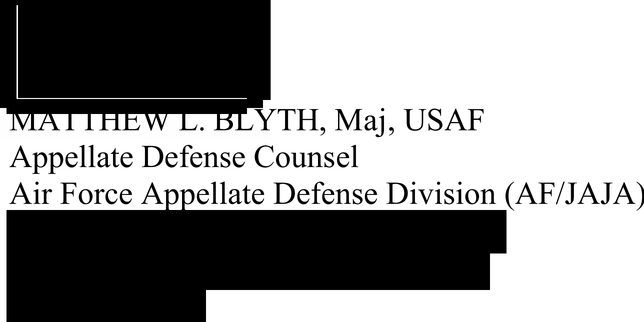
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Panel No. 1
Airman First Class (E-3), **NATHANIEL H. PAUGH** United States Air Force *Appellant*	)	No. ACM 40231 17 February 2022

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 an enlargement of time (EOT) to file an assignments of error. Appellant requests an enlargement for a period of 60 days, which will end on **27 April 2022.** The record of trial was docketed with this Court on 28 December 2021. 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.



MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division (AF/JAJA)

GRANTED
22 FEB 2022

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 17 February 2022.

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division (AF/JAJA)

17 February 2022

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman First Class (E-3) NATHANIEL H. PAUGH, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40231 Panel No. 1

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

JOHN P. PATERA, Maj, USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 17 February 202

JOHN P. PATERA, Maj, USAF
Appellate Government Counsel, Government Trial
and Appellate Operations Division
Military Justice and Discipline
United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**APPELLANT'S MOTION FOR**
Appellee,	)	**ENLARGEMENT OF TIME**
	)	**(SECOND)**
v.	)	
	)	Before Panel No. 1
Airman First Class (E-3)	)	
NATHANIEL H. PAUGH,	)	No. ACM 40231
United States Air Force	)	
Appellant	)	18 April 2022

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 an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **27 May 2022.** The record of trial was docketed with this Court on 28 December 2021. From the date of docketing to the present date, 111 days have elapsed. On the date requested, 150 days will have elapsed.

On 30 September – 1 October and 25 October 2021, at Mountain Home Air Force Base (AFB), Idaho, a military judge sitting as a general court-martial tried Appellant, A1C Nathaniel Paugh. (Record (R.) at 84; Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 3 Dec. 2021.) Consistent with his pleas, the military judge found him guilty of two specification of communication a threat, four specifications of assault, two specifications of domestic violence, and one specification of stalking, in violation of Articles 115, 128, 128b, and 130, Uniform

U.S. AIR FORCE COURT OF CRIMINAL APPEALS

GRANTED

20 Apr 2022

Code of Military Justice (UCMJ), 10 U.S.C. § 915, 928, 928b & 930.[1,2] (EOJ, ROT Vol. 1, 3 Dec. 2021; R. at 90, 179.) The military judge sentenced A1C Paugh to 11 months' confinement, reduction to the grade of E-1, forfeiture of all pay and allowances, and a bad-conduct discharge.[3] (R. at 221.) The convening authority took no action on the findings or the sentence. (Convening Authority Decision on Action, ROT Vol. 1, 19 Nov. 2021.)

The record of trial consists of 13 prosecution exhibits, 10 defense exhibits, 7 appellate exhibits, and 1 court exhibit. The transcript is 224 pages. A1C Paugh is in confinement.

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

---

[1] Unless otherwise noted, all references to the UCMJ, Rules for Courts-Martial (R.C.M.), and Mil. R. Evid. are to the *Manual for Courts-Martial, United States* (2019 ed.) [2019 *MCM*].

[2] Pursuant to the plea agreement, the convening authority withdrew and dismissed with prejudice one specification of violating a no-contact order and two specifications of domestic violence, in violation of Article 92 and 128b, UCMJ, 10 U.S.C. § 892, 928b. (EOJ, ROT Vol. 1, 3 Dec. 2021; Appellate Exhibit V.)

[3] The military judge sentenced A1C Paugh to (1) 9 months' confinement for specifications 1 and 2 of Charge II (communicating a threat); (2) 9 months' confinement for Specifications 1 and 3, 10 months' confinement for Specification 2, and 11 months' confinement for Specification 4 of Charge III (assault); (3) 11 months' confinement for the Specification of Charge V (stalking); and (4) 11 months' confinement for both Specifications 1 and 2 of the Additional Charge (domestic violence). (R. at 221.)

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 18 April 2022.

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762

19 April 2022

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman First Class (E-3) NATHANIEL H. PAUGH, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40231 Panel No. 1

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 19 April 2022.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**APPELLANT'S MOTION FOR**
Appellee,	)	**ENLARGEMENT OF TIME**
	)	**(THIRD)**
v.	)	
	)	Before Panel No. 1
Airman First Class (E-3)	)	
NATHANIEL H. PAUGH,	)	No. ACM 40231
United States Air Force	)	
Appellant	)	20 May 2022

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 an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **26 June 2022.** The record of trial was docketed with this Court on 28 December 2021. From the date of docketing to the present date, 143 days have elapsed. On the date requested, 180 days will have elapsed.

On 30 September – 1 October and 25 October 2021, at Mountain Home Air Force Base (AFB), Idaho, a military judge sitting as a general court-martial tried Appellant, A1C Nathaniel Paugh. (Record (R.) at 84; Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 3 Dec. 2021.) Consistent with his pleas, the military judge found him guilty of two specification of communication a threat, four specifications of assault, two specifications of domestic violence, and one specification of stalking, in violation of Articles 115, 128, 128b, and 130, Uniform

U.S. AIR FORCE COURT OF CRIMINAL APPEALS
GRANTED
26 MAY 2022

Code of Military Justice (UCMJ), 10 U.S.C. § 915, 928, 928b & 930.[1,2] (EOJ, ROT Vol. 1, 3 Dec. 2021; R. at 90, 179.) The military judge sentenced A1C Paugh to 11 months' confinement, reduction to the grade of E-1, forfeiture of all pay and allowances, and a bad-conduct discharge.[3] (R. at 221.) The convening authority took no action on the findings or the sentence. (Convening Authority Decision on Action, ROT Vol. 1, 19 Nov. 2021.)

The record of trial consists of 13 prosecution exhibits, 10 defense exhibits, 7 appellate exhibits, and 1 court exhibit. The transcript is 224 pages. A1C Paugh is in confinement.

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

---

[1] Unless otherwise noted, all references to the UCMJ, Rules for Courts-Martial (R.C.M.), and Mil. R. Evid. are to the *Manual for Courts-Martial, United States* (2019 ed.) [2019 *MCM*].

[2] Pursuant to the plea agreement, the convening authority withdrew and dismissed with prejudice one specification of violating a no-contact order and two specifications of domestic violence, in violation of Article 92 and 128b, UCMJ, 10 U.S.C. § 892, 928b. (EOJ, ROT Vol. 1, 3 Dec. 2021; Appellate Exhibit V.)

[3] The military judge sentenced A1C Paugh to (1) 9 months' confinement for specifications 1 and 2 of Charge II (communicating a threat); (2) 9 months' confinement for Specifications 1 and 3, 10 months' confinement for Specification 2, and 11 months' confinement for Specification 4 of Charge III (assault); (3) 11 months' confinement for the Specification of Charge V (stalking); and (4) 11 months' confinement for both Specifications 1 and 2 of the Additional Charge (domestic violence). (R. at 221.)

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

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 20 May 2022.

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

24 May 2022

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman First Class (E-3) NATHANIEL H. PAUGH, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40231 Panel No. 1

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 24 May 2022.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,* v. Airman First Class (E-3) **NATHANIEL H. PAUGH,** United States Air Force *Appellant*	)))))))))	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FOURTH)** Before Panel No. 1 No. ACM 40231 16 June 2022

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 an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **26 July 2022.** The record of trial was docketed with this Court on 28 December 2021. From the date of docketing to the present date, 170 days have elapsed. On the date requested, 210 days will have elapsed.

On 30 September – 1 October and 25 October 2021, at Mountain Home Air Force Base (AFB), Idaho, a military judge sitting as a general court-martial tried Appellant, A1C Nathaniel Paugh. (Record (R.) at 84; Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 3 Dec. 2021.) Consistent with his pleas, the military judge found him guilty of two specification of communication a threat, four [illegible]tions of assault, two specifications of domestic violence, and one [illegible]on of stalking, in violation of Articles 115, 128, 128b, and 130, Uniform

U.S. AIR FORCE COURT OF CRIMINAL APPEALS
GRANTED
22 JUN 2022

Code of Military Justice (UCMJ), 10 U.S.C. § 915, 928, 928b & 930.[1,2] (EOJ, ROT Vol. 1, 3 Dec. 2021; R. at 90, 179.) The military judge sentenced A1C Paugh to 11 months' confinement, reduction to the grade of E-1, forfeiture of all pay and allowances, and a bad-conduct discharge.[3] (R. at 221.) The convening authority took no action on the findings or the sentence. (Convening Authority Decision on Action, ROT Vol. 1, 19 Nov. 2021.)

The record of trial consists of 13 prosecution exhibits, 10 defense exhibits, 7 appellate exhibits, and 1 court exhibit. The transcript is 224 pages. A1C Paugh is in confinement.

Counsel is currently assigned 22 cases, with 10 pending initial brief before this Court. Counsel has not yet begun review in this case. Five cases at the Air Force Court has priority over this case:

---

[1] Unless otherwise noted, all references to the UCMJ, Rules for Courts-Martial (R.C.M.), and Mil. R. Evid. are to the *Manual for Courts-Martial, United States* (2019 ed.) [2019 *MCM*].

[2] Pursuant to the plea agreement, the convening authority withdrew and dismissed with prejudice one specification of violating a no-contact order and two specifications of domestic violence, in violation of Article 92 and 128b, UCMJ, 10 U.S.C. § 892, 928b. (EOJ, ROT Vol. 1, 3 Dec. 2021; Appellate Exhibit V.)

[3] The military judge sentenced A1C Paugh to (1) 9 months' confinement for specifications 1 and 2 of Charge II (communicating a threat); (2) 9 months' confinement for Specifications 1 and 3, 10 months' confinement for Specification 2, and 11 months' confinement for Specification 4 of Charge III (assault); (3) 11 months' confinement for the Specification of Charge V (stalking); and (4) 11 months' confinement for both Specifications 1 and 2 of the Additional Charge (domestic violence). (R. at 221.)

1. *United States v. Baker*, ACM 40091. The record of trial consists of 6 prosecution exhibits, 7 defense exhibits, and 19 appellate exhibits. The transcript is 247 pages. The AOE is complete and counsel will submit shortly.

2. *United States v. McCoy*, ACM 40119. The record of trial consists of 12 prosecution exhibits, 10 defense exhibits, and 40 appellate exhibits, and 1 court exhibit. The transcript is 537 pages. Counsel has completed review of this record and begun drafting the AOE.

3. *United States v. Williamson*, ACM 40211. The record of trial consists of 18 prosecution exhibits, 28 defense exhibits, 42 appellate exhibits, and 2 court exhibits. The transcript is 653 pages. Counsel has not yet begun review of this record.

4. *United States v. King*, ACM 39927 (f rev). The record of trial consists of 4 prosecution exhibits, 7 defense exhibits, 14 appellate exhibits, and 1 court exhibit. The transcript is 104 pages. Counsel has reviewed the record in this case.

5. *United States v. Mobley*, ACM 40088 (f rev). The record of trial consists of 4 prosecution exhibits, 4 defense exhibits, and 9 appellate exhibits. The transcript is 110 pages. Counsel has reviewed the record in this case.

Additionally, counsel is working on a grant brief for *United States v. Day*, ACM 39962. The CAAF granted review on 23 May 2022, and the brief is due 22 June 2022. Counsel anticipates significant work on a reply brief, which will be due in late July.

Through no fault of A1C Paugh, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. A1C Paugh was specifically informed of his right to timely appeal, was consulted with regard to

this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review A1C Paugh's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

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 16 June 2022.

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

21 June 2022

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman First Class (E-3) NATHANIEL H. PAUGH, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40231 Panel No. 1

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 21 June 2022.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,* v. Airman First Class (E-3) **NATHANIEL H. PAUGH,** United States Air Force *Appellant*	)))))))))	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIFTH)** Before Panel No. 1 No. ACM 40231 15 July 2022

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 an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **25 August 2022.** The record of trial was docketed with this Court on 28 December 2021. From the date of docketing to the present date, 199 days have elapsed. On the date requested, 240 days will have elapsed.

On 30 September - 1 October and 25 October 2021, at Mountain Home Air Force Base (AFB), Idaho, a military judge sitting as a general court-martial tried Appellant, A1C Nathaniel Paugh. (Record (R.) at 84; Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 3 Dec. 2021.) Consistent with his pleas, the military judge found him guilty of two specification of communication a threat, four specifications of assault, two specifications of domestic violence, and one specification of stalking, in violation of Articles 115, 128, 128b, and 130, Uniform

Code of Military Justice (UCMJ), 10 U.S.C. § 915, 928, 928b & 930.[1,2] (EOJ, ROT Vol. 1, 3 Dec. 2021; R. at 90, 179.) The military judge sentenced A1C Paugh to 11 months' confinement, reduction to the grade of E-1, forfeiture of all pay and allowances, and a bad-conduct discharge.[3] (R. at 221.) The convening authority took no action on the findings or the sentence. (Convening Authority Decision on Action, ROT Vol. 1, 19 Nov. 2021.)

The record of trial consists of 13 prosecution exhibits, 10 defense exhibits, 7 appellate exhibits, and 1 court exhibit. The transcript is 224 pages. A1C Paugh is not currently in confinement.

Counsel is currently assigned 21 cases, with 8 pending initial brief before this Court. Counsel has not yet begun review in this case. Two cases at the Air Force Court has priority over this case:

---

[1] Unless otherwise noted, all references to the UCMJ, Rules for Courts-Martial (R.C.M.), and Mil. R. Evid. are to the *Manual for Courts-Martial, United States* (2019 ed.) [2019 *MCM*].

[2] Pursuant to the plea agreement, the convening authority withdrew and dismissed with prejudice one specification of violating a no-contact order and two specifications of domestic violence, in violation of Article 92 and 128b, UCMJ, 10 U.S.C. § 892, 928b. (EOJ, ROT Vol. 1, 3 Dec. 2021; Appellate Exhibit V.)

