag over head while he listens to her scream for help. (Id. at 02:00-02:58). He discussed putting his victim into a large trash bag and using a vacuum to suck the air out, so the bag fits to her body. (Id. at 02:59-03:07). He planned to super-glue her lips shut and leave her for the night. (Id. at 03:21-03:33.) He asked about where the child sex trafficker would hand off the victim. (Id. at 04:27-04:32.) Appellant asked whether the child victim would be "clean" of STDs, so he can "go bare" (rape them without a condom), although he questioned whether he would be permitted to ejaculate inside of them, "getting their [the trafficker's] property pregnant." (Id. at 04:53-05:41.)

In the 5 September clip, Appellant discussed with Ms. J.O. his conversation with Blazer and Appellant's desire to have sex with the child victim, Caitlin, in front of her mother, Sarah, bound face-to-face, killing the mother, and then about disposing of the body. (Pros. Ex. 3, 5 Sep 2021 clip at 00:20-02:22). Appellant "definitely" wanted to capture the killing on camera. (Id. at 06:01-06:11.) Appellant questioned whether the 14-year-old victim would have a heart attack from seeing her mother killed. (Id. at 06:45-07:10.) Appellant said he wanted to torture the daughter in front of the mother during the week. (Id. at 07:28-07:44.)

Prosecution Exhibit 4 included 49 pages of text messages between Appellant and Blazer, including the following examples: on 5 September 2021, Blazer asked Appellant what he had planned for Sarah, and Appellant wrote, "Well I'd love to torture her daughter in front of her, and make them do shit to do each other. But just to be clear, are you considering getting rid of her

permanently? Because doing that in front of her daughter, oh boy. That would be some great footage. If you're okay with me recording that." (Pros. Ex. 4, p. 9.) Blazer responded, "It really would be good footage. . . . That could sell. . . . But anyway yeah man I don't need her back. . . ." Appellant responded, "Well my main issue is that while I can take care of them, I'm not confident with disposal. Is that something you're able to take care of? Because that's the riskiest part." (Id.) "But my plan would be to tie them face to face, wrap tape around Caitlin's mouth, then tape Sarah's mouth and nose shut, and record the magic." (Id., p. 10.) On 10 September, at 1617 hours, Appellant wrote, "So I was trying to clarify on if I needed to stop looking for snuff vid buyers. Or mom daughter buyers. So you still gonna make both those?" Blazer responded, "Cause it'd be fine if not but I look fuckin stupid asking around if it's not happening. Gotta backtrack." Appellant wrote back, "Yeah I'll still go ahead and make those." (Id., p.24.) On 12 September, Appellant wrote, "Hey, I think I actually can fuck the mom while she's tied to her daughter for the finale." Blazer responded, "Wasn't the snuff gonna be tape over the mouth and nose? So you'll have to reach around to get it on but could still work for sure." Appellant replied, "Yeah I'm still thinking on it. I may just be behind the camera so I can get the closeups I want." (Id., p. 36.) On 18 September 2021, shortly before his arrest, Appellant wrote, "Really excited for the reveal. I was thinking of taking Sarah's blindfold off first so she can dread the moment that I take Caitlin's off." (Pros. Ex. 4, p. 49.)

C. <u>Testimony of AFOSI Special Agent J.P.</u>

AFOSI Special Agent (SA) J.P. testified at the court-martial. (R. at 387.) He described his training and experience as an agent. (R. at 388-89.) SA J.P. described how he got involved in the investigation of Appellant, the evidence he obtained via Ms. J.O., acting as an undercover agent "Blazer" in text communications with Appellant, who went by "Ace." (R. at 389-91.) Appellant

met in person with another undercover agent, Homeland Security Investigations SA B.S., who portrayed "Blazer" in person. (R. at 391.) During the mid-September meeting, SA J.P. was positioned to observe Appellant and SA B.S. Appellant paid SA B.S. $150 in cash in a white envelop that was intended for Blazer as half the payment for two victims, an adult and a child. Appellant expressed many plans over the course of a few weeks, including "[Appellant] wanted to tape or tie the two individuals together, suffocate one to death, while having sex with them, and keep them tied together overnight. He wanted to video having sex with a 14-year-old and sell it on the dark web. He wanted to chain the victims up, torture them, beat them with a curtain rod." (R. at 392-93.) Appellant discussed binding Sarah and Caitlin face-to-face while naked and him (Appellant) having sex with one of them. Appellant wanted to tape the nose and mouth shut of Sarah until she died while having sex. Appellant wanted to leave them tied together overnight with a vibrator attached to Caitlin. (R. at 412-13.) Appellant provided $150 to Blazer, and Blazer provided Appellant with a blue plastic dinosaur that Appellant could send a photo of to Blazer as a code to indicate there was a problem with the plan. (R. at 393; Pros. Ex. 5, at 00:54-01:41.)

SA J.P. testified about the text messages between Appellant and Ms. J.O. in Prosecution Exhibit 1, which he received from Ms. J.O.; those between Appellant and Ms. J.O. in Prosecution Exhibit 2, which he obtained in real-time; and those between Appellant and Blazer in Prosecution Exhibit 4. (R. at 395-98.) Prosecution Exhibit 6 was a video of Appellant purchasing a balaclava and nose plugs at a Dick's Sporting Goods store on 5 September 2021. Prosecution Exhibit 7 was a receipt for those purchases. (R. at 398-99.) Prosecution Exhibit 9 was a 17 September 2021 receipt from Callie's Love Stuff for a leash and collar, which Appellant had told him he would use on Caitlin, and Prosecution Exhibit 10 was a 15 September 2021 invoice for a straitjacket that was sent to Appellant's house. (R. at 400.) Prosecution 11 was a 17 September 2021 video from

Harbor Freight of Appellant purchasing padlocks and a bone sponge, and Prosecution Exhibit 12 was the receipt for that purchase. (R. at 401.) Prosecution Exhibit 14 was the video of Appellant's 18 September 2021 arrest, during which law enforcement seized the blue plastic dinosaur SA B.S. had given Appellant, as well as Appellant's phone. (R. at 401-402.) Prosecution Exhibit 15 was a photograph showing the contents of Appellant's open trunk upon his arrest. Appellant also used the vehicle for the meeting with SA B.S. (R. at 403.) SA J.P. testified about Prosecution Exhibits 16 through 22 and 24 through 39, which were physical pieces of evidence seized from Appellant, including a balaclava and sunglasses to hide Appellant's identity, a leash and collar Appellant planned to put on Caitlin while raping her, the hard drive Appellant planned to use to store child pornography he intended Blazer to sell on the dark web, chains, padlocks, earplugs to prevent Caitlin and Sarah from knowing they were having sex with each other, tape and superglue to shut the lips of the victims to suffocate them temporarily and to kill Sarah, and nose plugs to suffocate Sarah to death. (R. at 403-11.)

On 18 September 2021, Appellant drove toward the AirBnB that had been previously discussed for committing the crimes and parked at an adjacent parking lot. Then, law enforcement apprehended him. (R. at 394.)

D. <u>Appellant's Post-Arrest Calls from Jail</u>

On 19 September 2021, Appellant called his wife from the Lowndes Jail and, consistent with standard procedure, it was recorded. (Pros. Ex. 41 at 01:00-01:04, 01:23-01:27.) In the call, Appellant admitted that he and Ms. J.O. had been talking with a trafficker because he thought he was going to be trafficking a 14- or 15-year-old child. (Id. at 05:11-05:34). Appellant admitted, "I'm the one that brought stuff up." (Id. at 06:15-06:32.)

ARGUMENT

I.

THE EVIDENCE IS LEGALLY AND FACTUALLY SUFFICIENT TO SUPPORT THE FINDINGS OF GUILTY FOR ATTEMPTED MURDER OF "SARAH" AND ATTEMPTED CONSPIRACIES TO RAPE AND KIDNAP AB.

Standard of Review

This Court reviews issues of legal and factual sufficiency de novo. Art. 66(c), UCMJ, 10 U.S.C. § 866(c); United States v. Washington, 57 M.J. 394, 399 (C.A.A.F. 2002).

Law

The test for legal sufficiency is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." United States v. King, 78 M.J. 218, 221 (C.A.A.F. 2019) (internal citations omitted). This test does not require a court to ask whether it believes the evidence established guilt beyond a reasonable doubt, but rather whether any rational factfinder could do so. United States v. Acevedo, 77 M.J. 185, 187 (2018). The term reasonable doubt, however, does not mean that the evidence must be free from conflict. United States v. Wheeler, 76 M.J. 564, 568 (A.F. Ct. Crim. App. 2017), *aff'd*, 77 M.J. 289 (C.A.A.F. 2018). In resolving questions of legal sufficiency, the Court is bound to draw every reasonable inference from the evidence of record in favor of the prosecution. United States v. Plant, 74 M.J. 297, 301 (C.A.A.F. 2015). The test for legal sufficiency "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." United States v. Oliver, 70 M.J. 64, 68 (C.A.A.F. 2011) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1973)). As a result, the standard for legal sufficiency involves a very low threshold to sustain a conviction. King, 78 M.J. at 221.

The test of factual sufficiency is governed by the following amendment to Article 66(d)(1), UCMJ:

> (B) Factual sufficiency review
>
> (i) [T]he Court may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.
>
> (ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—
>
> (I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and
>
> (II) appropriate deference to findings of fact entered into the record by the military judge.
>
> (iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, Section 542(b), 134 Stat. 3611-12.