[3] The military judge sentenced A1C Paugh to (1) 9 months' confinement for specifications 1 and 2 of Charge II (communicating a threat); (2) 9 months' confinement for Specifications 1 and 3, 10 months' confinement for Specification 2, and 11 months' confinement for Specification 4 of Charge III (assault); (3) 11 months' confinement for the Specification of Charge V (stalking); and (4) 11 months' confinement for both Specifications 1 and 2 of the Additional Charge (domestic violence). (R. at 221.)

1. *United States v. McCoy*, ACM 40119. The record of trial consists of 12 prosecution exhibits, 10 defense exhibits, and 40 appellate exhibits, and 1 court exhibit. The transcript is 537 pages. The AOE is complete and counsel will file this month.

2. *United States v. Williamson*, ACM 40211. The record of trial consists of 18 prosecution exhibits, 28 defense exhibits, 42 appellate exhibits, and 2 court exhibits. The transcript is 653 pages. Counsel has reviewed 75% of the record.

Additionally, counsel will be working on *United States v. Day*, ACM 39962. The CAAF granted review on 23 May 2022, and counsel anticipates significant work on a reply brief, which will be due in late July.

Through no fault of A1C Paugh, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. A1C Paugh was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review A1C Paugh's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel

Appellate Defense Division (AF/JAJA)

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 15 July 2022.

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

18 July 2022

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman First Class (E-3) NATHANIEL H. PAUGH, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40231 Panel No. 1

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 18 July 2022.

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

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40231**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Nathaniel H. PAUGH	)	
Airman First Class (E-3)	)	
U.S. Air Force	)	
Appellant	)	**Panel 1**

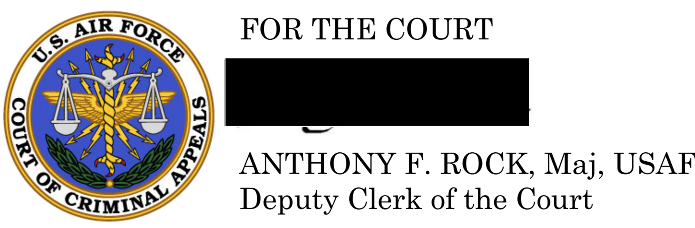
On 15 July 2022, counsel for Appellant submitted a Motion for Enlargement of Time (Fifth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

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 20th day of July, 2022,

ORDERED:

Appellant's Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant shall file any assignments of error not later than **25 August 2022**.

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



FOR THE COURT

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**APPELLANT'S MOTION FOR**
Appellee,	)	**ENLARGEMENT OF TIME**
	)	**(SIXTH)**
v.	)	
	)	Before Panel No. 1
Airman First Class (E-3)	)	
NATHANIEL H. PAUGH,	)	No. ACM 40231
United States Air Force	)	
Appellant	)	11 August 2022

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 an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **24 September 2022.** The record of trial was docketed with this Court on 28 December 2021. From the date of docketing to the present date, 226 days have elapsed. On the date requested, 270 days will have elapsed.

On 30 September - 1 October and 25 October 2021, at Mountain Home Air Force Base (AFB), Idaho, a military judge sitting as a general court-martial tried Appellant, A1C Nathaniel Paugh. (Record (R.) at 84; Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 3 Dec. 2021.) Consistent with his pleas, the military judge found him guilty of two specification of communication a threat, four specifications of assault, two specifications of domestic violence, and one [specifi]cation of stalking, in violation of Articles 115, 128, 128b, and 130, Uniform

GRANTED
12 AUG 2022

Code of Military Justice (UCMJ), 10 U.S.C. § 915, 928, 928b & 930.[1,2] (EOJ, ROT Vol. 1, 3 Dec. 2021; R. at 90, 179.) The military judge sentenced A1C Paugh to 11 months' confinement, reduction to the grade of E-1, forfeiture of all pay and allowances, and a bad-conduct discharge.[3] (R. at 221.) The convening authority took no action on the findings or the sentence. (Convening Authority Decision on Action, ROT Vol. 1, 19 Nov. 2021.)

The record of trial consists of 13 prosecution exhibits, 10 defense exhibits, 7 appellate exhibits, and 1 court exhibit. The transcript is 224 pages. A1C Paugh is not currently in confinement.

Counsel is currently assigned 22 cases, with 8 pending initial brief before this Court. Counsel has not yet begun review in this case. One case at the Air Force Court has priority over this case:

---

[1] Unless otherwise noted, all references to the UCMJ, Rules for Courts-Martial (R.C.M.), and Mil. R. Evid. are to the *Manual for Courts-Martial, United States* (2019 ed.) [2019 *MCM*].

[2] Pursuant to the plea agreement, the convening authority withdrew and dismissed with prejudice one specification of violating a no-contact order and two specifications of domestic violence, in violation of Article 92 and 128b, UCMJ, 10 U.S.C. § 892, 928b. (EOJ, ROT Vol. 1, 3 Dec. 2021; Appellate Exhibit V.)

[3] The military judge sentenced A1C Paugh to (1) 9 months' confinement for specifications 1 and 2 of Charge II (communicating a threat); (2) 9 months' confinement for Specifications 1 and 3, 10 months' confinement for Specification 2, and 11 months' confinement for Specification 4 of Charge III (assault); (3) 11 months' confinement for the Specification of Charge V (stalking); and (4) 11 months' confinement for both Specifications 1 and 2 of the Additional Charge (domestic violence). (R. at 221.)

United States v. Williamson, ACM 40211. The record of trial consists of 18 prosecution exhibits, 28 defense exhibits, 42 appellate exhibits, and 2 court exhibits. The transcript is 653 pages. Counsel has reviewed the record and begun drafting the assignment of error.

Through no fault of A1C Paugh, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. A1C Paugh was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review A1C Paugh's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

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 11 August 2022.

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

11 August 2022

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman First Class (E-3) NATHANIEL H. PAUGH, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40231 Panel No. 1

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 11 August 2022.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**APPELLANT'S MOTION FOR**
Appellee,	)	**ENLARGEMENT OF TIME**
	)	**(EIGHTH)**
v.	)	
	)	Before Panel No. 1
Airman First Class (E-3)	)	
NATHANIEL H. PAUGH,	)	No. ACM 40231
United States Air Force	)	
Appellant	)	16 October 2022

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 an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **23 November 2022.** The record of trial was docketed with this Court on 28 December 2021. From the date of docketing to the present date, 292 days have elapsed. On the date requested, 330 days will have elapsed.

On 30 September - 1 October and 25 October 2021, at Mountain Home Air Force Base (AFB), Idaho, a military judge sitting as a general court-martial tried Appellant, A1C Nathaniel Paugh. (Record (R.) at 84; Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 3 Dec. 2021.) Consistent with his pleas, the military judge found him guilty of two specification of communication a threat, four specifications of assault, two specifications of domestic violence, and one specification of stalking, in violation of Articles 115, 128, 128b, and 130, Uniform

Code of Military Justice (UCMJ), 10 U.S.C. § 915, 928, 928b & 930.[1,2] (EOJ, ROT Vol. 1, 3 Dec. 2021; R. at 90, 179.) The military judge sentenced A1C Paugh to 11 months' confinement, reduction to the grade of E-1, forfeiture of all pay and allowances, and a bad-conduct discharge.[3] (R. at 221.) The convening authority took no action on the findings or the sentence. (Convening Authority Decision on Action, ROT Vol. 1, 19 Nov. 2021.)

The record of trial consists of 13 prosecution exhibits, 10 defense exhibits, 7 appellate exhibits, and 1 court exhibit. The transcript is 224 pages. A1C Paugh is not currently in confinement.

Counsel is currently assigned 22 cases, with 8 pending initial brief before this Court. Counsel has not yet begun review in this case. Two cases at the Air Force Court have priority over this case:

---

[1] Unless otherwise noted, all references to the UCMJ, Rules for Courts-Martial (R.C.M.), and Mil. R. Evid. are to the *Manual for Courts-Martial, United States* (2019 ed.) [2019 *MCM*].

[2] Pursuant to the plea agreement, the convening authority withdrew and dismissed with prejudice one specification of violating a no-contact order and two specifications of domestic violence, in violation of Article 92 and 128b, UCMJ, 10 U.S.C. § 892, 928b. (EOJ, ROT Vol. 1, 3 Dec. 2021; Appellate Exhibit V.)

[3] The military judge sentenced A1C Paugh to (1) 9 months' confinement for specifications 1 and 2 of Charge II (communicating a threat); (2) 9 months' confinement for Specifications 1 and 3, 10 months' confinement for Specification 2, and 11 months' confinement for Specification 4 of Charge III (assault); (3) 11 months' confinement for the Specification of Charge V (stalking); and (4) 11 months' confinement for both Specifications 1 and 2 of the Additional Charge (domestic violence). (R. at 221.)

1. *United States v. Williamson*, ACM 40211. The record of trial consists of 18 prosecution exhibits, 28 defense exhibits, 42 appellate exhibits, and 2 court exhibits. The transcript is 653 pages. Counsel has reviewed the record and largely drafted the assignments of error.
2. *United States v. Palik*, ACM 40225. The record of trial consists of 5 prosecution exhibits, 15 defense exhibits, 50 appellate exhibits, and 1 court exhibit. The transcript is 1002 pages. Counsel has reviewed the record of trial and begun drafting the assignments of error.

In addition, counsel will argue two cases before the CAAF on consecutive days in late October: *United States v. Day*, ACM 39962, and *United States v. Harrington*, ACM 39825. This will inhibit progress on A1C Paugh's case during the month of October.

Through no fault of A1C Paugh, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. A1C Paugh was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review A1C Paugh's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

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 16 October 2022.

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

17 October 2022

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman First Class (E-3) NATHANIEL H. PAUGH, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40231 Panel No. 1

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly one 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.

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 17 October 2022.

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

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40231**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Nathaniel H. PAUGH	)	
Airman First Class (E-3)	)	
U.S. Air Force	)	
Appellant	)	**Panel 1**

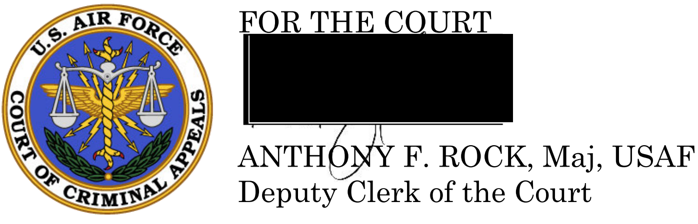
On 16 October 2022, counsel for Appellant submitted a Motion for Enlargement of Time (Eighth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

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 18th day of October, 2022,

ORDERED:

Appellant's Motion for Enlargement of Time (Eighth) is **GRANTED**. Appellant shall file any assignments of error not later than **23 November 2022**.

Appellant's counsel is advised that given the number of enlargements granted thus far, any further requests for an enlargement of time may necessitate a status conference.



FOR THE COURT

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**APPELLANT'S MOTION FOR**
Appellee,	)	**ENLARGEMENT OF TIME**
	)	**(SEVENTH)**
v.	)	
	)	Before Panel No. 1
Airman First Class (E-3)	)	
NATHANIEL H. PAUGH,	)	No. ACM 40231
United States Air Force	)	
Appellant	)	13 September 2022

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 an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **24 October 2022.** The record of trial was docketed with this Court on 28 December 2021. From the date of docketing to the present date, 259 days have elapsed. On the date requested, 300 days will have elapsed.

On 30 September - 1 October and 25 October 2021, at Mountain Home Air Force Base (AFB), Idaho, a military judge sitting as a general court-martial tried Appellant, A1C Nathaniel Paugh. (Record (R.) at 84; Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 3 Dec. 2021.) Consistent with his pleas, the military judge found him guilty of two specification of communication a threat, four [illegible]ions of assault, two specifications of domestic violence, and one [illegible]ion of stalking, in violation of Articles 115, 128, 128b, and 130, Uniform

GRANTED
16 SEP 2022

Code of Military Justice (UCMJ), 10 U.S.C. § 915, 928, 928b & 930.[1,2] (EOJ, ROT Vol. 1, 3 Dec. 2021; R. at 90, 179.) The military judge sentenced A1C Paugh to 11 months' confinement, reduction to the grade of E-1, forfeiture of all pay and allowances, and a bad-conduct discharge.[3] (R. at 221.) The convening authority took no action on the findings or the sentence. (Convening Authority Decision on Action, ROT Vol. 1, 19 Nov. 2021.)

The record of trial consists of 13 prosecution exhibits, 10 defense exhibits, 7 appellate exhibits, and 1 court exhibit. The transcript is 224 pages. A1C Paugh is not currently in confinement.

Counsel is currently assigned 20 cases, with 8 pending initial brief before this Court. Counsel has not yet begun review in this case. Two cases at the Air Force Court have priority over this case:

---

[1] Unless otherwise noted, all references to the UCMJ, Rules for Courts-Martial (R.C.M.), and Mil. R. Evid. are to the *Manual for Courts-Martial, United States* (2019 ed.) [2019 *MCM*].

[2] Pursuant to the plea agreement, the convening authority withdrew and dismissed with prejudice one specification of violating a no-contact order and two specifications of domestic violence, in violation of Article 92 and 128b, UCMJ, 10 U.S.C. § 892, 928b. (EOJ, ROT Vol. 1, 3 Dec. 2021; Appellate Exhibit V.)

[3] The military judge sentenced A1C Paugh to (1) 9 months' confinement for specifications 1 and 2 of Charge II (communicating a threat); (2) 9 months' confinement for Specifications 1 and 3, 10 months' confinement for Specification 2, and 11 months' confinement for Specification 4 of Charge III (assault); (3) 11 months' confinement for the Specification of Charge V (stalking); and (4) 11 months' confinement for both Specifications 1 and 2 of the Additional Charge (domestic violence). (R. at 221.)

1. *United States v. Williamson*, ACM 40211. The record of trial consists of 18 prosecution exhibits, 28 defense exhibits, 42 appellate exhibits, and 2 court exhibits. The transcript is 653 pages. Counsel has reviewed the record and largely drafted the assignments of error.
2. *United States v. Palik*, ACM 40225. The record of trial consists of 5 prosecution exhibits, 15 defense exhibits, 50 appellate exhibits, and 1 court exhibit. The transcript is 1002 pages. Counsel has reviewed the record of trial.

In addition, counsel will argue two cases before the CAAF on consecutive days in late October: *United States v. Day*, ACM 39962, and *United States v. Harrington*, ACM 39825. This will inhibit progress on A1C Paugh's case during the month of October.

Through no fault of A1C Paugh, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. A1C Paugh was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review A1C Paugh's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

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 13 September 2022.

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

15 September 2022

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman First Class (E-3) NATHANIEL H. PAUGH, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40231 Panel No. 1

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

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

The United States respectfully maintains that, short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 300 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 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.

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 15 September 2022.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (NINTH)**
v.	)	
	)	Before Panel No. 1
Airman First Class (E-3) **NATHANIEL H. PAUGH,** United States Air Force *Appellant*	)	No. ACM 40231
	)	13 November 2022

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 an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **23 December 2022.** The record of trial was docketed with this Court on 28 December 2021. From the date of docketing to the present date, 320 days have elapsed. On the date requested, 360 days will have elapsed.

On 30 September - 1 October and 25 October 2021, at Mountain Home Air Force Base (AFB), Idaho, a military judge sitting as a general court-martial tried Appellant, A1C Nathaniel Paugh. (Record (R.) at 84; Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 3 Dec. 2021.) Consistent with his pleas, the military judge found him guilty of two specification of communication a threat, four specifications of assault, two specifications of domestic violence, and one n of stalking, in violation of Articles 115, 128, 128b, and 130, Uniform

U.S. AIR FORCE COURT OF CRIMINAL APPEALS
GRANTED
15 NOVEMBER 2022

Code of Military Justice (UCMJ), 10 U.S.C. §§ 915, 928, 928b & 930.[1,2] (EOJ, ROT Vol. 1, 3 Dec. 2021; R. at 90, 179.) The military judge sentenced A1C Paugh to 11 months' confinement, reduction to the grade of E-1, forfeiture of all pay and allowances, and a bad-conduct discharge.[3] (R. at 221.) The convening authority took no action on the findings or the sentence. (Convening Authority Decision on Action, ROT Vol. 1, 19 Nov. 2021.)

The record of trial consists of 13 prosecution exhibits, 10 defense exhibits, 7 appellate exhibits, and 1 court exhibit. The transcript is 224 pages. A1C Paugh is not currently in confinement.

Counsel is currently assigned 23 cases, with 9 pending initial brief before this Court. Counsel has not yet begun review in this case. One case at the Air Force Court has priority over this case:

---

[1] Unless otherwise noted, all references to the UCMJ, Rules for Courts-Martial (R.C.M.), and Mil. R. Evid. are to the *Manual for Courts-Martial, United States* (2019 ed.) [2019 *MCM*].

[2] Pursuant to the plea agreement, the convening authority withdrew and dismissed with prejudice one specification of violating a no-contact order and two specifications of domestic violence, in violation of Article 92 and 128b, UCMJ, 10 U.S.C. § 892, 928b. (EOJ, ROT Vol. 1, 3 Dec. 2021; Appellate Exhibit V.)

[3] The military judge sentenced A1C Paugh to (1) 9 months' confinement for specifications 1 and 2 of Charge II (communicating a threat); (2) 9 months' confinement for Specifications 1 and 3, 10 months' confinement for Specification 2, and 11 months' confinement for Specification 4 of Charge III (assault); (3) 11 months' confinement for the Specification of Charge V (stalking); and (4) 11 months' confinement for both Specifications 1 and 2 of the Additional Charge (domestic violence). (R. at 221.)

United States v. Williamson, ACM 40211. The record of trial consists of 18 prosecution exhibits, 28 defense exhibits, 42 appellate exhibits, and 2 court exhibits. The transcript is 653 pages. Counsel has reviewed the record and largely drafted the assignments of error.

In addition, undersigned counsel has a grant brief for the CAAF due on 2 December 2022 in *United States v. Behunin*, Dkt. No. 22-0276.

Through no fault of A1C Paugh, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. A1C Paugh was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review A1C Paugh's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

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 13 November 2022.

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

14 November 2022

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman First Class (E-3) NATHANIEL H. PAUGH, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40231 Panel No. 1

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly one 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 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 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.

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 14 November 2022.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**APPELLANT'S MOTION FOR**
Appellee,	)	**ENLARGEMENT OF TIME**
	)	**(TENTH)**
v.	)	
	)	Before Panel No. 1
Airman First Class (E-3)	)	
NATHANIEL H. PAUGH,	)	No. ACM 40231
United States Air Force	)	
Appellant	)	14 December 2022

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 an enlargement of time (EOT) to file assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **22 January 2023.** The record of trial was docketed with this Court on 28 December 2021. From the date of docketing to the present date, 351 days have elapsed. On the date requested, 390 days will have elapsed.

On 30 September - 1 October and 25 October 2021, at Mountain Home Air Force Base (AFB), Idaho, a military judge sitting as a general court-martial tried Appellant, A1C Nathaniel Paugh. (Record (R.) at 84; Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 3 Dec. 2021.) Consistent with his pleas, the military judge found him guilty of two specification of communication a threat, four specifications of assault, two specifications of domestic violence, and one specification of stalking, in violation of Articles 115, 128, 128b, and 130, Uniform

Code of Military Justice (UCMJ), 10 U.S.C. §§ 915, 928, 928b & 930.[1,2] (EOJ, ROT Vol. 1, 3 Dec. 2021; R. at 90, 179.) The military judge sentenced A1C Paugh to 11 months' confinement, reduction to the grade of E-1, forfeiture of all pay and allowances, and a bad-conduct discharge.[3] (R. at 221.) The convening authority took no action on the findings or the sentence. (Convening Authority Decision on Action, ROT Vol. 1, 19 Nov. 2021.)

The record of trial consists of 13 prosecution exhibits, 10 defense exhibits, 7 appellate exhibits, and 1 court exhibit. The transcript is 224 pages. A1C Paugh is not currently in confinement.

Counsel is currently assigned 23 cases, with 8 pending initial brief before this Court. Counsel has begun review of the record in this case. One case at this Court has priority over this case: *In re United States (Robinson)*, Misc. Dkt. No. 2022-09, 2022-10, and 2022-15. The record in this extraordinary writ contains 3 defense

---

[1] Unless otherwise noted, all references to the UCMJ, Rules for Courts-Martial (R.C.M.), and Mil. R. Evid. are to the *Manual for Courts-Martial, United States* (2019 ed.) [2019 *MCM*].

[2] Pursuant to the plea agreement, the convening authority withdrew and dismissed with prejudice one specification of violating a no-contact order and two specifications of domestic violence, in violation of Article 92 and 128b, UCMJ, 10 U.S.C. § 892, 928b. (EOJ, ROT Vol. 1, 3 Dec. 2021; Appellate Exhibit V.)

[3] The military judge sentenced A1C Paugh to (1) 9 months' confinement for specifications 1 and 2 of Charge II (communicating a threat); (2) 9 months' confinement for Specifications 1 and 3, 10 months' confinement for Specification 2, and 11 months' confinement for Specification 4 of Charge III (assault); (3) 11 months' confinement for the Specification of Charge V (stalking); and (4) 11 months' confinement for both Specifications 1 and 2 of the Additional Charge (domestic violence). (R. at 221.)

exhibits and 39 appellate exhibits. The transcript is 377 pages. Counsel has begun review of the record in this case.

Through no fault of A1C Paugh, undersigned counsel has been working on other assigned matters and has yet to complete the assignment of errors. A1C Paugh was specifically informed of his right to timely appeal, was consulted with regard to this enlargement of time, and agrees with this enlargement of time. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review A1C Paugh's case and advise him regarding potential errors.

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

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

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 14 December 2022.

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

15 December 2022

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Airman First Class (E-3) NATHANIEL H. PAUGH, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40231 Panel No. 1

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly one 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 over 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.

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 15 December 2022.

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

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40231**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Nathaniel H. PAUGH	)	
Airman First Class (E-3)	)	
U.S. Air Force	)	
Appellant	)	**Panel 1**

On 14 December 2022, counsel for Appellant submitted a Motion for Enlargement of Time (Tenth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

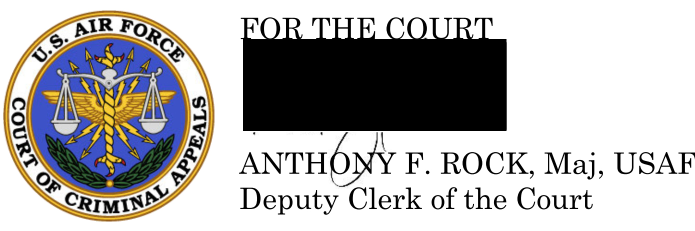
The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure. Accordingly, it is by the court on this 16th day of December, 2022,

ORDERED:

Appellant's Motion for Enlargement of Time (Tenth) is **GRANTED**. Appellant shall file any assignments of error not later than **22 January 2023**.

Appellant's counsel is advised that given the number of enlargements granted thus far, any further requests for an enlargement of time may necessitate a status conference.

Appellant's counsel is further advised that given the nature of this case and the number of enlargements granted thus far, absent exceptional circumstances, no further enlargement of time will be granted.



FOR THE COURT

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,* v. Airman First Class (E-3), **NATHANIEL H. PAUGH,** United States Air Force, *Appellant.*	)))))))))	**BRIEF ON BEHALF OF APPELLANT** Before Panel No. 1 No. ACM 40231 17 January 2023

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

ASSIGNMENTS OF ERROR

I.

WHETHER SPECIFICATIONS 1 AND 2 OF CHARGE II—OVERLAPPING THREATS ISSUED TO THE SAME PEOPLE IN SUCCESSION—UNREASONABLY MULTIPLIED THE CHARGES AGAINST A1C PAUGH.

II.

WHETHER THE RECORD OF TRIAL CONTAINS TWO INCOMPLETE PROSECUTION EXHIBITS AND REQUIRES REMAND FOR CORRECTION.

III.[1]

WHETHER THE ASSISTANT TRIAL COUNSEL ENGAGED IN IMPROPER ARGUMENT BY: (1) ARGUING FACTS NOT IN EVIDENCE; (2) HIGHLIGHTING UNCHARGED MISCONDUCT; (3) PERSONALLY ATTACKING A1C PAUGH; AND, (4) MAKING A SENTENCING RECOMMENDATION BASED ON WHAT THE VICTIM "DESERVES."

[1] Issue III is raised in the appendix pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

STATEMENT OF THE CASE

On 30 September, 1 October, and 25 October 2021, at Mountain Home Air Force Base (AFB), Idaho, a military judge sitting as a general court-martial tried Appellant, Airman First Class (A1C) Nathaniel Paugh. (Record (R.) at 85; Entry of Judgment (EOJ), Record of Trial (ROT) Vol. 1, 3 Dec. 2021.) Consistent with his pleas, the military judge found him guilty of two specifications of communicating a threat, four specifications of assault, two specifications of domestic violence, and one specification of stalking, in violation of Articles 115, 128, 128b, and 130, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 915, 928, 928b & 930.[2,3] (EOJ, ROT Vol. 1, 3 Dec. 2021; R. at 90, 179.) The military judge sentenced A1C Paugh to 11 months' confinement, reduction to the grade of E-1, forfeiture of all pay and allowances, and a bad-conduct discharge.[4] (R. at 221.) The convening authority took

[2] Unless otherwise noted, all references to the UCMJ and the Rules for Courts-Martial (R.C.M.) are to the *Manual for Courts-Martial, United States* (2019 ed.) [2019 *MCM*].

[3] Pursuant to the plea agreement, the convening authority withdrew and dismissed with prejudice one specification of violating a no-contact order and two specifications of domestic violence, in violation of Articles 92 and 128b, UCMJ, 10 U.S.C. §§ 892, 928b. (EOJ, ROT Vol. 1, 3 Dec. 2021; Appellate Exhibit V.)

[4] The military judge sentenced A1C Paugh to (1) 9 months' confinement each for Specifications 1 and 2 of Charge II (communicating a threat); (2) 9 months' confinement each for Specifications 1 and 3, 10 months' confinement for Specification 2, and 11 months' confinement for Specification 4 of Charge III (assault consummated by a battery); (3) 11 months' confinement for the Specification of Charge V (stalking); and (4) 11 months' confinement each for Specifications 1 and 2 of the Additional Charge (domestic violence), with all confinement served concurrently. (R. at 221.)

no action on the findings or the sentence. (Convening Authority Decision on Action, ROT Vol. 1, 19 Nov. 2021.)

STATEMENT OF FACTS

A1C Paugh grew up in West Virginia, where he attended the Mountaineer Challenge Academy, a high school program centered around military life. (Defense Exhibit (DE) I at 1.) His family had a deep military tradition, and he was not yet 18 when he enlisted in the Air Force in 2019. (*Id.*) He met A1C KC (KC) in technical school at Joint Base San Antonio-Lackland. (Prosecution Exhibit (PE) 1 at 1.) They began dating in September 2019; at the time, KC was still in contact with her ex-boyfriend, which upset A1C Paugh. (*Id.*)

A1C Paugh pleaded guilty to multiple specifications of assault consummated by a battery against KC under Article 128, UCMJ, 10 U.S.C. § 928: pulling her into a wall on 3 December 2019 (Charge III, Specification 1); pushing her into a bedframe on 12 December 2019 (Charge III, Specification 2); striking her in the shin with a trash can by culpable negligence on 13 December 2019 (Charge III, Specification 3); and pushing her to the ground on 24 December 2019 (Charge III, Specification 4). (EOJ, ROT Vol. 1, 3 Dec. 2021; PE 1.) He pleaded guilty to two specifications of domestic violence under Article 128b, UCMJ, 10 U.S.C. § 928: one for pulling her to the ground by her wrist on 24 December 2019 (Additional Charge, Specification 1), and one for holding her on the floor with his hands the same day (Additional Charge, Specification 2). (EOJ, ROT Vol. 1, 3 Dec. 2021; PE 1.) He also pleaded guilty to one specification of stalking under Article 130, UCMJ, 10 U.S.C. § 930 (Charge V, Specification) for engaging in a course of conduct directed at KC that would cause a

reasonable person to fear bodily harm. (EOJ, ROT Vol. 1, 3 Dec. 2021; PE 1.) Finally, he pleaded guilty to two specifications of communicating a threat under Article 115, 10 U.S.C. § 915: one for threatening to kill KC and her friend, A1C SA (SA) (Charge II, Specification 1), and one for threatening to "shoot people" in the Logistics Readiness Squadron (LRS) building, where KC and SA worked. (EOJ, ROT Vol. 1; PE 1.)