Pending before the Court of Appeals for the Armed Forces is the impact of the new Article 66 on the courts' review of factual sufficiency. That is, they have granted review of the issue of whether, as the Navy-Marine Court of Criminal Appeals held, there is a rebuttable presumption of guilt on appeal:

> We find that the revised statute requires a departure from the prior practice, and the standard for factual sufficiency has become harder for an appellant to meet. It is clear that the factual sufficiency standard in the revised Article 66, UCMJ, statute has altered this Court's review from taking a fresh, impartial look at the evidence requiring this Court to be convinced of guilt beyond a reasonable doubt, to a standard where an appellant has the burden to both raise a specific factual issue, and to show that his or her conviction is against the weight of the evidence admitted at trial. Thus, Congress has implicitly created a rebuttable presumption that in reviewing a conviction, a court of criminal appeals presumes that an appellant is, in fact, guilty.

United States v. Harvey, 83 M.J. 685, 693 (N-M. Ct. Crim. App. 23 May 2023), *rev. granted,* 2024 CAAF LEXIS 13 (C.A.A.F. 10 Jan. 2024). *But see* United States v. Scott, 83 M.J. 778, 780-81 (A. Ct. Crim. App. 27 Oct. 2023) (rejecting Harvey's creation of rebuttable presumption of guilt on appeal).

An "attempt" is defined under Article 80 as "[a]n act, done with specific intent, to commit an offense . . . amounting to more than mere preparation and tending, even though failing, to effect its commission." *Manual for Courts-Martial, United States* (2016 ed.) (*MCM*), pt. IV, ¶ 4.a.(a). To constitute more than "mere preparation," the act must be a "substantial step" towards commission of the offense. *See* United States v. Schoof, 37 M.J. 96, 102 (C.M.A. 1993) (citations omitted). A "substantial step" must be conduct "strongly corroborative of the firmness of the defendant's criminal intent." United States v. Hale, 78 M.J. 268, 272 (C.A.A.F. 2019) (citing United States v. Byrd, 24 M.J. 286, 290 (C.M.A. 1987)). An attempt is more than "devising or arranging the means or measures necessary for the commission of the offense;" rather, it is a "direct movement toward the commission after the preparations are made." Id. at 271 (quoting Schoof, 37 M.J. at 103). However, "[t]he overt act need not be the last act essential to the consummations of the offense." Id. (citation omitted).

In cases involving attempts to entice minors to engage in sexual activity, "courts agree that travel constitutes a substantial step." United States v. Winckelmann, 70 M.J. 403, 407 (C.A.A.F. 2011) (citations omitted). Analyzing an attempted larceny conviction, the United States Court of Appeals for the Armed Forces noted it had "recognized that a substantial step could be comprised of something as benign as travel, arranging a meeting, or making hotel reservations." United States v. Hale, 78 M.J. 268, 272 (C.A.A.F. 2019) (citing Winckelmann, 70 M.J. at 407).

Analysis

1. Attempted Murder of "Sarah"

In this case, the evidence proves Appellant attempted to murder sex worker "Sarah," whom he believed to be the mother a child sex trafficking victim named "Caitlin."

Specification 5 of Charge I for which Appellant was found guilty alleged:

> [T]hat [Appellant], did, at or near Montgomery, Alabama, on or about 18 September 2021, with premeditation, attempt to murder a person whom he believed to be "Sarah," by means of suffocating her.

ROT, Vol. 1, DD Form 458, Charge Sheet, Entry of Judgment; R. at 465.

For the court-martial to find Appellant guilty of attempted murder under Articles 80UCMJ, the United States was required to prove beyond a reasonable doubt that (1) at or near Montgomery, Alabama, on or about 18 September 2021, Appellant did a certain overt act(s), (2) the act(s) was/were done with the specific intent to kill a person he believed to be "Sarah," that is, to suffocate her and kill without justification or excuse; (3) the act(s) amounted to more than mere preparation, that is, they were a substantial step a direct movement toward the unlawful killing of a person he believed to be "Sarah"; (4) the act(s) apparently tended to bring about the commission of the offense of premeditated murder, that is, the act(s) apparently would have resulted in the actual commission of the offense of premeditated murder except for a circumstance unknown to Appellant or an unexpected intervening circumstance which prevented the completion of that offense; and (5) at the time Appellant committed the acts alleged, he had the premeditated design to kill the person he believed to be "Sarah." *See* Manual for Courts-Martial (2019 ed.) (MCM), pt. IV, para. 4.b; Department of the Army Pamphlet 27-9, *Military Judges' Benchbook*, para. 3a-4-2.

Appellant's seven-page argument regarding this Assignment of Error starts:

> This is a case about fantasy and intent and where the line between the two is, especially when the charged offenses are attempted acts and not completed acts. Conversations about specific fantasies, no matter how dark and disturbing they are, are not criminal when the evidence is insufficient to prove intent and the charged overt acts are not substantial steps toward the completion of the offenses.

App. Br. at 16.

That introduction demonstrates Appellant's failure to acknowledge his intent to commit his crimes and the significant steps he took to do so. Far from fantasy and mere talk, Appellant had numerous detailed communications (see Pros. Exs. 1-4) about crimes he wanted to commit against specific victims, he planned how he would perpetrate his crimes, he purchased various tools to commit his crimes and avoid detection (see Pros. Ex. 6-12, 15-39), including the nose plugs he planned to use to suffocate Sarah to death (Pros. Ex. 25; R. at 407), and met with, and paid, people whom he understood would assist him in completing his crimes (*see* Pros. Ex. 5).

Because the Court of Appeals for the Armed Forces has found that travel constitutes a "substantial step" towards attempted enticement of a minor to engage in sexual activity, Winckelmann, 70 M.J. at 407, Appellant's travel to the AirBnB was a substantial step towards his attempted murder of Sarah. The Winklemann opinion cited two cases as examples of "substantial steps" towards attempted child sex crimes: United States v. Zawada, 552 F.3d 531, 534-35 (7th Cir. 2008) (making arrangements for meeting a supposed minor, agreeing on a time and place for a meeting, making a hotel reservation, purchasing a gift, or traveling to a rendezvous point); and United States v. Thomas, 410 F.3d 1235, 1246 (10th Cir. 2005) (posting an advertisement online seeking sexual contact with children, repeatedly discussing such activity with an adult intermediary, arranging a rendezvous for the sexual encounter, and discussing ways to avoid police detection). 70 M.J. at 408. Those examples are comparable to the substantial steps Appellant took in attempting to murder Sarah.

The Court of Appeals for the Armed Forces, in affirming a guilty plea to attempted espionage, found the "substantial steps" of enlisting the aid of fellow sailor; removing classified documents from classified storage facility; and going halfway to deliver the documents to be sufficient. Schoof, 37 M.J. at 103. In this case, Appellant enlisted the aid of two other people, paid a believed sex trafficker cash for Sarah and her daughter, and traveled to the AirBnB to help restrain Sarah, among other overt acts, so he took substantial steps toward committing the crime.

This Court in United States v. Easterly, No. ACM 39310, 2019 CCA LEXIS 175 (A.F. Ct. Crim. App. 12 Apr. 2019) (unpub. op.), found the following to be "substantial steps" towards attempted murder: the appellant's purchasing a knife, borrowing a car, driving to the victim's apartment, getting in the elevator without notifying her, and twice knocking on the victim's door while he waited for her to answer with a bag at his feet that contained the knife to kill her and items to cover up the crime. Id., *34. In the instant case, as well, Appellant had discussed in detail how he would murder Sarah, he rented the location and purchased tools to commit the crime and avoid detection – including the nose plugs that would be the ultimate murder weapon, and he traveled to the AirBnB on the day intended to start committing the kidnaping and rapes leading up to the murder.

Appellant cites to United States v. Valle, 807 F.3d 508, 511 (2d Cir. 2015), to contrast fantasy from crime. App. Br. at 16. However, in that case, the prosecution was based on mere chats, some of which were conceded by the Government to be mere "fantasy." Valle, 807 F.3d at 516-19. The only other evidence, of "preparation," was the appellant's internet searches about the alleged crimes. Id. at 519. Crucially, there were no overt acts towards committing the crimes.

In contrast, Appellant's overt acts – that is, paying Ms. J.O. to rent a location to commit the crime, involving a third-party human trafficker whom he knew as "Blazer," purchasing

numerous items to commit the crime and evade detection, and traveling to the site of the intended crime to help restrain Sarah -- pushed any claim of fantasy into a horrific reality. Appellant bolds the words "Maybe" and "sometime" in trial counsel's closing argument when counsel quotes from a couple of Appellant's text messages from 1 and 4 September 2021. (App. Br. at 17 (citing R. at 441).) In using those words, Appellant was not indicating lack of dedication to commit his crimes. Rather, he was musing about the specific way in which he would commit the rape and murder.

After the text messages Appellant cites, on 5 September 2021, Appellant sent Ms. J.O. a text message:

> I want to do it [kill Sarah] a day or two before so I can record an interview with her [Caitlin] when she's taped to a chair, or mummified, and gagged, asking her questions about how she feels about dear mommy dying. I don't need her to actually answer, I just want to taunt and tease her to get some gagged screams and crying on film. And just spend the entire day seeing her deal with the reality of it all.