The military judge accepted the guilty plea for each charge and specification. (R. at 179.) This brief will provide additional facts as necessary below.

ARGUMENT

I.

SPECIFICATIONS 1 AND 2 OF CHARGE II—OVERLAPPING THREATS ISSUED TO THE SAME PEOPLE IN SUCCESSION—UNREASONABLY MULTIPLIED THE CHARGES AGAINST A1C PAUGH.

Additional Facts

On 30 September 2021, A1C Paugh attempted to plead guilty to both specifications of Charge II: a threat to kill KC and SA, and a threat to "shoot people" at the LRS building. (Charge Sheet, ROT Vol. 1; R. at 62.) When the military judge asked whether A1C Paugh thought SA and KC would view the language as a threat, A1C Paugh responded "No, Sir." (R. at 65–66.) After the military judge expressed concerns, the court-martial recessed for the night. (R. at 67–69.) A1C Paugh changed his plea to "Not Guilty" the next day. (R. at 78.)

On 25 October 2021, A1C Paugh again attempted to plead guilty to the specifications of Charge II. (R. at 90.) The military judge reviewed A1C Paugh's

statements from the previous *Care* inquiry and offered him a chance to clarify. (R. at 98.) For Specification 1 of Charge II, he explained that he made the threat to kill SA and KC while in KC's dorm room on 24 December 2019. (R. at 100–01.) A1C Paugh believed SA and KC would take the threat seriously because of "past arguments and violence." (R. at 103.) Additionally, A1C Paugh had, at the time, just made threats to kill himself. (R. at 103–04.)

For Specification 2 of Charge II, A1C Paugh explained that he "verbally threatened to shoot up the LRS building where they worked. I meant it as a threat towards [SA] and [KC]." (R. at 108.) When asked who he would shoot—"everybody in that particular building or specifically [SA] and [KC]"—A1C Paugh clarified "[j]ust [SA] and [KC], Sir." (R. at 109.) A1C Paugh acknowledged that it was the "same setting, same context" as the previous threat. (*Id.*) A1C Paugh and the military judge then had this exchange:

> [Military Judge (MJ)]: In terms of the sequence of events, walk me through it a bit. Is this -- you start with threatening some self-harm, then you make some threats to them, kind of walk me through, exactly, how that occurs.
>
> [Accused consulted with counsel.]
>
> [A1C Paugh (ACC)]: It was immediately after the previous threat, Sir.
>
> MJ: So first you made some threats of self-harm, they intervene to get you to stop, you make a threat to kill them right then, then you make a threat following that to go to the LRS building and shoot them both.
>
> ACC: Yes, Sir.

(R. at 110 (bracketed action in original).) Shortly thereafter, the military judge initiated the following exchange:

> MJ: Okay. All right, you've already answered this a bit, I'm just going to ask you specifically. Given all those surrounding circumstances what was going on at that time, the tone of your voice, everything, do you agree that a reasonable person in that circumstance would have understood your words as expressing a present determination or intent to wrongfully injure [SA] and [KC] or other members of the LRS building?
>
> ACC: Yes, Sir.
>
> MJ: And why is it you believe even a reasonable person looking at those circumstances would have believed that your statement was threat to harm them or other members of the LRS building?
>
> [Accused consulted with counsel.]
>
> ACC: Because of the circumstances and how angry I was, Sir.

(R. at 111–12 (bracketed action in original).) The stipulation of fact stated only that A1C Paugh "threatened to kill [KC] and [SA], and shoot up the LRS squadron building, because he was angry." (PE 1 at 2.) The military judge accepted the guilty plea. (R. at 179.)

Standard of Review

This Court reviews claims of unreasonable multiplication of charges for an abuse of discretion. *United States v. Campbell*, 71 M.J. 19, 22 (C.A.A.F. 2012). A "waive all waivable motions" provision in a plea agreement waives a claim of unreasonable multiplication of charges such that the claim is extinguished and cannot be raised on appeal. *United States v. Gladue*, 67 M.J. 311, 314 (C.A.A.F. 2009). However, this Court is "not bound to apply waiver" when exercising its powers under Article 66(d), UCMJ. *United States v. Butcher*, 53 M.J. 711, 714 (A.F. Ct. Crim. App. 2000) (citing *United States v. Evans*, 28 M.J. 74, 76 (C.M.A. 1989)). "[F]ailure to raise

the issue does not preclude the Court of Military Review in the exercise of its powers from granting relief." *United States v. Britton*, 26 M.J. 24, 27 (C.M.A. 1988). If this Court "in the interest of justice, determines that a certain finding or sentence should not be approved . . . the court need not approve such finding or sentence." *United States v. Claxton*, 32 M.J. 159, 162 (C.M.A. 1991).

Law

"What is substantially one transaction should not be made the basis for an unreasonable multiplication of charges against one person." R.C.M. 307(c)(4). The Court of Appeals for the Armed Forces (CAAF) has approved a non-exhaustive list of factors to determine whether charges are unreasonably multiplied:

> (1) Did the accused object at trial that there was an unreasonable multiplication of charges and/or specifications?;
>
> (2) Is each charge and specification aimed at distinctly separate criminal acts?;
>
> (3) Does the number of charges and specifications misrepresent or exaggerate the appellant's criminality?;
>
> (4) Does the number of charges and specifications unfairly increase the appellant's punitive exposure?; and
>
> (5) Is there any evidence of prosecutorial overreaching or abuse in the drafting of the charges?

United States v. Quiroz, 55 M.J. 334, 338 (C.A.A.F. 2001) (internal quotations and citations omitted).

"On appeal, the issue of unreasonable multiplication of charges involves the duty of the Courts of Criminal Appeals to 'affirm only such findings of guilty, and the

sentence . . . as it . . . determines, on the basis of the entire record, should be approved.'" *United States v. Butcher*, 56 M.J. 87, 93 (C.A.A.F. 2001) (citation omitted). This power is "highly discretionary" and includes the ability to determine that an unreasonable multiplication of charges claim "has been waived or forfeited when not raised at trial." *Id.* In *Quiroz*, the Court of Criminal Appeals (CCA) had stated that "if we find the 'piling on' of charges is so extreme or unreasonable as to necessitate the invocation of [its] Article 66(c), UCMJ, authority, we will determine the appropriate remedy on a case-by-case basis"; the CAAF found this well within a CCA's discretion. 55 M.J. at 338–39. This Court has exercised its Article 66 power to overcome waiver in cases where the unreasonable multiplication of charges are "plainly presented." *See*, *e.g.*, *United States v. Jeffers*, No. ACM 38664 (recon), 2016 CCA LEXIS 52, at *10 (A.F. Ct. Crim. App. 28 Jan. 2016) (unpub. op.); *United States v. Chin*, No. ACM 38452 (recon), 2015 CCA LEXIS 241, at *12 (A.F. Ct. Crim. App. 12 Jun. 2015) (unpub. op.), *aff'd*, 75 M.J. 220 (C.A.A.F. 2016).

Analysis

A1C Paugh, in rapid succession during the same conversation, threatened to kill SA and KC and said he would do so at their place of work. To treat this continuous threat as multiple threats unreasonably multiplied the charges against him, and this Court should pierce waiver and dismiss Specification 2 of Charge II.

Applying the *Quiroz* factors confirms this Court should dismiss the offending specification. Under the second factor, these are not distinctly separate criminal acts. This was one threat to SA and KC, with the added detail of *where* he would carry out

the threat. There is no second threat. Under the third *Quiroz* factor, this misrepresents and exaggerates his criminality. As for the fourth factor—"unfairly increasing maximum punishment"—it is true that the plea agreement tightly circumscribed the permissible confinement between 9 and 12 months, and he received 9 months' confinement for each specification, but the overcharging nonetheless inflated the maximum theoretical punishment by 3 years. *See MCM*, pt. IV, ¶53.d.(1). This Court should not approve of charging overlapping "threats" as multiple occurrences. This is akin to charging separate specifications for different assaults during a "single, uninterrupted scuffle," which the Court of Military Appeals found unreasonable in *United States v. Morris*, 18 M.J. 450 (C.M.A. 1984).

While three factors favor A1C Paugh, two weigh against him. First, there is no evidence of prosecutorial overreaching or abuse beyond the specifications themselves. Second, A1C Paugh acknowledges that there was no objection at trial to this unreasonable multiplication of charges, and that his plea agreement contained a provision that waived all waivable motions. However, the interest of justice weighs in favor of overcoming that waiver. Charge II involves plainly presented unreasonable multiplication of charges. In *Jeffers*, the appellant's single act of causing the death of his passenger resulted in charges of both involuntary manslaughter and negligent homicide. Unpub. op. at *16. This Court set aside the conviction for negligent homicide as the two charges were "not aimed at distinctly separate criminal acts." *Id.* Similarly, Specifications 1 and 2 of Charge II are aimed at a single threat.

Furthermore, if this Court agrees, it will not mean a windfall for A1C Paugh. If this Court dismisses Specification 2 of Charge II, it will have no impact on his sentence.

Considering the obvious nature of the unreasonable multiplication in this case, this Court should exercise its power under Article 66(d) to overcome waiver and only approve such findings and sentence as are correct in law and fact.

WHEREFORE, A1C Paugh respectfully requests this Honorable Court dismiss Specification 2 of Charge II.

II.

THE RECORD OF TRIAL CONTAINS TWO INCOMPLETE PROSECUTION EXHIBITS AND REQUIRES REMAND FOR CORRECTION.

Additional Facts

The Stipulation of Fact provides a description of multiple Prosecution Exhibits. (PE 1 at 6.) For Prosecution Exhibit 3, the disc is supposed to contain "3 video clips from 4 December 2019, showing the Accused pulling [KC] into the wall and then onto the floor, pushing her into the dormitory day room, and then holding her down on the couch." (*Id.*) It contains only one file. (PE 3.)

The military judge recognized a problem with Prosecution Exhibit 6 during the court-martial. (R. at 217.) The military judge commented that it appeared to contain 55 files with "a fair number" of the videos showing a hallway that was "completely empty." (*Id.*) Additionally, one file would not play. (*Id.*) The military judge asked the Circuit Trial Counsel (CTC) to compare the original and working copy. (R. at

218.) The CTC agreed one file erroneously had no content, but did not ask to correct the exhibit. (R. at 218.) The military judge did not mention any other errors with the files themselves.

Of the 55 files in Prosecution Exhibit 6, only two play the entire content without skipping.[5] Fifty-two of the files, when played, skip ahead significantly, omitting the majority of the content.[6]

---

[5] PE 6 (ch20_20200103224050-converted and ch20_20200104003243-converted.)

[6] *See PE* 6 (ch20_20200103224412-converted; ch20_20200103225038-converted; ch20_20200103225300-converted; ch20_20200103225448-converted; ch20_20200103225704-converted; ch20_20200103235022-converted; ch20_20200104000549-converted; ch20_20200104000714-converted; ch20_20200104001305-converted; ch20_20200104001402-converted; ch20_20200104001547-converted; ch20_20200104001700-converted; ch20_20200104001757-converted; ch20_20200104001939-converted; ch20_20200104002044-converted; ch20_20200104002132-converted; ch20_20200104002249-converted; ch20_20200104002340-converted; ch20_20200104002410-converted; ch20_20200104002741-converted; ch20_20200104002813-converted; ch20_20200104002847-converted; ch20_20200104003039-converted; ch20_20200104003225-converted; ch20_20200104003333-converted; ch20_20200104003425-converted; ch20_20200104003549-converted; ch20_20200104003635-converted; ch20_20200104003723-converted; ch20_20200104003748-converted; ch20_20200104003846-converted; ch20_20200104004604-converted; ch20_20200104004703-converted; ch20_20200104004747-converted; ch20_20200104004946-converted; ch20_20200104005027-converted; ch20_20200104005052-converted; ch20_20200104005227-converted; ch20_20200104005343-converted; ch20_20200104005437-converted; ch20_20200104005607-converted; ch20_20200104005749-converted; ch20_20200104005826-converted; ch20_20200104005904-converted; ch20_20200104005946-converted; ch20_20200104010126-converted; ch20_20200104010238-converted; ch20_20200104010314-converted; ch20_20200104010341-converted; ch20_20200104010437-converted; ch20_20200104010602-converted; ch20_20200104010853-converted.

Standard of Review

This Court reviews whether a record of trial is complete *de novo*. *See United States v. Henry*, 53 M.J. 108, 110 (C.A.A.F. 2000).

Law and Analysis

The record of trial is "the very heart of the criminal proceedings and the single essential element to meaningful appellate review." *United States v. Credit*, 4 M.J. 118, 119 (C.M.A. 1977). A complete record of proceedings is required for every court-martial in which the sentence adjudged includes "a sentence of death, dismissal, discharge, confinement for more than six months, or forfeiture of pay for more than six months." Article 54(c)(2), 10 U.S.C. § 854(c)(2). A complete record shall include "[e]xhibits." R.C.M. 1112(b)(6). "Omissions are quantitatively substantial unless 'the totality of omissions . . . becomes so unimportant and so uninfluential when viewed in the light of the whole record, that it approaches nothingness.'" *United States v. Daley*, No. ACM 40012, 2022 CCA LEXIS 7, at *4 (A.F. Ct. Crim. App. 5 Jan. 2022) (unpub. op.) (quoting *United States v. Davenport*, 73 M.J. 373, 377 (C.A.A.F. 2014) (alterations in original)). A substantial omission in a record of trial raises a presumption of prejudice to an appellant which the Government must rebut. *Henry*, 53 M.J. at 111 (citations omitted). "Moreover, since in military criminal law administration the Government bears responsibility for preparing the record of trial, it is fitting that every inference be drawn against the Government with respect to the existence of prejudice because of an omission." *United States v. McCullah*, 11 M.J. 234, 237 (C.M.A. 1981) (citation omitted).

In *Daley*, this Court returned the record of trial to the Chief Trial Judge, Air Force Trial Judiciary, for reconstruction of the record of trial because of missing attachments to the stipulation of fact. Unpub. op., at *2, 5. This Honorable Court should take the same approach and remand this case for correction so that A1C Paugh, and this Court, can fully review the evidence presented at the court-martial. Prosecution Exhibit 3 is missing two files. These may be the same files as Preliminary Hearing Officer (PHO) Exhibit 8, but this is speculative. (PHO Exhibit 8, 4 Dec. 2019, ROT Vol. 4.) As to Prosecution Exhibit 6, a substantial portion of the files are missing. The military judge noticed that one file did not play at all, and further discussed how some files showed only an empty hallway, but he made no mention of almost every file skipping. Thus, it is uncertain whether the version of Prosecution Exhibit 6 in the Record of Trial matches the version introduced at trial.

WHEREFORE, A1C Paugh respectfully requests this Honorable Court return the record of trial to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the two incomplete exhibits.

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

APPENDIX

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), A1C Paugh, through appellate defense counsel, personally requests that this Court consider the following matters:

III.

THE ASSISTANT TRIAL COUNSEL ENGAGED IN IMPROPER ARGUMENT BY: (1) ARGUING FACTS NOT IN EVIDENCE; (2) HIGHLIGHTING UNCHARGED MISCONDUCT; (3) PERSONALLY ATTACKING A1C PAUGH; AND, (4) MAKING A SENTENCING RECOMMENDATION BASED ON WHAT THE VICTIM "DESERVES."

Additional Facts

1. *A1C Paugh's "Manipulation"*

The assistant trial counsel (ATC) delivered sentencing argument. (R. at 207–12.) She repeatedly argued that A1C Paugh manipulated KC, to include:

> [KC] was scared for her safety, but more scared for him, worried he wasn't doing well because she was in love with him. [KC] was blinded by her love for the accused. Blinded so much, that she didn't even realize how terribly he was actually treating her. How he manipulated her. How he betrayed her. Betrayed her trust, betrayed her feeling of safety and abused her trust when she let her guard down . . . He manipulated her to the point that a friend had to tell her that so many bruises, so much violence, so much manipulation, is not normal for a relationship.
>
> …
>
> A relationship, which typically is built upon trust, mutual support and love. But not here. Here for the accused, trust was replaced by emotional manipulation of [KC]. Support was replaced by gas lighting and guilt tripping [KC] into submission.
>
> …
>
> He beat [KC] in public, in front of friends, and where the camera could catch him because he knew she would not report him. She was so beaten down, so intimidated, and so scared and he knew that. And he used that against her.

(R. at 207–08.) KC's unsworn statement was less than one page and provided very limited information about the relationship. (Court Exhibit A; R. at 206.) One of KC's friends, IM, testified about a change in KC's demeanor; however, she only saw KC once and mostly formed this impression through text and phone call. (R. at 197–98.) IM did not provide insight into the relationship itself. (*Id.*) Finally, SA testified about his involvement, but primarily spoke about the physical abuse. (R. at 200–03.)

2. Uncharged Misconduct and Personal Attacks

The ATC argued that A1C Paugh "has no respect for authority or consequences." (R. at 209.) She later linked this lack of respect to his purported violation of a no-contact order during the stalking offense, stating "[h]e did this after he was given a direct order to not contact her. But he didn't follow that. He went to her room so many times, every time risking her seeing him stalking her. A1C Paugh has such a lack of respect for this woman, for authority, for the military." (R. at 211.) The alleged no-contact order violation was withdrawn and dismissed. (EOJ, ROT Vol. 1, 3 Dec. 2021.)

The ATC made the following comments about A1C Paugh: "He is a wrecking ball of chaos that has affected so many people around him, as well as his unit's mission" and "he is the posterchild of dishonor." (R. at 211, 212.)

3. What KC "Deserves"

Commenting on how the sentence would affect KC, the ATC argued:

> In these 12 months, [KC] can feel safe that she won't have to see A1C Paugh, that he won't retaliate or harm her in any way again. She can feel safe again and live the life of a young woman at the beginning of her career, with excitement and optimism for what is to come, and taking

> advantage of all the opportunities her job and the Air Force have to offer. The way it should be. Not worried about being beaten, or scared he would kill her or shoot up their work space. This is not what [KC] was imagining when she joined the military and this is not what she deserves. She deserves for him to get more than the minimum confinement allowed by the plea agreement. For all she has gone through she deserves that he gets 12 months.

(R. at 210.) After the argument, the military judge stated he would not consider what KC would or would not deserve. (R. at 212.) The Defense did not object to any of the arguments above.

Standard of Review

Whether argument is improper is a question of law, reviewed *de novo*. *United States v. Andrews*, 77 M.J. 393, 398 (C.A.A.F. 2018). If no objection is made, this Court reviews for plain error. *See id.* "Plain error occurs when (1) there is error, (2) the error is plain or obvious, and (3) the error results in material prejudice to a substantial right of the accused." *Id.* at 401 (quoting *United States v. Fletcher*, 62 M.J. 175, 179 (C.A.A.F. 2005)).

Law

Improper argument, a facet of prosecutorial misconduct, "occurs when trial counsel oversteps the bounds of that propriety and fairness which should characterize the conduct of such an officer in the prosecution of a criminal offense." *United States v. Sewell*, 76 M.J. 14, 18 (C.A.A.F. 2017) (quoting *United States v. Hornback*, 73 M.J. 155, 159–60 (C.A.A.F. 2014)) (internal quotation marks and alterations omitted). A trial counsel "may prosecute with earnestness and vigor . . . . But, while he may strike hard blows, he is not at liberty to strike foul ones." *Berger v. United States*, 295 U.S.

78, 88 (1935). Indeed, "[i]t is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *Id.*

The Court of Military Appeals "has consistently cautioned counsel to 'limit' arguments on findings or sentencing 'to evidence in the record and to such fair inferences as may be drawn therefrom.'" *United States v. White*, 36 M.J. 306, 308 (C.M.A. 1993) (quoting *United States v. Nelson*, 1 M.J. 235, 239–40 (C.M.A. 1975)). Additionally, the trial counsel may not mischaracterize the evidence. *See United States v. Toro*, 37 M.J. 313, 318 (C.A.A.F. 1993) (citing *United States v. Carroll*, 678 F.2d 1208 (4th Cir. 1982)). Additionally, "disparaging comments are . . . improper when they are directed to the defendant himself." *United States v. Voorhees*, 79 M.J. 5, 11 (C.A.A.F. 2019) (citing *Fletcher*, 62 M.J. at 182). A military judge has a *sua sponte* duty to ensure a fair trial. *Id.* at 14.

Improper argument will yield relief only if the misconduct "actually impacted on a substantial right of an accused (*i.e.*, resulted in prejudice)." *Fletcher,* 62 M.J. at 178 (quoting *United States v. Meek*, 44 M.J. 1, 5 (C.A.A.F. 1996)). When assessing prosecutorial misconduct's prejudicial effect, the CAAF has outlined a balancing approach of three factors: "(1) the severity of the misconduct, (2) the measures adopted to cure the misconduct, and (3) the weight of the evidence supporting the conviction." *Id.* at 184. The question is whether "trial counsel's comments, taken as a whole, were so damaging that [this Court] cannot be confident that the appellant was sentenced on the basis of the evidence alone." *United States v. Halpin*, 71 M.J.

477, 480 (C.A.A.F. 2013) (citations, internal quotation marks, and alterations omitted).

Analysis

1. *The ATC argued facts not in evidence to build a narrative about "manipulation."*

The ATC repeatedly accused A1C Paugh of manipulating KC. It is unclear exactly what the ATC meant by manipulation, but it is not supported by the admitted evidence or victim impact statement. The ATC built this theme by injecting facts not in evidence: that KC was more scared for A1C Paugh than herself; that she was blinded by love and didn't realize how badly he treated her; that a friend had to tell her that bruises, violence, and manipulation is not normal; that he was emotionally manipulative; and that he engaged in "gas lighting and guilt tripping"; and that A1C Paugh knew that KC would not report. (R. at 207–09.) Neither the witness testimony nor the unsworn statement provides a basis for these arguments. In short, the ATC generated facts to mold a narrative. This was improper, and plain and obvious error. *See White*, 36 M.J. at 308.

2. *The ATC personally attacked A1C Paugh and invited the military judge to punish him more severely because of uncharged misconduct.*

The ATC also inflated the gravity of the stalking offense by emphasizing that it allegedly occurred in violation of a no-contact order. The Government originally charged the no-contact order violation, but A1C Paugh could not make it through a *Care* inquiry, despite trying. (R. at 38–59.) The ATC used this to argue that he lacked respect for authority or for the military, essentially asking the military judge to punish him for that unproven violation.

Not only did the ATC highlight uncharged conduct, but she also made impermissible personal attacks on A1C Paugh, to include that he "is a wrecking ball of chaos that has affected so many people around him, as well as his unit's mission" and "is the posterchild of dishonor." (R. at 211, 212.) Such personal attacks have no place before a sentencing authority. *See Voorhees*, 79 M.J. at 11.

3. *The ATC asked the military judge to issue his sentence based on what KC "deserved."*

The ATC argued at length about KC's experience after the offenses and how she "deserves for him to get more than the minimum confinement allowed by the plea agreement. For all she has gone through she deserves that he gets 12 months." (R. at 210.) While the sentencing authority can consider victim impact, this does not mean that a sentence should reflect what a victim "deserves." *See* Article 56, UCMJ, 10 U.S.C. § 856. This was plain and obvious error.

4. *Conclusion*

The ATC's repeated improper arguments invited the military judge to choose a sentence based on evidence outside the record, personal attacks, and what KC "deserves." Each instance was plain and obvious error. Even if the military judge seemed to discount some of these arguments, this Court cannot be confident that A1C Paugh was sentenced on the basis of the evidence alone. *See Halpin*, 71 M.J. at 480.

WHEREFORE, this Honorable Court should reassess the sentence.

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 17 January 2023.

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	ANSWER TO ASSIGNMENTS OF ERROR
v.	)	Before Panel No. 1
Airman First Class (E-3) **NATHANIEL H. PAUGH** United States Air Force *Appellant.*	)	No. ACM 40231 16 February 2023

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

ISSUES PRESENTED

I.

WHETHER SPECIFICATIONS 1 AND 2 OF CHARGE II—OVERLAPPING THREATS ISSUED TO THE SAME PEOPLE IN SUCCESSION—UNREASONABLY MULTIPLIED THE CHARGES AGAINST A1C PAUGH.

II.

WHETHER THE RECORD OF TRIAL CONTAINS TWO INCOMPLETE PROSECUTION EXHIBITS AND REQUIRES REMAND FOR CORRECTION.

III.

WHETHER THE ASSISTANT TRIAL COUNSEL ENGAGED IN IMPROPER ARGUMENT BY: (1) ARGUING FACTS NOT IN EVIDENCE; (2) HIGHLIGHTING UNCHARGED MISCONDUCT; (3) PERSONALLY ATTACKING A1C PAUGH; AND, (4) MAKING A SENTENCING RECOMMENDATION BASED ON WHAT THE VICTIM "DESERVES."[1]

STATEMENT OF CASE

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

[1] Appellant has raised this issue under United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

STATEMENT OF FACTS

On 5 November 2020, Appellant was charged with one charge and one specification of failure to obey a lawful order in violation of Article 92, UCMJ; one charge and two specifications of communicating a threat in violation of Article 115, UCMJ; one charge and four specifications of assault on K.C., an intimate partner, in violation of Article 128, UCMJ; one charge and two specifications of assault against K.C., an intimate partner, in violation of Article 128b, UCMJ; and one charge and one specification of stalking K.C., in violation of Article 130, UCMJ. Further, he was charged with an additional charge and two specifications of assault consummated by battery against K.C., an intimate partner, in violation of Article 128b, UCMJ. (Charge Sheet, dated 5 November 2020, ROT, Vol. 1.).

At trial, Appellant pled guilty to Charge II and its two specifications for communicating at threat under Article 115, Charge III and its four specifications of assault against an intimate partner under Article 128, Charge V and its specification for stalking under Article 130, and the Additional Charge and its two specifications for assault consummated by battery under Article 128b. The remaining charges and specifications were dismissed with prejudice pursuant to the plea agreement. (Entry of Judgment, dated 3 December 2021, ROT, Vol. 1.)

ARGUMENT

I.

SPECIFICATIONS 1 AND 2 OF CHARGE II DID NOT UNREASONABLY MULTIPLY THE CHARGES AGAINST APPELLANT.

Additional Facts

Appellant initially intended to plead guilty to Charge I and its specification for violating a no contact order. However, he was not able to complete the Care inquiry for this charge, and ultimately, the government withdrew and dismissed it. (R. at 179.)

Specification 1 of Charge II read:

> In that AIRMAN FIRST CLASS NATHANIEL H. PAUGH, United States Air Force, 366th Logistics Readiness Squadron, Mountain Home Air Force Base, Idaho, did, at or near Mountain Home Air Force Base, Idaho, on or about 24 December 2019, wrongfully communicate to Airman First Class [K.C.] and Airman First Class [S.A.] a threat to kill them both, or words to that effect.

Specification 2 of Charge II read:

> In that AIRMAN FIRST CLASS NATHANIEL H. PAUGH, United States Air Force, 366th Logistics Readiness Squadron, Mountain Home Air Force Base, Idaho, did, at or near Mountain Home Air Force Base, Idaho, on or about 24 December 2019, wrongfully communicate to Airman First Class [K.C.] and Airman First Class [S.A.] a threat to shoot people in the Logistics Readiness Squadron Building by shooting them with a firearm, or words to that effect.

(Charge Sheet, dated 5 November 2020, ROT, Vol. 1.)