(Pros. Ex. 2, p. 118.)

On 18 September 2021, the day of Appellant's arrest, Ms. J.O. wrote to him, "Blazer left, but if u could get down here that would be great bc the mom Sarah is instantly being a cunt and I need to tape her up," and Appellant responded, "Just update me on everything when you can. . . . Put her in the laundry room and gag her." (Id, p. 229.)

Appellant concedes his text messages with Ms. J.O. were "replete" with discussion about "snuffing someone"; however, he minimizes them as "elaborate fantasies." App. Br. at 18 (citing Pros. Ex. 1). Appellant cites how his text discussions are "peppered" with emojis, GIFs, and cartoon images. (App. Br. at 18 (citing Pros. Ex. 1.) That only shows how depraved Appellant is. Appellant tries to deflect the extensive evidence of criminal tools he purchased to kidnap, rape, and murder his victims and, instead, emphasizes that he failed to bring merely one item, trash bags,

for eventual disposal of Sarah's body. (App. Br. at 18, 25.) Far from negating his intent to kill, a reasonable conclusion is that it demonstrated Appellant distinguished between (a) items needed to commit kidnaping, torture, rape, and murder, and (b) what could wait for after the crimes when executing the cover-up. In any event, Appellant had all the equipment he needed to commit the murder in any number of ways, including the nose plugs that he ultimately decided to use to suffocate Sarah (Pros. Ex. 2, p. 128, Pros. Ex. 25; R. at 407.), and his obtaining them were overt acts towards committing the crime.

Appellant asserts Blazer was in charge and "dominated" Appellant and mischaracterizes his text conversation with Blazer to give the false impression Blazer threatened him if Appellant backed out of the plan. (App. Br. at 18-19.) To the contrary, it was Appellant who wanted to make sure Blazer would not back out on Appellant's plan to rape and torture Caitlin and to kill Sarah. As demonstrated by the following conversation from which Appellant's brief excerpted only a small portion, Blazer emphasized he was still thinking about Appellant's plan to murder Sarah, he would only include Sarah in the deal because Appellant would kill her for Blazer, and Appellant could back out but should let Blazer know in advance:

> Appellant: So you definitely want me to do this to Sarah, and no backing out if I get her? No backing out for me, I mean. Obviously you can back out at any time with doing what you want to your own property.
>
> Blazer: Uh no I haven't said for sure on anything with Sarah. I said I'd think about it and I'm working on getting her, but I'm still not for sure on if I want her back. [. . .]
>
> Appellant: No, I just wanted to know that, if we get her booked, if I will or won't be able to back out of that endgame plan. Just wanted to cover that base in case something changes along the way. Because I haven't done that before. She might make it easy to go through with it if she's as mouthy as you say.
>
> Blazer: Uh I mean you know I'm only including her because of our deal right? You offered to help solve a problem for me. Are you saying you're not sure if you want to or...? The original gig was for

> one. It was your idea to add in, and I liked it because of your offer. But you do what you want but let me know in advance. Everyone gotta start somewhere. I'll help you with it, since you're helping me, but I really can't say I want to screw around with a flake. You wouldn't want to either. I won't force you to do anything, but I do expect clarity. I'm working over here based on what you're telling me.
>
> Appellant: Alright, that's what I wanted to confirm. I just wanted to be sure things were clear. If you can book her for us, I guarantee we'll take care of it. I'm definitely not going to screw you over on a deal.
>
> Blazer: That's what I want to hear. But it's still all talk for now. Everyone can talk. And if you were trying to really fuck me over...well don't try that because you'd regret it I promise.
>
> Appellant: Believe me, I definitely don't want to deal with the consequences of that.
>
> Blazer: But if you just feel like you need to back out and this ain't for you, I get it. I appreciate honesty. Just tell me sooner rather than later so I don't get caught with my dick out ya feel? We just switch numbers and never speak again. Easy. But if you wait and then screw with me after I've gone in for you, well that's not as easy. Well I'll let you in on a secret. I don't want to deal with it either lol so we agree.
>
> Appellant: Just so I'm not misinterpreting anything, I just want to confirm again that you'll be handling the body after.

Pros. Ex. 4, pp. 19-20. Moreover, during a subsequent recorded conversation on 10 September 2021 between Appellant and Blazer, both men were calmly and cordially discussing Appellant's plan. (Pros. Ex. 5.)

Appellant's brief cites to SA B.S.'s testimony about the 10 September 2021 meeting, "[Appellant] said he wasn't interested in the mother (Sarah), that he would only be interested in meeting with the girl (Caitlin)." (App. Br. at 20 (citing R. at 430).) However, the video of the meeting, which took place at approximately 1132 hours, demonstrates that Appellant did not say that; rather, after they discussed Sarah's age, Blazer laughed because Appellant told him of his

"preference" for children. (Pros. Ex. 5, 02:07-02:40.) In Appellant's first text messages to Blazer after the meeting, at 1216 hours, he wrote:

> Hey I'm still down to take care of Sarah if you need me to. But honestly we're not going to get much use out of her and will focus primarily on Caitlin, so Sarah could be a bit of a liability without much benefits. When I'm not there it'll be Bunny having to watch two of them. But if it's too late to change the plan, I'm good to stick with it. We'll just keep her stashed away most of the time if that's the case.

(Pros. Ex. 4, p. 24.) Additionally, in subsequent text messages with Blazer, Appellant discussed killing Sarah. For example, on 10 September, he asked about "snuff video" buyers and, on 12 September, Appellant discussed how he would film the "snuff." (Pros. Ex. 4, pp, 36, 49.) And in a 16 September text message with Ms. J.O., Appellant justified killing Sarah because she "tolerated" Caitlin getting involved in the sex business. (Pros. Ex. 2, p. 207.)

Appellant argues that blindfolding Sarah, so she would not see him, would have been unnecessary if the plan really had been to kill her. (App. Br. at 19.) However, this demonstrated Appellant was prepared just in case the scheme did not work out exactly as planned.

Appellant cites to what he characterizes as his own expressions of apprehension and doubts to Ms. J.O. (App. Br. at 19-20.) However, as Appellant conceded in the recording in Prosecution Exhibit 3, he did so to establish a false defense in case anybody was listening or recording the conversation, "I was saying that just to get it on the record in case this was a fucking cop set up basically." (Pros. Ex. 3, 9 Sep 2021 clip at 01:26-01:32; R. at 446.) Later in the conversation, Appellant told Ms. J.O., "It's just -- I've realized I said a lot of shit (to Blazer) that I probably should have kept to myself for the moment." (Id. at 02:49-02:59.) Similarly, Appellant's recorded call from jail to his wife was self-serving when he denied intending to murder anybody, especially since the system warns all callers, "All phone calls are subject to monitoring and recording." (Pros. Ex. 41 at 01:00-01:04, 01:23-01:27.)

Just like Appellant's argument at trial, his brief argues Ms. J.O. was motivated by retribution against Appellant because his wife broke her heart, hurt her feelings by having sex with Ms. J.O.'s husband and ex-boyfriend, and maligned her in the community. (App. Br. at 20.) Although Ms. J.O. was motivated to contact law enforcement only after Appellant demonstrated his intent to harm children, her intent to contact law enforcement is not important, because Appellant's own words and deeds demonstrated his intent to commit the crimes. This case did not involve entrapment, an affirmative defense that Appellant explicitly waived at trial. (R. at 222, 293-95, 322-25, 434.)

Ultimately, the evidence proved beyond a reasonable doubt that Appellant intended, through the time of his arrest, that he intended to kill Sarah.

2. Attempted Conspiracies to Rape and Kidnap Ms. A.B.

In this case, the evidence proves Appellant attempted to conspire to rape Ms. A.B. and attempted to conspire to kidnap her, as charged in Specifications 1 and 2 of the Additional Charge. Appellant's payment to Ms. J.O. for the AirBnB was an overt act that was necessary to put into place a key aspect of their committing their crimes.

Specification 1 of the Additional Charge for which Appellant was found guilty alleged:

> [T]hat [Appellant], did, at or near Montgomery, Alabama, between on or about 1 August 2021 and on or about 5 August 2021, attempt to conspire with J.O. to commit an offense under the Uniform Code of Military Justice, to wit: sexually assault A.B. by penetrating her vulva with his penis, by using unlawful force, and in order to effect the object of the conspiracy the said [Appellant] did provide funding for a lodging rental.

(ROT, Vol. 1, DD Form 458, Charge Sheet, Entry of Judgment; R. at 465.)

Specification 2 of the Additional Charge for which Appellant was found guilty alleged:

> [T]hat [Appellant], did, at or near Montgomery, Alabama, between on or about 1 August 2021 and on or about 5 August 2021, attempt to conspire with J.O. to commit an offense under the Uniform Code of Military Justice,

> to wit: confine and hold A.B., a person not a minor, against her will, and in in order to effect the object of the conspiracy the said [Appellant] did provide funding for a lodging rental.

(Id.)