Appellant pled guilty to both specifications of Charge II for communicating a threat. In the Stipulation of Fact, Appellant stated the following:

> The Accused then went to the bathroom to retrieve razor blades, where he threatened to swallow the razor blades and kill himself. When A1C [S.A.] took the razor blades away from the Accused, the Accused put a belt around his neck and threatened to kill A1C [K.C.] and A1C [S.A.], and shoot up the LRS squadron building, because he was angry. The Accused made these threats wanting to scare A1C [K.C.] and A1C [S.A.].

(Pros. Ex. 1 at 2.)

Further in the Stipulation of Fact, Appellant admitted to the elements of each offense to which he was pleading guilty. For Charge II, Specification 1, Appellant stated that he

> made statements to A1C [K.C.] and A1C [S.A.] to the effect of that he would kill them both. At the time that the Accused made these statements, they were to A1C [K.C.] and A1C [S.A.] in their presence and as such the statements were known to both. Though made in the heat of anger, the communication was wrongful, as the circumstances surrounding the statement showed that the statement was not made in jest or for an otherwise innocent purpose. The Accused made these statements with the intent to threaten and scare both A1C [K.C.] and A1C [S.A.] because he believed they were secretly romantically involved and was angry at them. The Accused had no legal justification or excuse to make such statement.

(Pros. Ex. 1 at 3.)

For Charge II, Specification 2, Appellant

> made statements to A1C [K.C.] and A1C [S.A.] to the effect of that he would shoot people in the Logistics Readiness Squadron building with a firearm. At the time that the Accused made these statements, they were to A1C [K.C.] and A1C [S.A.] in their presence and as such the statements were known to both. A1C [K.C.] and A1C [S.A.] worked in the LRS building at the time and the Accused made these statements with the intent to threaten and scare them, because he believed they were secretly romantically involved and was angry at them. Though made in the heat of anger, the communication was wrongful, as the circumstances surrounding the statement showed that the statement was not made in jest or for an otherwise innocent purpose. The Accused made these statements with the intent to threaten and scare both A1C [K.C.] and A1C [S.A.] because he believed they were secretly romantically involved and was angry at them. The Accused had no legal justification or excuse to make such statement.

(Pros. Ex. 1 at 3.)

The military judge read the following elements with regard to Specification 1:

> 1) That on or about 24 December 2019, at or near Mountain Home Air Force Base, Idaho, you communicated certain language, to wit: a threat to kill both Airman First Class [K.C.] and Airman First Class [S.A.], or words to that effect, expressing a present

> determination or intent to injure the person, property, or reputation of Airman First Class [K.C.] and Airman First Class [S.A.], presently or in the future; (2) That the communication was made known to Airman First Class [K.C.] and Airman First Class [S.A.]; and (3) That the communication was wrongful.

(R. at 96.)

The military judge read the following elements with regard to Specification 2:

> 1) That on or about 24 December 2019, at or near Mountain Home Air Force Base, Idaho, you communicated certain language, to wit: a threat to shoot people in the Logistics Readiness Squadron building by shooting them with a firearm, or words to that effect, expressing a present determination or intent to injure the person, property, or reputation of the people in the Logistics Readiness Squadron, presently or in the future; (2) That the communication was made known to Airman First Class [K.C.] and Airman First Class [S.A.]; and (3) That the communication was wrongful.

(R. at 107.)

Appellant understood at the time that he was pleading guilty for communicating threats to both K.C. and S.A. In his own words, Appellant admitted he was guilty because he "verbally threatened to kill them both" in an effort "to scare both of them" because he "thought they were cheating." (R. at 99.) The military judge asked Appellant, "When you said to [K.C.] and [S.A.], I'm going to kill you, did you say that intending to issue both of them a threat?" (R. at 101.). Appellant testified that he did. (Id.) Appellant also admitted that he wanted [K.C.] and [S.A.] to "quit hanging out with each other." (R. at 101.)

Further, the military judge asked Appellant, "So at the time you had made this threat, you had retrieved razor blades and were threatening to swallow those razor blades and kill yourself and [S.A.] and [K.C.] took that threat seriously enough that they actually started to try [to] stop you from harming yourself. Is that fair to say?" To that, Appellant responded, "Yes, sir." (R. at 103.) At the time he made the threat, Appellant was holding razor blades that K.C. and S.A.

tried to take away from him. (R. at 103.) After K.C. and S.A. got the blade away from Appellant, he wrapped a belt around his neck and threatened to kill himself again. (R. at 103.) The military judge asked Appellant, "And it was right after that, in the heat of this argument, where you had made threats of self-harm, they took them seriously enough to intervene, that you then threatened to kill them. Is that accurate?" Appellant stated that it was. (R. at 104.)

With regard to Specification 2, the military judge reviewed the elements of the offense and asked Appellant to describe why he was guilty of them. Appellant stated, "Sir, I am guilty of communicating a threat to A1C [K.C.] and A1C [S.A.]. I verbally threatened to shoot up the LRS building where they worked. I meant it as a threat towards A1C [K.C.] and A1C [S.A.]. I also regret doing this and I feel immature for my actions." (R. at 108.) Appellant told the military judge that he believed shooting people in the LRS building would have physically hurt K.C. and S.A. (R. at 108-109.)

Pursuant to the plea agreement, Appellant agreed to "waive all waivable motions." (App. Ex. IV at 2.) In exchange he would be sentenced to confinement for nine to 12 months for Charge II, Specification 1, and nine to 12 months for Charge II, Specification 2, both to run concurrently. (App. Ex. V at 2.) During the Care inquiry, the military judge specifically asked about waiver of a motion for unreasonable multiplication of charges as related to the additional charge. (R. at 166.) "Do you understand that your defense counsel potentially could raise a motion for an unreasonable multiplication of charges? It could be for anything, but particularly for the specifications of the additional charge…" (R. at 167.) Further, the military judge asked:

> MJ: Knowing what your defense counsel and I have told you, do you want to give up making this motion or any other motion which may be waived pursuant to this term of your plea agreement in order to get the benefit of your plea agreement?
>
> ACC: Yes, Sir.

> MJ: Do you have any questions about this provision of your plea agreement?
>
> ACC: No, Sir.
>
> MJ: Do you freely and voluntarily agree to this term of your plea agreement?
>
> ACC: Yes, Sir.

(R. at 168.)

Appellant was ultimately sentenced to confinement for 9 months for Charge II, Specification 1 (threatening to kill K.C. and S.A.); 9 months for Charge II, Specification 2 (threatening to shoot inside the LRS building); 9 months for Charge III, Specification 1 (assaulting K.C. by pulling her to the ground); 10 months for Charge III, Specification 2 (assaulting by pushing K.C. in to a bedframe); 9 months for Charge III, Specification 3 (assaulting K.C. by striking her on the shin with the trash can); 11 months for Charge III, Specification 4 (assaulting K.C. by pushing her to the ground); 11 months for the specification of Charge V (stalking K.C.); 11 months for the Additional Charge, Specification 1 (assault consummated by battery for pulling K.C.'s wrist; and 11 months for the Additional Charge, Specification 2 (assault consummated by battery for holding K.C. down to the floor). All terms of confinement were to run concurrently. Additionally, the military judge sentenced Appellant to reduction in grade to E-1, a total forfeiture of all pay and allowances, and a bad conduct discharge. (R. at 221.)

Standard of Review

"Whether an appellant has waived an issue is a legal question that this Court reviews *de novo*. Waiver is different from forfeiture. Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the intentional relinquishment or abandonment of a known right."

United States v. Davis, 79 M.J. 329, 331 (C.A.A.F. 2020) (citation and internal quotation marks omitted). The standard of review for forfeiture is plain error. United States v. Rich, 79 M.J. 472, 475-76 (C.A.A.F. 2020). "The plain error standard is met when (1) an error was committed; (2) the error was plain, or clear, or obvious; and (3) the error resulted in material prejudice to substantial rights." Id. (See also United States v. Maynard, 66 M.J. 242, 244 (C.A.A.F. 2008)).

a. Appellant waived the issue of unreasonable multiplication of charges by function of his plea agreement.

Appellant waived his right to raise the issue of unreasonable multiplication of charges (UMC) by function of his plea agreement when he agreed to waive all waivable motions.

Law

"Waiver must be established by *affirmative* action of the accused's counsel, and not by a mere failure to object to erroneous instructions or to request proper instructions." United States v. Smith, 50 M.J. 451, 455-56 (C.A.A.F. 1999) (emphasis in original) (citations and internal quotation marks omitted). An affirmative statement than an accused at trial has "no objection" generally "constitutes an affirmative waiver of the right or admission at issue." United States v. Swift, 76 M.J. 210, 217 (C.A.A.F. 2017) (citation omitted).

"While there are no 'magic words' dictating when a party has sufficiently raised an error to preserve it for appeal, of critical importance is the specificity with which counsel makes the basis for his position known to the military judge." United States v. Killion, 75 M.J. 209, 214 (C.A.A.F. 2016) (citation omitted) (quoting Smith, 50 M.J. at 456).

Analysis

Appellant's assertion of error is waived. At no point during pre-trial negotiations, the Care inquiry, or the court proceedings did Appellant raise the issue of unreasonable multiplication of charges with the military judge. In fact, Appellant agreed to "waive all

waivable motions" pursuant to his guilty plea. (App. Ex. IV. at 2). During the guilty plea colloquy, the military judge advised Appellant about his right to waive all waivable motions, and specifically addressed a waiver of a motion for unreasonable multiplication of charges. (R. at 167.) Appellant's discussion with the military judge on the issue reflects that 1) Appellant was aware that a UMC motion could be filed for any of the specifications, and 2) that he was waiving all motions for the benefit of a favorable plea agreement.

Appellant argues that the Court should pierce waiver in this case: "A1C Paugh acknowledges that there was no objection at trial to this unreasonable multiplication of charges, and that his plea agreement contained a provision that waived all waivable motions. However, the interest of justice weighs in favor of overcoming that waiver." (App. Br. at 8-9.) The government disagrees with Appellant on this point. As will be addressed below, the Quiroz factors are not met, and Appellant does not point to any evidence in this case that merits piercing waiver. Appellant made an affirmative waiver of all motions as contemplated by Smith. When the military judge asked Appellant if he agreed to waive a motion for unreasonable multiplication of charges "and any other motion which may be waived pursuant to this term of your plea agreement in order to get the benefit of your plea agreement," Appellant unequivocally stated yes. (R. at 167.) He then received the benefits of his plea agreement, in which he agreed to waive the issue. Therefore, the issue has been sufficiently waived, and Appellant is not entitled to relief.

b. There was no unreasonable multiplication of charges in this case under the Quiroz factors.

Law

Rule for Court-Martial 307(c)(4) provides that "[w]hat is substantially one transaction should not be made the basis for an unreasonable multiplication of charges against one person."

Unreasonable multiplication of charges concerns "those features of military law that increase the potential for overreaching in the exercise of prosecutorial discretion." United States v. Quiroz, 55 M.J. 334, 337 (C.A.A.F. 2001). A five-part test determines whether the prosecution has unreasonably multiplied charges:

> (1) Did the Accused object at trial to an unreasonable multiplication of charges or specifications?
>
> (2) Does each charge and specification address distinctly separate criminal acts?
>
> (3) Does the number of charges and specifications misrepresent or exaggerate the Appellant's criminality?
>
> (4) Does the number of charges and specifications unfairly increase the appellant's punitive exposure?
>
> (5) Is there any evidence of prosecutorial overreaching or abuse in the drafting of the charges?
>
> Id. at 338.

CAAF has noted that "where acts constitute separate criminal conduct under the applicable statute . . . drafting separate charges and cumulative punishments for those acts are not unreasonable." United States v. Forrester, 76 M.J. 389, 395 (C.A.A.F. 2017)

Analysis

Appellant's argument for unreasonable multiplication of charges does not prevail under the Quiroz test, especially under a plain error standard. First, Appellant did not object to trial on the issue. On the contrary, as discussed above, he not only failed to object, he *affirmatively* waived the issue. This factor weighs in favor of the government.

Second, each charge and specification addressed distinctly separate acts. Appellant posits that "[t]his was one threat to SA and KC, with the added detail of where he would carry out the threat. There is no second threat." (App. Br. at 8-9.) However, the court in Quiroz

found that "offenses are separate if each offense requires proof of an element not required to prove the other." 55 M.J. at 334 (citing Blockburger v. United States, 284 U.S. 299 (1932)). In Appellant's case, the nature of the threat made against K.C. and S.A., while arising from the same conversation, gave rise to different elements. Specification 1 charged Appellant for communicating a threat to K.C. and S.A. "that he would kill them both." However, in Specification 2, Appellant was charged for stating that "he would shoot people in the Logistics Readiness Squadron building with a firearm." (Pros. Ex. 1 at 3.) Each of these statements requires proof of a victim not mentioned in the other. Threatening to kill K.C. and S.A. in that moment is a different offense than threatening to essentially engage in an active shooting inside the Logistics Readiness Squadron (LRS) building with the possibility of other victims. The two statements are distinct from one another in the nature of the threat, Appellant's means to carry out the threat, and most importantly, the targeted victims. For the incident in Specification 1, Appellant threatened K.C. and S.A. directly at that moment in K.C.'s dorm room. While Appellant did not specify how he would carry out this threat, he had just been relieved of razor blades and had threatened to hang himself using a belt. For the incident in Specification 2, Appellant threatened to use a firearm and shoot inside the LRS building at a future date where others would be present and could be harmed. Based on the differences in methods and victims, the two specifications did not plainly and obviously amount to an unreasonable multiplication of charges. Therefore, the government prevails on the second Quiroz factor.

Third, the number of charges and specifications do not misrepresent or exaggerate Appellant's criminality. Appellant did, in fact, threaten two separate entities: 1) K.C. and S.A., and 2) members of the Logistics Readiness Squadron. Even if Appellant's goal in shooting the LRS building was to target K.C. and S.A., he acknowledged that he would also shoot at other

people inside the building in the process of hurting K.C. and S.A. (R. at 108-109.) While the first threat targeted only two people, the second threat went significantly farther, threatening to murder or endanger an even greater number of people in their on-base workplace by perpetrating what would have been a terrifying mass shooting incident. In light of that, Appellant's criminal exposure was exactly proportional to the crimes that he committed without exaggeration or misrepresentation. Trial counsel, defense counsel, and the military judge all understood the same set of facts that led to the charging of two separate specifications. Therefore, the government prevails on this factor.

Fourth, the number of charges and specifications do not unfairly increase Appellant's punitive exposure. Under the terms of his plea, Appellant agreed to a sentence of nine to 12 months confinement for each specification under Charge II, to run concurrently. (App. Ex. V at 2.) The military judge sentenced him to nine months concurrent confinement for these two specifications, which was at the lower end of the plea agreement. (R. at 221.) Appellant argues that the charges increased his punitive exposure by three years, however he also admits that dismissing one of the specifications would not impact his sentence. (App. Br. at 10.) He presents no argument or evidence to show the sentence he received was *per se* unreasonable, or that an increased maximum punishment *actually* increased his punitive exposure unfairly. Therefore, the fourth Quiroz factor weighs in favor of the government.

Finally, there was no evidence of prosecutorial overreaching or abuse in the drafting of the charges. Appellant acknowledged that there was "no evidence of prosecutorial overreaching or abuse beyond the specifications themselves." (App. Br. at 9.) The record reflects that the Government charged Appellant as it did to capture the full scope of his criminal conduct. Thus, the final Quiroz factor weighs in favor of the Government.

Considering that all of the Quiroz factors weigh in favor of the Government and that Appellant did not object to unreasonable multiplication of charges at trial, there is no error under the first factor of plain error standard. And because there is no error, the other two factors are not in question. Therefore, this Court should find that the military judge did not commit plain error by not *sua sponte* dismissing either Specifications 1 or 2 of Charge II – especially after Appellant affirmatively waived this issue. Thus, Appellant is not entitled to any relief.

II.

PROSECUTION EXHIBIT 3 IN THE RECORD OF TRIAL IS INCOMPLETE AND REQUIRES REMAND FOR CORRECTION WHILE PROSECUTION EXHIBIT 6 IS COMPLETE AND DOES NOT REQUIRE REMAND FOR CORRECTION.

Standard of Review

Whether a record of trial is complete is a question of law that is reviewed de novo. United States v. Davenport, 73 M.J. 373, 376 (C.A.A.F. 2014).

Law

A complete record of proceedings, including all exhibits and a verbatim transcript, must be prepared for any general or special court-martial that results in a punitive discharge or more than six months of confinement. Article 54(c)(2), UCMJ. Appellate courts understand that inevitably records will be imperfect, and therefore review for substantial omissions. *See* United States v. Lashley, 14 M.J. 7, 8 (C.M.A. 1982). A substantial omission renders a record incomplete and raises a presumption of prejudice that the government must rebut. United States v. Henry, 53 M.J. 108, 111 (C.A.A.F. 2000)(citing United States v. McCullah, 11 M.J. 234, 237 (C.M.A. 1981)). Insubstantial omissions do not raise a presumption of prejudice or affect the record's characterization as complete. Id. A substantial omission may not be prejudicial if the appellate courts are able to conduct an informed review. United States v. Simmons, 54 M.J. 883,

887 (N-M. Ct. Crim. App. 2001); *see also* United States v. Morrill, ARMY 20140197, 2016 CCA LEXIS 644, at *4-5 (A. Ct. Crim. App. 31 October 2016) (unpub. op.) (finding the record "adequate to permit informed review by this court and any other reviewing authorities") (citation omitted).

Analysis

Appellant argues that the ROT is incomplete because Prosecution Exhibit 3 only has one video clip and not three as the record indicates. The government concurs. All copies of Prosecution Exhibit 3 – the government's, Appellant's, and the Court's – only contain one video. Therefore, the government acknowledges that a remand for correction under R.C.M. 1112(d)(2) is required on the issue of Prosecution Exhibit 3.

However, Appellant also argues that "[o]f the 55 files in Prosecution Exhibit 6, only two play the entire content without skipping. Fifty-two of the files, when played, skip ahead significantly, omitting the majority of the content." (App. Br. at 11.) Undersigned counsel reviewed both the government's copy and the Court's copy of Prosecution Exhibit 6 and found that all 55 videos functioned properly. Further, the government provided trial defense counsel with an additional copy of Prosecution Exhibit 6 with all 55 functional videos on 15 February 2023. Therefore, the government posits that with regard to Prosecution Exhibit 6, the record is complete, and remand is not required.

III.

TRIAL COUNSEL DID NOT ENGAGE IN IMPROPER ARGUMENT OR MAKE PERSONAL ATTACKS AGAINST APPELLANT, AND THE MILITARY JUDGE'S DISTINCTION OF WHAT HE WOULD AND WOULD NOT CONSIDER FOR SENTENCING RESULTED IN NO PREJUDICE TO APPELLANT."[2]

---

[2] Appellant has raised this issue under United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

Additional Facts

In the Stipulation of Fact, Appellant admitted that on 12 December 2019, he "threatened to overdose on pills" after he assaulted K.C. in her dorm room. (Pros. Ex. 1 at 2.) On 24 December 2019, Appellant came to K.C.'s room, "and she let him in after he threatened to kill himself by taking sleeping aid pills." (Pros. Ex. 1 at 2). Once there, Appellant assaulted K.C. and "then went to the bathroom to retrieve razor blades, where he threatened to swallow the razor blades and kill himself." (Id.) When S.A. "took the razor blades away from the Accused, the Accused put a belt around his neck and threatened to hang himself in the shower." (Id.)

At sentencing, K.C. gave a victim impact statement in which she told the military judge, "What Nathaniel Paugh did to me was something I could have never imagined. He hurt me in more ways than one. I began to fear coming home from work to see him. Every single day I was terrified that he would continue to do something worse to me than the day previous." (R. at 206.) She asked the court "to give him a sentence that reflects the harm that he has done because I never want it happening to anyone ever again." (R. at 206.)

Trial counsel called Ms. I.M., a friend of K.C., to testify the about impact that Appellant's actions had on K.C. I.M. characterized K.C.'s relationship with Appellant as "[t]oxic, very unhealthy, and very concerning." (R. at 197.) I.M. testified that she discussed K.M.'s relationship with Appellant often "mainly through text or over calls, just me being concerned and trying to get her to get help and just her not really caring, just shrugging it off I guess." (R. at 197.) I.M. recalled the incident during Christmas time 2019, stating, "[K.C.] had – she was texting me and she was very, very scared. She didn't really know what to do, she was texting and then after that, she called me and I asked her, like, [K.C.], do you – like, you need to report this, you need to, like, talk to somebody. And she was afraid so I offered to do it and she

had finally said yes, like I need help." (R. at 198.) It was after that phone call that I.M. called Security Forces. (Id.)

SSgt T.H., who supervised K.C., testified that as a result of Appellant's actions, K.C. had "mental break downs at work. Like, there were several times where she actually had broken down into tears sitting there at work next to me and would have to leave the office, dismiss her from duty to go seek assistance…" (R. at 193.) SSgt T.H. testified to sending K.C. home "probably about a dozen times" so she could "gather herself or speak to somebody." (R. at 193.) This "greatly impacted the office's ability to get things done because not only was she not able to perform her duties but it clearly – everyone in the office could see also what was going on and took their attentions away from what they were doing and also my own." (R. at 194.)

During argument, trial counsel stated that K.C.

> was scared for her safety, but more scared for him, worried he wasn't doing well because she was in love with him. [K.C.] was blinded by her love for the accused. Blinded so much, that she didn't even realize how terribly he was actually treating her. How he manipulated her. How he betrayed her. Betrayed her trust, betrayed her feeling of safety and abused her trust when she let her guard down.
>
> He manipulated her to the point that a friend had to tell her that so many bruises, so much violence, so much manipulation, is not normal for a relationship. Her friends had to help her out. Pull him off of her, drag him out of the room, protect her from him, and call security forces on him but she still didn't feel safe. Because of this the government asks for 12 months of confinement, reduction in rank to E-1, total forfeiture of all pay and allowances, and a dishonorable discharge.
>
> . . .
>
> In these 12 months, [K.C.] can feel safe that she won't have to see A1C Paugh, that he won't retaliate or harm her in any way again. She can feel safe again and live the life of a young woman at the beginning of her career, with excitement and optimism for what is to come, and taking advantage of all the opportunities her job and

> the Air Force have to offer. The way it should be. Not worried about being beaten, or scared he would kill her or shoot up their work space. This is not what [K.C.] was imagining when she joined the military and this is not what she deserves. She deserves for him to get more than the minimum confinement allowed by the plea agreement. For all she has gone through she deserves that he gets 12 months.

(R. at 208-210.)

Trial counsel further argued that the circumstances of Appellant's offenses merited the government's recommended sentence because "[h]ere for the accused, trust was replaced by emotional manipulation of [K.C.]. Support was replaced by gas lighting and guilt tripping [K.C.] into submission. And love was replaced by physical abuse, evidenced by a body covered in bruises and marks." (R. at 208.) Further, "A1C Paugh manipulated her so intensely, that she was too scared to call security forces when she was in actual fear of physical harm." (R. at 209.)

Trial counsel asked for the court to sentence Appellant to a dishonorable discharge because "[a] permanent mark for the rest of A1C Paugh's foreseeable future is merited. He is a wrecking ball of chaos that has affected so many people around him, as well his unit's mission." (R. at 210.).

Trial counsel also stated, "[S.A.] also told us how terrified [K.C.] was, when they caught him stalking her, terrified the accused would hurt her again, scared because not even a no contact order would stop him." (R. at 212.) This statement by trial counsel was reflected in the Stipulation of Fact, where Appellant admitted to going to K.C.'s dorm room "despite a no contact order having been issued and monitoring her communications and whereabouts." (Pros. Ex. 1 at 5.)

Trial defense counsel did not object to any portion of trial counsel's argument. However, the military judge, *sua sponte*, stated,

> All right, Court just wants to make clear that it will only be sentencing Airman Paugh for the crimes of which he has been convicted. To the extent that any of counsel's argument may have inferenced evidence which is not before this Court or made inferences which are not fair inferences from the evidence provided to this Court, this Court will not consider it. Additionally, this Court will not base any determination on what the victim would or would not deserve. The accused is to be punished for the crimes of which he has been convicted, solely, the Court understands its responsibility in that regard. To the extent that trial counsel's argument may have crossed any of those lines, the Court will disregard it in its entirety, those portions.

(R. at 212.)

Standard of Review

Allegations of improper argument and prosecutorial misconduct are reviewed *de novo*. United States v. Voorhees, 79 M.J. 5, 9 (C.A.A.F. 2019). When no objection is made, this Court reviews for plain error. United States v. Andrews, 77 M.J. at 393, 398 (C.A.A.F. 2018). "The burden of proof under plain error is on the appellant." Voorhees, 79 M.J. at 9. "Plain error occurs when (1) there is error, (2) the error is clear and obvious, and (3) the error results in material prejudice to a substantial right of the accused." Id. For that reason, this Court "must determine: (1) whether trial counsel's arguments amounted to clear, obvious error; and (2) if so, whether there was a reasonable probability that, but for the error, the outcome of the proceeding would have been different." Id.

When improper argument occurs during sentencing, this Court determines whether it can be "confident that the appellant was sentenced on the basis of the evidence alone." United States v. Frey, 73 M.J. 245, 248 (C.A.A.F. 2014) (citing United States v. Halpin, 71 M.J. 477, 480 (C.A.A.F. 2013)).

Law

Prosecutorial misconduct "can be generally defined as action or inaction by a prosecutor in violation of some legal norm or standard. . .". Vorhees, 79 M.J. at 10. Trial counsel is charged "with being a zealous advocate for the government." United States v. Barrazamartinez, 58 M.J. 173, 176 (C.A.A.F. 2003). Trial counsel may argue the evidence in the record and "all reasonable inferences fairly derived from such evidence." United States v. Baer, 53 M.J. 235, 237 (C.A.A.F. 2000). However, it is error for trial counsel to make arguments that unduly inflame the passions or prejudices of the court members. United States v. Marsh, 70 M.J. 101, 102 (C.A.A.F. 2011).

When addressing a claim of improper argument, the inquiry should not be on words in isolation, but rather focused on the argument in the context of the entire court-martial. Baer, 53 M.J. at 238. It is "improper to 'surgically carve' out a portion of the argument with no regard to its context." Id. However, "[i]n cases of improper argument, each case must rest on its own peculiar facts." Baer, 53 M.J. at 239.

Trial counsel is not "prohibited from offering a comment that provides a fair response to claims made by the defense." United States v. Carter, 61 M.J. 30, 33 (C.A.A.F. 2005).

For claims of prosecutorial misconduct, assessing prejudice under the plain error test is accomplished by balancing the Fletcher factors: (1) the severity of the misconduct; (2) the measures adopted to cure the misconduct; and (3) the weight of the evidence supporting the conviction. Fletcher, 62 M.J. at 184. In the context of improper argument, courts balance the Fletcher factors to determine whether trial counsel's comments, taken as a whole, were so damaging that the court cannot be confident the appellant was convicted on the basis of the evidence alone. United States v. Erickson, 65 M.J. 221 (C.A.A.F. 2007). Courts are not required

to weigh all the factors equally when conducting their analysis. United States v. Frey, 73 M.J. 245, 251 (C.A.A.F. 2014). One factor can weigh so heavily in favor of the government it can provide the needed confidence that the appellant was sentenced on the evidence alone. Id. Additionally, in assessing prejudice, the lack of an objection by trial defense counsel is "some measure of the minimal impact" of an improper argument by trial counsel. United States v. Gilley, 56 M.J. 113, 123 (C.A.A.F. 2001).

"When the issue of plain error involves a judge-alone trial, an appellant faces a particularly high hurdle." United States v. Hays, 62 M.J. 158, 166 (C.A.A.F. 2005) (quoting United States v. Robbins, 52 M.J. 455, 457 (C.A.A.F. 2000)). This is because a "military judge is presumed to know the law and apply it correctly, [and] is presumed capable of filtering out inadmissible evidence…" Robbins, 52 M.J. at 457 (citation omitted). As part of the presumption that military judges know and follow the law absent clear evidence to the contrary, this Court must "presume that the military judge is able to distinguish between proper and improper sentencing arguments." United States v. Hill, No. ACM 38979, 2017 CCA LEXIS 477, at *19-20 (A.F. Ct. Crim. App. 12 July 2017) (unpub. op.) (quoting United States v. Erickson, 65 M.J. 221, 225 (C.A.A.F. 2007)). This is true regardless of whether the military judge states on the record what portion of the argument is improper and will not be considered. Erickson, 65 M.J. at 225. Therefore, "plain error before a military judge sitting alone is rare indeed." United States v. Raya, 45 M.J. 251, 253 (C.A.A.F. 1996). After all, "argument by counsel is not evidence." United States v. Bodoh, 78 M.J. 231, 236 (C.A.A.F. 2019).