For the court-martial to find Appellant guilty of attempted conspiracy to rape Ms. A.B. and attempted conspiracy to kidnap Ms. A.B. under Article 80, the United States was required to prove beyond a reasonable doubt that (1) at or near Montgomery, Alabama, on or about 18 September 2021, Appellant did a certain overt act, that is, provide funding for a lodging rental, (2) the act was done with the specific intent to commit a certain offense under the UCMJ, that is, conspiracy to commit rape in Specification 1 and conspiracy to commit kidnaping in Specification 2, (3) the act amounted to more than mere preparation, that is, it was a substantial step a direct movement toward the commission of the intended offense; and (4) the act apparently tended to effect the commission of the intended offense, that is, the act apparently would have resulted in the actual commission of the offense except for a circumstance unknown to Appellant or an unexpected intervening circumstance which prevented the completion of that offense. *See* Manual for Courts-Martial (2019 ed.) (MCM), pt. IV, para. 4.b.

The elements of conspiracy, in violation of Article 81(a), UCMJ, 10 U.S.C. § 881(a), are:

> (1) That the accused entered into an agreement with one or more persons to commit an offense under the UCMJ; and
>
> (2) That, while the agreement continued to exist, and while the accused remained a party to the agreement, the accused or at least one of the co-conspirators performed an overt act for the purpose of bringing about the object of the conspiracy.

MCM, pt. IV, para. 5.b.(1).

The elements of rape by unlawful force, in violation of Article 120(a)(1), UCMJ, 10 U.S.C. § 920(a)(1), are:

> (1) That the accused committed a sexual act upon another person; and

(2) That the accused did so with unlawful force.

Id., para. 60.b.(1)(a).

The elements of kidnapping, in violation of Article 125, UCMJ, 10 U.S.C. § 925, are:

(1) That the accused seized, confined, inveigled, decoyed, or carried away a certain person;

(2) That the accused then held such person against that person's will; and

(3) That the accused did so wrongfully.

Id., para. 74.b.

Appellant argues the various "What if…?" scenarios presented to Ms. J.O. in which he repeatedly rapes, tortures, and impregnates Ms. A.B. demonstrated mere fantasy. (App. Br. at 21.) However, the more reasonable conclusion, based largely on his actions after he switched from planning to victimize Ms. A.B. to planning to victimize Sarah and Caitlin, is that Appellant intended to commit crimes against Ms. A.B. but was deciding which specific way to do them, when he received another criminal opportunity.

Appellant recites his earlier question to Ms. J.O., "Are you sure I'm not being delusional about trying to have a daughter with [Ms. A.B.]?" (App. Br. at 22 (citing Pros. Ex. 2, p. 15).) However, such a question about one's own possible delusion is not part of role-play or fantasy; rather, it is what somebody asks when they want something to happen in reality but are unsure it can be accomplished. Appellant claims his "contingency planning" for possible failure were "utterly unrealistic and not feasible." (App. Br. at 22.) However, failure is not a concern in fantasy, and some of his contingency plans to prevent the victims' escape or crying out for help by using various forms of restraints demonstrated real-world research that would have worked. Appellant's contingency planning demonstrates just how real his plan was.

Appellant asserts that he "voluntarily abandoned" his plan to kidnap and rape Ms. A.B. (App. Br. at 22.) Although voluntary abandonment is a defense to an attempt offense, it certainly

does not apply to Appellant, because the defense requires one do so "solely because of the person's own sense that it was wrong" and not from other reasons such as "deciding to await a better opportunity for success." MCM, pt. IV, para. 4.c.(4). Far from changing his plan about Ms. A.B. because of his sense it was wrong, Appellant chose similar, but even more horrific, crimes to commit against Sarah and Caitlin. Thus, Appellant cannot avail himself of the defense of voluntary abandonment.

In any event, Appellant committed the overt act while Ms. A.B. was still the object of the crime, so Appellant committed the completed crime of attempt. As the MCM states:

> [A]n accused could commit an overt act, and then voluntarily decide not to go through with the intended offense. An attempt would nevertheless have been committed, for the combination of a specific intent to commit an offense, plus the commission of an overt act directly tending to accomplish it, constitutes the offense of attempt. Failure to complete the offense, whatever the cause is, is not a defense.

MCM, pt. IV, para. 4.c.(2).

Appellant argues that Ms. J.O. was not sure if the money Appellant gave her was for the AirBnB rental, quoting that she knew Appellant had given her money "for going down to Alabama, but I can't remember for [Ms. A.B.]." (App. Br. at 22 (citing R. at 350).) However, in that statement, Ms. J.O. was stating she was unsure whether Appellant had also paid for Ms. A.B. to go down to Alabama, not whether Appellant paid her (Ms. J.O.) for the AirBnB. She was quite sure that Appellant had paid her for the AirBnB. She testified, "He gave me money towards the AirBnB, and he gave me money towards taking the bus down to Montgomery from New York." (R. at 348.) Moreover, the evidence demonstrated Appellant paid Ms. J.O. $230 on 4 August 2021. (Pros. Ex. 1, p. 189; App. Ex. VIII, Atch. 13, p. 141; R. at 50.) It was not until a few weeks later,

after Blazer got involved, that the primary scheme redirected from Ms. A.B. towards Caitlin and Sarah.

Appellant's payment to Ms. J.O. for the AirBnB was an overt act that was necessary to put into place a key aspect of their committing their crimes.[6] Because Ms. J.O. and Ms. A.B. were close friends, Ms. A.B. would have recognized Ms. J.O.'s home. Thus, they needed the AirBnB as an unrecognizable place in which to imprison and rape her, so she would not link Ms. J.O. to the crime, and Ms. J.O. and Appellant would avoid detection if they freed Ms. A.B. or she escaped. Because the perpetrators' need for a safe third-party location at which the crimes would be committed was crucial for the success of their scheme, Appellant's payment to Ms. J.O. was strongly corroborative of the strength of his criminal intent and a "substantial step" towards completion of the crimes.

In summary, the evidence was legally sufficient because a rational trier of fact, after viewing the evidence in the light most favorable to the prosecution, would find Appellant attempted to murder Sarah and conspired to rape and kidnap Ms. A.B. Additionally, this Honorable Court should find the evidence was factually sufficient. After weighing the text message and phone conversations with Appellant and other evidence in the record of trial, and the testimony of Ms. J.O. and the two AFOSI agents, providing appropriate deference to the trial court, which saw and heard the witnesses and other evidence, and providing appropriate deference to the military judge's findings of fact, the Court cannot be "clearly convinced that the findings of guilty were against the weight of the evidence." Thus, the Court should affirm the findings of guilt.

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[6] We note that, although it related to other offenses in the Charge Sheet, during Appellant's Care inquiries for the crimes to which he pleaded guilty, he cited the payment to Ms. J.O. as an overt act for those offenses, "I sent money to [Ms. J.O.] for her to book the Airbnb in Montgomery, Alabama, and she confirmed she did." (R. at 207-08, 216, 226, 234, 270, 276, 279, 282, 283, 285, 289, 291; *see also* R. at 217, 219.)

II.

THE SENTENCES TO CONFINEMENT ARE NOT INAPPROPRIATELY SEVERE.

Additional Facts

During the sentencing phase of the court-martial, the Government adopted Appellant's statements made during the Care inquiry and was permitted to admit his personal data sheet (Pros. Ex. 42) and his four enlisted performance reports (Pros. Ex. 43). (R. at 471-72.)

Appellant submitted the following during his sentencing hearing: (1) photographs of Appellant with friends and family (Def. Ex. A; R. at 473-74); (2) Testimony of his mother, Ms. H.W. (R. at 476-93, 496); (3) testimony of his father, Mr. S.D. (R. at 496-505); (4) Appellant's written unsworn statement (Def. Ex. B; R. at 506); and (5) Appellant's oral unsworn statement (R. at 507-09). Appellant's evidence included, among other things, that, from a young age, he was subjected to alleged physical and verbal abuse from his birth father, he viewed pornography on his stepfather's computer, he was subjected to bullying and sexual abuse from his stepbrother. In Appellant's unsworn statement, he apologized for his crimes, and acknowledged that he had attempted "the most heinous crimes imaginable." (R. at 507.) He discussed feeling deep depression and his unsuccessful attempts to receive treatment.

The Government's sentencing argument emphasized the seriousness of Appellant's "cold and calculated" and heinous crimes of kidnaping, rape, and murder, as documented in numerous text messages (*see* Pros. Exs. 1, 2, 4) and conversations with Ms. J.O. (see Pros. Ex. 3), and his lack of rehabilitation potential based on his mendacity, denying the crimes he litigated at court-martial and blaming others for "emboldening" him. (R. at 512-19.) Trial counsel recommended a sentence of "at least 50 years" of confinement and requested the sentences for the crimes against

each of the three victims run consecutive to each other, because they were three separate criminal plans. (R. at 512, 513, 519, 520.)

Defense counsel asked for a sentence of "no more than 20 years of confinement" for Appellant's crimes and that the sentences run concurrently. (R. at 522, 523, 527, 528).

The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, 35 years of confinement for the attempted murder of Sarah in Specification 5 of Charge I (and lesser periods of confinement for other specifications of conviction, all to run concurrently)[7], and a dishonorable discharge. (R. at 532.)

Standard of Review

This Court reviews sentence appropriateness *de novo*. United States v. Lane, 64 M.J. 1, 2 (C.A.A.F. 2006)

[7] In addition to the attempted murder sentence of 35 years, the military judge sentenced Appellant to the following terms of confinement: Specification 2 of Charge I (attempt to possess Ecstasy) for 1 year, Specification 4 of Charge I (attempted rape of Sarah) for 15 years, Specification 8 of Charge I (attempted confining and holding against the will of Sarah) for 10 years, Specification 9 of Charge I (attempted confining and holding against the will of Caitlin, a minor) 10 years, Specification 10 of Charge I (attempted rape of Caitlin, a minor) 20 years, Specification 11 of Charge I (attempted distribution of child pornography of Caitlin) 6 years, Specification 12 of Charge I (attempted production of child pornography of Caitlin) 9 years, the Specification of Charge II (obstruction of justice) 6 months, Specification 1 of the Additional Charge (attempted conspiracy to rape Ms. A.B.) 7 years, Specification 2 of the Additional Charge (attempted conspiracy to confine and hold Ms. A.B. against her will) 4 years, Specification 3 of the Additional Charge (attempt to assault Caitlin, a minor, by choking her with a chain) 3 years, Specification 4 of the Additional Charge (attempt to assault Caitlin, a minor, by taping her nose and mouth shut) 3 years, Specification 5 of the Additional Charge (attempt to assault Caitlin, a minor, by putting a plastic bag over her head) 4 years, Specification 6 of the Additional Charge (attempt to assault Caitlin, a minor, by supergluing her lips together) 5 years, Specification 7 of the Additional Charge (attempt to assault Caitlin, a minor, by putting nose clips over her nostrils) 3 years, and Specification 10 of the Additional Charge (attempt to assault Caitlin, a minor, by tying "Sarah's" dead body to her) 5 years.

Law

The Court's authority to review a case for sentence appropriateness "reflects the unique history and attributes of the military justice system, [and] includes but is not limited to, considerations of uniformity and evenhandedness of sentencing decisions." United States v. Sothen, 54 M.J. 294, 296 (C.A.A.F. 2001) (citations omitted). This Court "may affirm only the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved." Article 66(d)(1), UCMJ. The Court "assess[es] sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense[s], the appellant's record of service, and all matters contained in the record of trial." United States v. Sauk, 74 M.J. 594, 606 (A.F. Ct. Crim. App. 2015) (*en banc*) (*per curiam*) (alteration in original) (citations omitted). Although the Court has discretion to determine whether a sentence is appropriate, it has no power to grant mercy. United States v. Nerad, 69 M.J. 138, 146 (C.A.A.F. 2010) (citation omitted).

Analysis

Appellant challenges several of his sentences:

> The sentence of confinement for thirty-five years for attempted murder of "Sarah," fifteen years for attempted rape of "Sarah," ten years for attempted kidnapping of "Sarah," twenty years for attempted rape of "Caitlin," ten years for attempted kidnapping of "Caitlin," nine years for attempted wrongful production of child pornography, six years for attempted wrongful distribution of child pornography, seven years for attempted conspiracy to rape AB, and four years for attempted conspiracy to kidnap AB is unduly harsh and inappropriately severe when considering this particular Appellant, the nature and seriousness of the offenses, his service record, and all matters contained in the record.

App. Br. at 30.[8]

[8] Appellant did not allege the sentences were unduly harsh or inappropriately severe for the drug crime in Specification 2 of Charge I for which he received a sentence of one year, the obstruction

The maximum sentences Appellant faced for his convictions of attempted murder, attempted rape (and attempted conspiracy), attempted kidnaping (and attempted conspiracy) included confinement for life, a dishonorable discharge, reduction to the grade of E-1, total forfeitures of pay and allowances, reprimand, and a fine. (MCM, pt. IV, paras. 56.a, 56.d, 4.d; 60.d(1); 74.d.) The period of confinement he faced for the attempted production of child pornography was 30 years and for the attempted distribution of child pornography was 20 years. Id. at 95.d(3) and (4). The military judge was lenient in sentencing Appellant far below the statutory maximums. Appellant planned to kidnap, restrain, physically and mentally torture, and rape his victims. He planned to rape Ms. A.B. and impregnate her. He planned to murder Sarah while making Caitlin watch her mother die. Then, he planned to keep Caitlin as his sex slave indefinitely. And he planned to sell the videos he made of all these horrors for widespread distribution to other mentally sick individuals.

Appellant does not compare his case to any other cases, closely related or otherwise, so he provides no basis upon which to invoke the Court's ability to ensure "uniformity and evenhandedness." To the contrary, the sentences are not unfairly disparate from and, in fact, are appropriately severe in comparison to the other sentences that the military judge adjudged for Appellant's other crimes.

During the sentencing hearing, Appellant asked for a sentence of no more than 20 years of confinement (R. at 522, 527, 528), and he is not arguing on appeal that said sentencing request during the court-martial constituted ineffective assistance of counsel. Thus, the only sentence exceeding 20 years that he could now reasonably attempt to argue is inappropriately severe is the

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crime in the Specification of Charge II for which he received a sentence of six months, and the attempted assaults of a child in Specifications 3 through 7 and 10 of the Additional Charge for which he received sentences ranging from three to seven years.

35-year sentence for the attempted murder of "Sarah." Appellant's emphasis in his Assignment of Error on his crimes against A.B.,[9] with no discussion of "Sarah" other than to reiterate that his intended victim of rape and murder was fictitious, is misplaced.

Appellant did not know his intended victim was fictitious. He believed "Sarah" was a real person, that she was "Caitlin's" mother. He planned to have her kidnaped, to restrain her with chains, to rape her repeatedly in front of her daughter, to make her engage in sexual acts with her daughter, and then to kill her in front of her daughter. Appellant believed he would be subjecting a real person to torture and a death that most people could not imagine in their worst nightmares. The sentence of 35 years for the attempted murder was justified and not greater than necessary to achieve the goals of incapacitation, retribution, specific deterrence, and general deterrence.

Even if the Court were to consider the crimes at or below the 20-year sentence Appellant requested as the maximum during his sentencing hearing, those were certainly not inappropriately severe. Regarding "Caitlin," Appellant believed his intended victim was a 14-year-old girl. As part of his kidnaping, rape, and torture scheme, he intended to rape her for 10 days. He planned to superglue Caitlin's lips to impede her breathing. (R. at 283.) Then, Appellant planned to make Caitlin watch as he murdered her mother. And he planned to sell videos of all of these crimes. The sentences of 10 years for attempted kidnaping, 20 years for attempted rape, 6 years for attempted distribution of child pornography, and 9 years for attempted production of said child pornography is justified by the facts of the case.

Turning to his original intended victim, Ms. A.B., she was the focus of Appellant's plans for several weeks before Blazer turned Appellant's attention to Caitlin and Sarah. Before that

[9] "Overall, the sentences to confinement are excessive and unreasonable, but especially those involving AB." (App. Br. at 31.)

point, Appellant had already paid for the AirBnB and, for more than one month, discussed in detail the kidnaping and rape, and initially the killing, of Ms. A.B. When the plan re-focused on Caitlin and Sarah, Ms. A.B. was not safe; rather, she was Appellant's next victim after them. He had every intention of returning to Ms. A.B. as a victim, whom he would impregnate and then enslave their child. The sentences of four years for the horrific attempted conspiracy to kidnap Ms. A.B. and seven years for the attempted conspiracy to rape her was reasonable and, arguably, too lenient.

Appellant's Assignment of Errors generally reiterates matters that were before the military judge when he decided the sentence, including Appellant's sentencing argument (R. at 521-28), and references the five principles for sentencing that would have been instructed to panel members. (App. Br. at 32-34.) The military judge is presumed to have considered those factors and followed the law, absent clear evidence to the contrary. United States v. Erickson, 65 M.J. 221, 225 (C.A.A.F. 2007). Appellant cites to nothing in the record that calls into question whether the military judge afforded Appellant's points the appropriate weight and followed the law.

In conclusion, the nature and seriousness of the offenses, even considering any mitigating factors Appellant raised, support the sentence as entered.

III.[10]

THE GOVERNMENT DID NOT VIOLATE APPELLANT'S ARTICLE 10, UNIFORM CODE OF MILITARY JUSTICE, SPEEDY-TRIAL RIGHT.

Additional Facts

AFOSI arrested Appellant on 18 September 2021 and placed him in pretrial confinement. (ROT Vol. 4, App. Ex. XX, Atch. 2, p. 22.) On 24 September 2021, a licensed clinical

[10] Appellant raised this third assignment of error pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

psychologist emailed defense counsel regarding Appellant's request for a psychological evaluation. (Id., Atch. 3, pp. 24-25.) On 7 October 2021, the AFOSI requested the Department of Defense Cyber Crime Center (DC3) examine Appellant's seized electronic device. (Id., Atch. 4, p. 27-29.) On 3 December 2021, the commander appointed an expert to conduct a sanity board to examine Appellant's mental capacity and responsibility pursuant to R.C.M. 706. (Id., p. 66.) The examination took place on 14 December 2021. (Id., p. 67.)

The Government was ready for trial on 13 January 2022, but the defense represented it would not be ready until 22 August 2022. (App. Ex. XX, p. 470.)

On 24 January 2022, the military judge arraigned Appellant. (R. at 10.)

On 11 April 2022, Appellant submitted a motion to dismiss for allegedly violating his speedy trial rights under Article 10. (App. Ex. XX.) He conceded that he had not made a formal demand for a speedy trial. (Id., p. 16, para. 70.) He also conceded that, due to defense delays excluded from speedy trial analysis, there were a total of 117 days of delay from apprehension to arraignment chargeable to the Government. (Id., pp. 1, 2, 16, para. 68.)

On 19 April 2022, the Government filed a response in opposition. (ROT Vol 5, App. Ex. XXI.) The response included, among other things, a detailed case procedural chronology (id., Atch. 1, pp. 13-19), a sanity board appointment memo and short form report (id., Atch. 7, pp. 66-67), and a scheduled meeting with a civilian federal prosecutor ("AUSA") (id., Atch. 11, p. 88).

On 21 July 2022, the military judge denied Appellant's motion to dismiss for allegedly violating his speedy trial rights under Article 10. (App. Ex. XXVI.) The military judge found Appellant had not made a demand for a speedy trial prior to filing his motion on 11 April 2022. (Id., p. 1, para. 3 (citing App. Ex. XX, p. 16, para. 70) and p. 8, para. 39.) The military judge found the Government's case ready date was 13 January 2022; however, the defense case ready

date was not until 22 August 2022, 221 days after the Government's case ready date. (App. Ex. XXVI, p. 2, paras. 5, 6, 32.) He found no prejudice to Appellant, because no witnesses or evidence became unavailable. (Id., p. 2, para. 7, p. 8, paras. 40, 41.) Although the military judge acknowledged the alleged assault on Appellant in pretrial confinement and the 30 minutes it took for defense counsel to visit Appellant, the military judge found Appellant had not suffered "any particularized 'anxiety and concern' in this case other than those typically associated with pretrial confinement generally." (Id., para 8.) Applying his findings of fact to the principles of law, the military judge concluded the Government moved the case with reasonable diligence. (Id., p. 6, para. 31, p. 8, para. 41.) His ruling cited the reasonable delays for the sanity board, adding additional charges, and the holiday season. (Id., p. 6, para. 32). And the ruling emphasized the trial took place several months prior to Appellant's case ready date. (Id., p. 7, para. 33.)

Standard of Review

Whether an accused received a speedy trial under Article 10, UCMJ, is a question of law that is reviewed *de novo*; however, this Court is bound by the facts as found by the military judge unless those facts are "clearly erroneous." United States v. Cossio, 64 M.J. 254, 256 (C.A.A.F.), *cert. denied*, 551 U.S. 1147 (2007) (internal citation omitted).

Law

Article 10, UCMJ, provides in pertinent part: "When a person subject to this chapter is ordered into arrest or confinement before trial, immediate steps shall be taken . . . to try the person or to dismiss the charges and release the person." 10 U.S.C. §§ 810(b)(1). The speedy trial requirement of Article 10 "does not demand constant motion but does impose on the Government the standard of 'reasonable diligence in bringing the charges to trial.'" Cooley, 75 M.J. at 259 (quoting Mizgala, 61 M.J. at 129). "Short periods of inactivity are not fatal to an otherwise

active prosecution." Mizgala, 61 M.J. at 127 (citation omitted). Appellate courts should remain mindful of "the proceeding as a whole and not mere speed." Id. at 129 (citation omitted).

"[A]lthough Sixth Amendment speedy trial standards cannot dictate whether there has been an Article 10 violation, the factors from Barker v. Wingo are an apt structure for examining the facts and circumstances surrounding an alleged Article 10 violation." Mizgala, 61 M.J. at 127 (internal citations omitted). Accordingly, the framework to determine whether the Government proceeded with reasonable diligence includes balancing the following four factors: (1) the length of the delay; (2) the reasons for the delay; (3) whether the appellant made a demand for a speedy trial; and (4) prejudice to the appellant. Id. at 129 (citing Barker, 407 U.S. at 530) (additional citation omitted).

The length of delay "is to some extent a triggering mechanism;" that is, "unless there is a period of delay that appears, on its face, to be unreasonable under the circumstances, 'there is no necessity for inquiry into the other factors that go into the balance.'" Barker, 407 U.S. at 530.

However, these factors are not "talismanic" and "must be considered together with such other circumstances as may be relevant." United States v. Wilson, 72 M.J. 347, 351 (C.A.A.F. 2013) (quoting Barker, 407 U.S. at 533).

The Supreme Court of the United States identified three interests, related to the speedy trial protection, to consider when assessing prejudice: (1) "to prevent oppressive pretrial incarceration;" (2) "to minimize anxiety and concern of the accused;" and, most importantly, (3) "to limit the possibility that the defense will be impaired." Barker, 407 U.S. at 532 (footnote omitted).

Analysis

Appellant believes the Government violated his speedy trial rights under Article 10, UCMJ. (App. Br. at Appendix.) The issue is without merit.

Addressing the Barker factors in order, the length of the delay in this case was reasonable. As the military judge found, the Government had moved with reasonable diligence, considering various factors in his ruling.

Regarding the reasons for delays, Appellant claims that, because he had made incriminating statements during a recorded interview and in a written statement, "AFOSI's investigation was effectively complete" when he entered pretrial confinement. (App. Br., Appendix, p.9.) However, he then acknowledges the continuing AFOSI investigation, interviewing witnesses, collecting receipts, and obtaining forensic analysis of electronic evidence. (Id.) Although Appellant cites the initial preferral of charges before the forensic analysis was completed, there were many investigative and legal steps that were needed. For example, investigators were looking into multiple other possible victims, there were additional charges and specification preferred, and the Government had to consult with various law enforcement agencies and coordinate with civilian federal prosecutors. Therefore, United States v. Simmons, 2009 CCA LEXIS 301 (A.F. Ct. Crim. App. 12 Aug. 2009) (unpub. op.), which Appellant cites (App. Br. at 45, 47), is distinguishable.

As mentioned above, Appellant made no demand for a speedy trial before arraignment, and the defense case ready date was not until August 2022, so this Barker factor weighs heavily against Appellant. Although Appellant cites defense counsel's error in not including the demand in their discovery request (App. Br., Appendix, p. 11), he does not allege ineffective assistance of counsel.

Appellant claims he suffered prejudice in the form of "anxiety from oppressive pretrial confinement" that "caused above average amounts of stress" and "severe and persistent anxiety." (App. Br. at 12.) He claims he was assaulted and had to deal with persistent anxiety. The assault,

if real, was minor, resulting in what a witness described as a "red scratch" to two places on Appellant's face. (App. Ex. XXII, p. 2.) Appellant claims he was prejudiced by his ability to communicate with counsel. (App. Br. at 12; App. Ex. XX, p. 17.) However, counsel's 30-minute drive to the jail is hardly prejudice meriting relief.

Considering the fundamental demand of Article 10 for reasonable diligence, and balancing the Barker factors, we submit Appellant was not denied his right to a speedy trial under Article 10.

CONCLUSION

The United States respectfully requests this Honorable Court deny the relief Appellant requests and, instead, affirm the findings and sentence.

[redacted]
STEVEN R. KAUFMAN, Col, USAF
Appellate Government Counsel, Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
[redacted]

[redacted]
MARY ELLEN PAYNE
Associate Chief, Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
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 11 March 2024 via electronic filing.

STEVEN R. KAUFMAN, Col, USAF
Appellate Government Counsel, Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME FOR REPLY (FIRST) OUT OF TIME**
v.	)	Before Panel No. 3
Senior Airman (E-4), **LOGAN A. MCLEOD,** United States Air Force, *Appellant.*	)	No. ACM 40374
	)	13 March 2024

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

Pursuant to Rule 23.3(m) of this Honorable Court's Rules of Practice and Procedure, Senior Airman (SrA) Logan A. McLeod, Appellant, hereby moves for an enlargement of time to file a Reply to the Government's Answer. The Government filed its Answer to the Brief on Behalf of Appellant on 11 March 2024. Appellant's Reply Brief is currently due on 18 March 2024. Appellant requests an enlargement for a period of ten days, which will end of **28 March 2024.** The record of trial was docketed with this Court on 15 November 2022. From the date of docketing to the present date, 484 days have elapsed. On the date requested, 499 days will have elapsed.

On 24 January and 22-24 August 2022, SrA McLeod was tried by a general court-martial composed of a military judge alone at Maxwell Air Force Base, Alabama, at which he entered mixed pleas.[1] Consistent with his pleas, SrA McLeod was convicted of ten specifications of various attempts, in violation of Article 80, Uniform Code of Military Justice (UCMJ);[2] and one specification of obstruction of justice, in violation of Article 131b, UCMJ.[3] Contrary to his pleas, the military judge found SrA McLeod guilty of an additional six specifications of attempt.[4] The

[1] R. at 191-92.
[2] The specifications of attempt are captured in Charge I and the Additional Charge.
[3] R. at 303.
[4] R. at 465.

military judge also acquitted SrA McLeod of three specifications of attempt.[5] Finally, three more specifications of attempt were withdrawn and dismissed before arraignment.[6] The military judge sentenced SrA McLeod to a reprimand, reduction to E-1, a total of 35 years' confinement, and a dishonorable discharge.[7] The military judge awarded 341 days pretrial confinement credit.[8]

The record of trial consists of eight volumes. The transcript is 533 pages. There are 43 Prosecution Exhibits,[9] two Defense Exhibits, and 38 Appellate Exhibits. SrA McLeod is currently in confinement.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), counsel provides the following information. Undersigned counsel currently has one additional active case—*United States v. Byrne*. A1C Byrne is also represented by civilian counsel. SrA McLeod's Reply is currently undersigned counsel's top priority. Undersigned counsel has reviewed the Government's Answer but has not begun researching or drafting the Reply.

Civilian counsel has an active docket with one case pending before this Court; 11 cases pending before the Army Court of Criminal Appeals; one case before the Navy-Marine Corps Court of Criminal Appeals; seven cases before the Court of Appeals for the Armed Forces; four cases before the Court of Federal Claims; and three petitions for a writ of habeas corpus in various federal district courts. No case currently takes priority over this case.

The length and complexity of this case justifies this ten-day enlargement of time. The requested enlargement is necessary to allow sufficient time for counsel to review and research the

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[5] *Id.*
[6] R. at 20.
[7] R. at 532.
[8] *Id.*
[9] Some of the prosecution exhibits are hundreds of pages in length and not included in the size of the record because they are presented on disc in the record of trial. *See, e.g.*, Prosecution Exhibit 1 (476 pages).

Government's 35-page Answer, for coordination between military and civilian appellate defense counsel, to effectively advise Appellant, and to file a thorough Reply.

Through no fault of Appellant, his counsel are unable to fully review the Government's Answer and file a Reply Brief before this Court's current deadline.

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

Respectfully submitted,

[redacted]

MEGAN P. MARINOS
Senior Counsel
Air Force Appellate Defense Division
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 13 March 2024.

Respectfully submitted,

[redacted]
MEGAN P. MARINOS
Senior Counsel
Air Force Appellate Defense Division
[redacted]

14 March 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) LOGAN A. MCLEOD, USAF, *Appellant.*	)))))))))	UNITED STATES' RESPONSE TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME FOR REPLY – OUT OF TIME No. ACM 40374 Panel No. 3

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 Motion for Enlargement of Time, Out of Time, to file a Reply to the United States' Answer to Assignments of Error.

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

[redacted]

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, to Civilian Defense Counsel, and to the Air Force Appellate Defense Division on 14 March 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**CONSENT MOTION FOR RECONSIDERATION OF MOTION FOR ENLARGEMENT OF TIME FOR REPLY (FIRST) OUT OF TIME**
v.	)	
Senior Airman (E-4) **LOGAN A. MCLEOD** United States Air Force *Appellant*	)	Before Panel No. 3
	)	No. ACM 40374
	)	15 March 2024

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

Pursuant to Rules 18(d), 23.3(m), and 31 of this Court's Rules of Practice and Procedure, Senior Airman (SrA) Logan A. McLeod, Appellant, hereby moves for reconsideration of his motion for an enlargement of time to file a Reply to the Government's Answer. The Government filed its Answer to the Brief on Behalf of Appellant on 11 March 2024 at 2058. Appellant's Reply Brief is currently due on 18 March 2024. Appellant filed a Motion for Enlargement of Time for Reply (First) Out of Time on 13 March 2024. Appellant requests an enlargement for a period of ten days, which will end on **28 March 2024**. The record of trial was docketed with this Court on 15 November 2022. From the date of docketing to the present date, 486 days have elapsed. On the date requested, 499 days will have elapsed.

Good cause exists to grant this motion. The original motion for enlargement of time was filed out of time as a consequence of the timelines delineated in the Court's Rules. Per Rule 18(d), a reply must be filed seven days after the Government's answer. Per Rule 23.3(m)(7), an enlargement of time must be filed "at least seven calendar days before the filing is due." So for a motion for an enlargement of time for a reply to be timely, it must be filed on the same day as the answer. Because the Government did not file it's Answer until 2058 on 11 March 2024, it was

impossible for appellate defense counsel to timely file a motion for an enlargement of time as counsel did not see the filing until the following morning, 12 March 2024. Counsel moved as quickly as possible to read the brief and determine how much time would be necessary to conduct additional research, get a copy of the Government's Answer to the incarcerated Appellant, consult with and advise the incarcerated Appellant, and draft an effective Reply.

The requested ten-day enlargement is necessary for counsel to effectively represent their client and complete the Reply. Civilian Counsel is a member of the Defense Advisory Committee on Investigations, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD), which advises the Secretary of Defense and Deputy Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces, and has been in Colorado Springs, Colorado this week fulfilling those duties. Appellant is incarcerated and is yet to receive a copy of the Government's Answer, making it impossible for him to assist with his Reply or fully understand what is being explained by counsel. Further, counsel are not scheduled to speak to Appellant until 19 March 2024—a date that was not of counsel's choosing but was provided by the confinement facility. Counsel cannot file a Reply on behalf of the Appellant in this case without first consulting with and advising the Appellant.

On 24 January and 22-24 August 2022, SrA McLeod was tried by a general court-martial composed of a military judge alone at Maxwell Air Force Base, Alabama, at which he entered mixed pleas.[1] Consistent with his pleas, SrA McLeod was convicted of ten specifications of various attempts, in violation of Article 80, Uniform Code of Military Justice (UCMJ);[2] and one

[1] R. at 191-92.
[2] The specifications of attempt are captured in Charge I and the Additional Charge.

specification of obstruction of justice, in violation of Article 131b, UCMJ.[3] Contrary to his pleas, the military judge found SrA McLeod guilty of an additional six specifications of attempt.[4] The military judge also acquitted SrA McLeod of three specifications of attempt.[5] Finally, three more specifications of attempt were withdrawn and dismissed before arraignment.[6] The military judge sentenced SrA McLeod to a reprimand, reduction to E-1, a total of 35 years' confinement, and a dishonorable discharge.[7] The military judge awarded 341 days pretrial confinement credit.[8]

The record of trial consists of eight volumes. The transcript is 533 pages. There are 43 Prosecution Exhibits,[9] two Defense Exhibits, and 38 Appellate Exhibits. SrA McLeod is currently in confinement.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), counsel provides the following information. Undersigned counsel currently has one additional active case—*United States v. Byrne*. Airman First Class (A1C) Byrne is also represented by civilian counsel. SrA McLeod's Reply is currently undersigned counsel's top priority. Undersigned counsel has reviewed the Government's Answer but has not begun researching or drafting the Reply.

Civilian counsel has an active docket with one case pending before this Court; 11 cases pending before the Army Court of Criminal Appeals; one case before the Navy-Marine Corps Court of Criminal Appeals; seven cases before the Court of Appeals for the Armed Forces; four cases before the Court of Federal Claims; and three petitions for a writ of habeas corpus in various

[3] R. at 303.
[4] R. at 465.
[5] *Id.*
[6] R. at 20.
[7] R. at 532.
[8] *Id.*
[9] Some of the prosecution exhibits are hundreds of pages in length and not included in the size of the record because they are presented on disc in the record of trial. *See, e.g.*, Prosecution Exhibit 1 (476 pages).

federal district courts. No case currently takes priority over this case, but he is limited in his ability to work on Appellant's Reply brief at present due to the DAC-IPAD obligations noted above.

The length and complexity of this case, along with the limitations imposed on counsel in communicating with their client by the confinement facility, justify this ten-day enlargement of time. The requested enlargement is necessary to allow sufficient time for counsel to review and research the Government's 35-page Answer, for coordination between military and civilian appellate defense counsel, to effectively advise Appellant, and to file a thorough Reply.

Through no fault of Appellant, his counsel are unable to file a Reply before this Court's current deadline. Counsel for the Government consents to this motion.

WHEREFORE, Appellant respectfully requests this Court grant the motion.

Respectfully submitted,

MEGAN P. MARINOS
Senior Counsel
Air Force Appellate Defense Division
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 15 March 2024.

Respectfully submitted,

MEGAN P. MARINOS
Senior Counsel
Air Force Appellate Defense Division
[redacted]

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40374**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Logan A. MCLEOD	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 3**

On 13 March 2024, counsel for Appellant submitted a Motion for Enlargement of Time for Reply (First) Out of Time requesting an additional ten days to submit Appellant's Reply Brief. Rule 18.5 of this court's Rules of Practice and Procedure requires "[a]ny filing that is submitted out of time . . . shall articulate good cause for why the filing is out-of-time." A.F. Ct. Crim. App. R. 18.5. Appellant's motion did not contain any justification as to the reason for the filing being out of time. Consequently, on 15 March 2024, the court denied the motion.

On 15 March 2024, Appellant submitted a Consent Motion for Reconsideration of Motion for Enlargement of Time for Reply (First) Out of Time. The reconsideration motion articulated the good cause as to why the original filing was out of time. However, the reconsideration motion does not "state with particularity . . .whether any other court has acquired jurisdiction over the case" as required. *See* A.F. Ct. Crim. App. R. 31.1. Despite this deficiency, in the interest of judicial economy, the court has reconsidered Appellant's Motion for Enlargement of Time for Reply (First) Out of Time. Counsel is cautioned to take greater care to ensure required information is included in future filings.

Accordingly, it is by the court on this 15th day of March, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time for Reply (First) Out of Time is **GRANTED**. Appellant shall file any assignments of error not later than **28 March 2024.**

FOR THE COURT

[redacted]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**REPLY BRIEF ON BEHALF OF**
Appellee	)	**APPELLANT**
	)	
v.	)	
	)	Before Panel No. 3
	)	
Senior Airman (E-4)	)	No. ACM 40374
LOGAN A. MCLEOD,	)	
United States Air Force	)	
Appellant	)	25 March 2024

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

WILLIAM E. CASSARA, Esq.
Appellate Defense Counsel
[redacted]

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Pursuant to Rules 18(d) and 18.3 of the United States Air Force Court of Criminal Appeals Rules of Practice and Procedure, dated 23 December 2020, Senior Airman [SrA] Logan A. McLeod [Appellant] hereby replies to the United States' Answer to Assignments of Error filed on 11 March 2024.

I.

THE EVIDENCE IS LEGALLY AND FACTUALLY INSUFFICIENT TO SUPPORT THE FINDINGS OF GUILTY FOR ATTEMPTED MURDER OF "SARAH" AND ATTEMPTED CONSPIRACIES TO RAPE AND KIDNAP AB.

Just as it did at trial, the Government confuses fantasy and intent. Virtually the entirety of SrA McLeod and JO's relationship consisted of an ongoing and escalating conversation about their sexual fantasies. (Appellant Br. at 18, 20-21.) As depraved as those fantasies may be to other people, the fantasies themselves are constitutionally protected, absent proof beyond a reasonable doubt of (a) Appellant's specific intent to murder "Sarah" by suffocating her (*Id*. at 17-20) and an overt act to accomplish the attempt (*Id*. at 20-21) and (b) Appellant's specific intent to rape and kidnap AB (*Id*. at 21-22) and an overt act to accomplish the attempt (*Id*. at 22-23). *See Stanley v. Georgia*, 394 U.S. 557, 565 (1969) ("Whatever the power of the state to control public dissemination of ideas inimical to the public morality, it cannot constitutionally premise legislation on the desirability of controlling a person's private thoughts."). *See also Jacobsen v. United States*, 503 U.S. 540, 551-52 (1992) (holding that a person's inclinations and fantasies are his own and beyond the reach of government) (quotation marks omitted); *United States v. Curtin*, 489 F.3d 935, 961 (9th Cir. 2007) (Kleinfeld, C.J., dissenting) ("The link between fantasy and intent is too tenuous for fantasy to be probative.") The Government was required to prove SrA McLeod's specific intent beyond a reasonable doubt; instead, it merely proved that he had detailed and disturbing fantasies. Indeed, SrA McLeod's fantasies were so

outrageous that he called one of them "taboo." (Pros. Ex. 1 at 379.) A taboo fantasy may be offensive but does not rise to the level of criminal liability without proof beyond a reasonable doubt of specific intent and an overt act. The Government's evidence was insufficient for both.

The Government maintains that Appellant's use of the words "[m]aybe" and "sometime" in texts dated 1 and 4 September 2021 amounted to "musing[s] about the specific way in which he would commit the rape and murder" of "Sarah." (Appellee Br. at 16.) The Government offers no evidence, whether documentary from SrA McLeod's texts or testimony from JO, to support this contention. Contrary to the Government's own musings, these texts reflected the hypothetical nature of SrA McLeod and JO's conversations. (Appellant Br. at 17-18.)

Special Agent JP testified, on direct examination, that he assumed "Blazer's" identity for an in-person meeting with SrA McLeod on 10 September 2021 and that Appellant "said he wasn't interested in the mother, that he would only be interested in meeting with the girl." (R. at 430.) The Government disputes the testimony elicited by its own witness when it argues that the video of the meeting, admitted as Prosecution Exhibit 5, "demonstrates that Appellant did not say that; rather, after they discussed Sarah's age, Blazer laughed because Appellant told him of his 'preference' for children.'" (*Id*. at 18-19.) The Government insists that SrA McLeod's post-meeting text to "Blazer" proved that he still intended to murder "Sarah." (*Id*. at 19.) The text did no such thing.

The text cited by the Government stated:

> Hey I'm still down to take care of Sarah **if you need me to**. But honestly we're not going to get much use out of her and will focus primarily on Caitlin, so Sarah **could be** a bit of a liability without much benefits. When I'm not there it'll be Bunny having to watch two of them. **But if it's too late** to change the plan, I'm good to stick with it. We'll just keep her stashed away most of the time **if that's the case**.

(Pros. Ex. 4 at 24 (emphasis added).) This text is full of conditional language that cuts against the Government's burden to prove that SrA McLeod specifically intended to kill "Sarah." This was no promise or declaration that Appellant would kill "Sarah"; rather, it was an expression of doubt and an effort to convince "Blazer" that the risk of killing "Sarah" far outweighed whatever benefit "Blazer" could get from selling a snuff video. The Government failed to prove beyond a reasonable doubt that SrA McLeod specifically intended to kill "Sarah" by suffocating her.

Appellant did not bring the one item—trash bags—that "Blazer" demanded he bring to dispose of "Sarah's" body. (Pros. Ex. 4 at 30, 35, 48; Pros. Ex. 15.) Nonetheless, the Government insists that "a reasonable conclusion is that it demonstrated Appellant distinguished between (a) items needed to commit kidnap[p]ing, torture, rape, and murder, and (b) what could wait for after the crimes when executing the cover-up." (Appellee Br. at 17.) The Government offers no support, whether documentary or testimonial, for this theory.

The Government attempts to convince this Court that it was "Blazer" who feared that Appellant would back out of the arrangement and not that Appellant feared what "Blazer" would do to him if Appellant abandoned the plan. (*Id*. at 17-18.) This contention is groundless and contrary to the objective evidence that SrA McLeod was scared that "Blazer" would kill him if he disobeyed or disappointed "Blazer." (R. at 243, 371.) Despite this fear, SrA McLeod did not bring the trash bags because he did not intend to kill "Sarah." The Government failed to prove beyond a reasonable doubt that SrA McLeod took a substantial step toward completion of the offense.

Regarding AB, the Government unconvincingly denies that Appellant's hypothetical "what if" scenarios (Pros. Exs. 1, 2) demonstrated his fantasies. (Appellee Br. at 22.) The Government argues that "the more reasonable conclusion . . . is that Appellant intended to

commit crimes against Ms. A.B. but was deciding which specific way to do them when he received another criminal opportunity. (Appellee Br. at 22.) Once again, the Government offers no support, whether from text messages or testimony, to support this hypothesis. The Government failed to prove beyond a reasonable doubt that SrA McLeod possessed the specific intent to conspire to rape and kidnap AB.

II.

THE SENTENCES TO CONFINEMENT ARE INAPPROPRIATELY SEVERE.

The Government incorrectly demands that SrA McLeod compare his case to other cases, whether closely related or not. (Appellee Br. at 26, 27 (citations and quotation marks omitted).) This is a misunderstanding of the law. Appellant has not asked this Court to engage in sentence comparison with any other case and has no such obligation to do so for this Court to assess sentence appropriateness. *See United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999)); *United States v. Ballard*, 20 M.J. 282 (C.M.A. 1985).

Moreover, the Government misunderstands the language of *United States v. Sothen*,[1] the case it cites for its assertion that SrA McLeod must compare his case to others, whether closely related or not, "to ensure 'uniformity and evenhandedness.'" (Appellee Br. at 27 (quoting *Sothen*, 54 M.J. at 296).) In *Sothen*, the Court of Appeals for the Armed Forces [CAAF] explained that "[t]he power to review a case for sentence appropriateness, which reflects the unique history and attributes of the military justice system, includes but is not limited to considerations of uniformity and evenhandedness of sentencing decisions." 54 M.J. at 296 (citations omitted). "[U]niformity and evenhandedness" are, therefore, one consideration,

[1] 54 M.J. 294 (C.A.A.F. 2001).

especially when an appellant avers that the sentence in his or her case is disparate from the sentence in other cases. That is not the case here. Contrary to the Government's contention, SrA McLeod does not argue that the segmented sentences are "unfairly disparate from . . . the other sentences that the military judge adjudged for Appellant's other crimes" (Appellee Br. at 28); to the contrary, Appellant argues that each of the sentences in question is inappropriately severe. (Appellant Br. at 30-31.)

In sentencing, defense counsel argued that Appellant should be sentenced to no more than 20 years. (R. at 522, 527, 528.) This referred to the total combined sentence. The Government inaccurately argues that "the only sentence exceeding 20 years that [SrA McLeod] could now reasonably attempt to argue is inappropriately severe is the 35-year sentence for the attempted murder of 'Sarah.'" (Appellee Br. at 28-29.) Appellant is not foreclosed from challenging the severity of each segmented sentence.

In *United States v. Flores*, No. 23-0198, __ M.J. __, slip. op. at 2 (C.A.A.F. 14 Mar. 2024), the CAAF held that "when a Court of Criminal Appeals (CCA) conducts a sentence appropriateness review under Article 66(d), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(d) (2018), the CCA must consider the appropriateness of each segment of a segmented sentence and the appropriateness of the sentence as a whole." Thus, this Court will consider each of the disputed segmented sentences (Appellant Br. at 30) and the appropriateness of the whole sentence of reduction to the grade of E-1, confinement for thirty-five years, and a dishonorable discharge.

PRAYER FOR RELIEF

WHEREFORE, appellant respectfully requests that this Honorable Court grant the requested relief.

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Defense Division and the Appellate Government Division on 25 March 2024.

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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40374**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF PANEL**
Logan A. MCLEOD	)	**CHANGE**
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	

It is by the court on this 12th day of April, 2024,

ORDERED:

That the record of trial in the above-styled matter is withdrawn from Panel 3 and referred to a Special Panel for appellate review. The Special Panel in this matter shall be constituted as follows:

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge
CADOTTE, ERIC J., Colonel, Senior Appellate Military Judge
MASON, BRIAN C., Lieutenant Colonel, Appellate Military Judge

FOR THE COURT

[redacted]

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