Analysis

a. Trial Counsel did not make an improper argument when she discussed how Appellant manipulated the victim.

Appellant posits that trial counsel's argument that Appellant manipulated K.C. was "not supported by the admitted evidence or victim impact statement." (App. Br. at 4.) Appellant takes issue with trial counsel's statements "that KC was more scared for A1C Paugh than herself; that she was blinded by love and didn't realize how badly he treated her; that a friend had to tell her that bruises, violence, and manipulation is not normal; that he was emotionally manipulative; and that he engaged in "gas lighting and guilt tripping"; and that A1C Paugh knew that KC would not report. (App. Br. at 5.)

Taking one issue at a time, first, trial counsel's characterization of the relationship between Appellant and K.C. as manipulative was not improper. Appellant asserts that "it is unclear exactly what the ATC meant by manipulation." However, applying common sense and knowledge of the ways of the world to this case, Appellant's actions toward K.C. can easily be understood to be manipulative in the colloquial understanding of the word – that he tried to exploit K.C.'s feelings for him by threatening suicide or harm to others in an effort to control her actions. That Appellant was manipulative is also a reasonable inference from the evidence. As military courts have stated numerous times, "It is appropriate for trial counsel -- who is charged with being a zealous advocate for the Government -- to argue the evidence of record, as well as all reasonable inferences fairly derived from such evidence." Baer, 53 M.J. at 237 (citing United States v. Nelson, 1 M.J. 235, 239 (C.M.A 1975)). In this case, trial counsel relied on several instances from the record to infer that Appellant was manipulative. For example, on numerous occasions, Appellant threatened to harm or kill himself if K.C. did not act a certain way. On 12 December 2019, he threatened to overdose on pills. (Pros. Ex. 1 at 2.) On 24 December 2019,

"he threatened to kill himself by taking sleeping aid pills." (Pros. Ex. 1 at 2.) During that same incident, he threatened to kill himself by swallowing razor blades, and when S.A. took the blades out of Appellant's hand, Appellant threatened to hang himself in the shower by putting a belt around his neck. (Pros. Ex. 1 at 2.) All of these acts amounted to manipulation in the common sense use and application of the word. Trial counsel's argument that "trust was replaced by emotional manipulation" was supported by these facts. Therefore, a reasonable inference, as well as common sense and knowledge of the ways of the world, rendered trial counsel's argument appropriately based on the evidence presented.

Next, the evidence also supports the notion that K.C. was "more scared for A1C Paugh than herself" (App. Br. at 5.) K.C.'s friend I.M. testified that K.C. would talk to her about Appellant. I.M. testified that K.C. "seemed like, she didn't really, like, care much what happened to her at that point." (R. at 197.) Along with K.C.'s disregard for herself, the evidence showed that K.C. did not report the incident until I.M. called for her in December 2019. Those facts reasonably point to K.C. becoming withdrawn and more worried about Appellant than herself.

Third, the evidence supports the notion that K.C. did not "realize how badly [Appellant] treated her; that a friend had to tell her that bruises, violence, and manipulation is not normal." (App. Br. at 5.) I.M. stated that K.C.'s relationship with Appellant was "[t]oxic, very unhealthy, and very concerning." (R. at 197.) I.M. admitted to being concerned about K.C. because she was "just shrugging it off." (Id.) I.M. also said that K.C. "was afraid so I offered to [report it to the police] and she had finally said yes, like I need help." (R. at 198.) All of these factors reasonably indicate that 1) up to that point, K.C. had not told I.M. that she understood how bad things were, 2) K.C. was afraid to admit that what was happening to her was not normal.

Finally, trial counsel's assertion that Appellant engaged in "gas lighting and guilt tripping" and that A1C Paugh knew that K.C. would not report was supported by I.M.'s testimony. I.M. stated that during the 24 December incident, she told K.C. "you need to report this, you need to, like talk to somebody. And she was afraid so I offered to do it…" (R. at 198.) In the Stipulation of Fact, Appellant admitted that during one of the incidents, K.C. called S.A. for help, and S.A. "threatened to report the Accused, who responded by threatening [S.A.] to kill him if he reported the incident." (Pros. Ex. 1 at 2.) Again, viewing these actions through the lens of common sense and knowledge of the ways of the world, and drawing reasonable inferences from the evidence, Appellant's threatening to commit self-harm if K.C. or S.A. reported him can be characterized as guilt-tripping and manipulation.

Considering the totality of these facts, trial counsel's argument that Appellant manipulated, gaslit, and guilt-tripped K.C. was not plain and obvious error. They were reasonable inferences that were based on the number of times he threatened harm against himself or others if K.C. did not do what he wanted her to do. And to the extent that any of trial counsel's statements may have teetered on the edge of what is permissible, the military judge resolved the issue by stating he would not consider anything that was not a fair inference based on the evidence admitted.

b. The military judge properly distinguished between charged and uncharged misconduct when rendering a sentence, and trial counsel's statements did not amount to a personal attack on Appellant.

Appellant argues that trial counsel "inflated the gravity of the stalking offense by emphasizing that it allegedly occurred in violation of a no-contact order." (App. Br. at 5.) However, Appellant states, "the Government originally charged the no-contact order violation, but A1C Paugh could not make it through a Care inquiry, despite trying." (App. Br. at 5.) As a

result, Appellant argues that trial counsel's use of this violation to show that Appellant "lacked respect for authority and for the military, essentially asking the military judge to punish him for that unproven violation" was improper. (App. Br. at 5.)

However, to the extent that trial counsel may or may not have argued uncharged misconduct, the military judge headed off any prejudice to Appellant when he stated, *sua sponte*, that he would only sentence Appellant "for the crimes of which he has been convicted." (R. at 212.) The military judge added that to the extent that trial counsel's "argument may have inferred evidenced which is not before this Court or made inferences which are not fair inferences from the evidence provided to this Court, this Court will not consider it." (Id.)

Even if the military judge had not stated this caveat on the record, there would not have been any prejudice to Appellant because a "military judge is presumed to know the law and apply it correctly, [and] is presumed capable of filtering out inadmissible evidence…" Robbins, 52 M.J. at 457 (citation omitted). As part of the presumption that military judges know and follow the law absent clear evidence to the contrary, this Court must "presume that the military judge is able to distinguish between proper and improper sentencing arguments." Hill, 2017 CCA LEXIS at *19-20 (quoting Erickson, 65 M.J. at 225)). Appellant has not pointed to anything in the record to show that the military judge considered uncharged misconduct when deciding the sentence in this case.

Appellant also takes issue with trial counsel's characterization of him as a "wrecking ball of chaos that has affected so many people around him, as well as his unit's mission" and "the posterchild of dishonor" as impermissible personal attacks. (App. Br. at 6.) However, trial counsel's comments while hard-hitting, did not amount to plain error. They were made in the context of asking the court to sentence Appellant to a dishonorable discharge. They were meant

to represent the dishonor of assaulting an intimate partner, stalking, and threatening other servicemembers. And "[w]hen arguing for what is perceived to be an appropriate sentence, the trial counsel is at liberty to strike hard, but not foul, blows." Baer, 53 M.J. at 237. It was not plain error for trial counsel to strike hard at the severity of Appellant's actions to support why he deserved a dishonorable discharge.

Ultimately, even if these comments crossed the line, Appellant suffered no prejudice because the comments, taken as a whole, were not so damaging that the court cannot be confident the appellant was convicted on the basis of the evidence. The alleged error was not severe, because use of the phrase "posterchild of dishonor" does not rise to the level of personal attacks that cases like Voorhees are designed to address especially where, as in this case, they were said in the context of why Appellant should be sentenced to a dishonorable discharge. Additionally, trial counsel used the language to reiterate that Appellant's actions affected not just K.C., but also S.A., Appellant's unit, and other members of LRS.

Appellant next argues that trial counsel's statement regarding the no contact order inserted facts not in evidence. However, even though Appellant did not plead guilty to the underlying charge, the evidence that he violated a no contact order was included in the Stipulation of Fact, and trial counsel could to use it as an aggravating factor. Nevertheless, the military judge's caveat after trial counsel's sentencing argument that he would only consider the charges to which Appellant pled guilty and not any uncharged misconduct sufficiently resolved the matter. So even if trial counsel plainly erred in mentioning the no contact order, Appellant suffered no prejudice because the military judge did not consider the argument.

Further, Appellant did not object to any portion of trial counsel's argument, nor did he ask for a remedy. But more importantly, the military judge resolved any potential issues by

clarifying that he would only consider proper argument. Without evidence to the contrary, the presumption is that the military judge would properly apply the law. The evidence in this case was strong enough for the military judge to convict and sentence Appellant. Appellant admitted to assaulting K.C. in numerous ways and stalking her. He also admitted to threatening K.C., S.A., and members of LRS. He signed and submitted a Stipulation of Fact, where he also admitted he was guilty of all the charges and specifications to which he was pleading guilty. Additional prosecution exhibits that the court covered included surveillance videos of certain incidents, eyewitness testimony, and impact testimony. Appellant also had the opportunity to submit evidence in mitigation and give an unsworn statement. All of this evidence showed that Appellant assaulted K.C. violently numerous times, and sometimes in the presence of S.A. Prosecution Exhibit 6 shows Appellant throwing K.C. against the wall in the hallway. Appellant also threatened to shoot innocent people—members of LRS who were not connected to the situation at all. The weight of all that evidence was strong enough to support the sentence, and therefore Appellant suffered no prejudice from any improper arguments.

c. Appellant suffered no prejudice from trial counsel's request that the military judge sentence Appellant based on what the victim deserved, because the military judge said he would not consider that argument.

Appellant argues that while a court can consider the impact of Appellant's actions on the victim, trial counsel asking the court to sentence him to what the victim deserves is improper. (App. Br. at 6.) Again, it is important to take trial counsel's statement in context. Trial counsel asked the court to sentence Appellant to 12 months in confinement, arguing it would give Appellant "the time necessary for rehabilitation, to understand and reflect upon his actions. His actions that left a young woman scared for her life and terrified to face her abuser again, changed

in her personality from a happy and social young woman to a timid shell of a person." (R. at 212.) Further, trial counsel argued that

> [i]n these 12 months, [K.C.] can feel safe that she won't have to see A1C Paugh, that he won't retaliate or harm her in any way again. She can feel safe again and live the life of a young woman at the beginning of her career, with excitement and optimism for what is to come, and taking advantage of all the opportunities her job and the Air Force have to offer. The way it should be. Not worried about being beaten, or scared he would kill her or shoot up their work space. This is not what [K.C.] was imagining when she joined the military and this is not what she deserves. She deserves for him to get more than the minimum confinement allowed by the plea agreement. For all she has gone through she deserves that he gets 12 months.

(R. at 210.)

To the extent that trial counsel made any arguments beyond what was permitted, the military judge resolved the issue by stating that "[t]o the extent that any of counsel's argument may have inferenced evidence which is not before this Court or made inferences which are not fair inferences from the evidence provided to this Court, this Court will not consider it." (R. at 212.) The military judge also clarified that he would not "base any determination on what the victim would or would not deserve." (Id.)

As a result of the military judge's finding, Appellant suffered no prejudice from trial counsel's request for a sentence based on what the victim deserved, and the court should deny Appellant's claim on this basis.

CONCLUSION

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's claims and affirm the findings and sentence in this case.

ATEL, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 16 February 2023.

DEEPA M. PATEL, Maj, 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	)	**APPELLANT'S REPLY BRIEF**
Appellee,	)	
	)	Before Panel No. 1
v.	)	
	)	No. ACM 40231
Airman First Class (E-3),	)	
NATHANIEL H. PAUGH,	)	22 February 2023
United States Air Force,	)	
Appellant.	)	

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

Appellant, Airman First Class (A1C) Nathaniel H. Paugh, pursuant to Rule 18(d) of this Honorable Court's Rules of Practice and Procedure, files this Reply to the Appellee's Answer, dated 16 February 2023 (Ans.). In addition to the arguments in his opening brief, filed on 17 January 2023 (App. Br.), A1C Paugh submits the following arguments for the issues listed below.

I.

SPECIFICATIONS 1 AND 2 OF CHARGE II—OVERLAPPING THREATS ISSUED TO THE SAME PEOPLE IN SUCCESSION—UNREASONABLY MULTIPLIED THE CHARGES AGAINST A1C PAUGH.

1. *The interest of justice supports piercing waiver, and if this Court agrees the proper standard of review is not plain error.*

A1C Paugh conceded, though perhaps not clearly enough, that this issue was waived. (App. Br. at 10 ("this Court should exercise its power under Article 66(d) to overcome waiver").) The Government and A1C Paugh thus agree on waiver. (Ans. at 8–9.) But this Court should pierce waiver, and if it does, two key disagreements remain. First, the parties disagree on the standard of review. The Government

claims it is plain error. (Ans. at 8.) But this issue was not forfeited, it was fully waived. If this Court chooses to exercise its Article 66(d) authority and pierce waiver, it can review the unreasonable multiplication of charges (UMC) de novo. *See United States v. Quiroz*, 55 M.J. 334, 338 (C.A.A.F. 2001) (holding the lower court "acted well within its authority" when it addressed UMC raised for the first time on appeal and declined to apply waiver or forfeiture); *United States v. Quiroz*, 53 M.J. 600, 606–07 (N.M. Ct. Crim. App. 2000) (en banc) (refusing to apply forfeiture and reviewing UMC under what appears to be de novo review), *remanded for reconsideration on other grounds by* 55 M.J. 334. *Cf. United States v. Massey*, No. ACM 40017, 2023 CCA LEXIS 46, at *38–41 (A.F. Ct. Crim. App. 30 Jan. 2023) (unpub. op.) (finding no abuse of discretion in the military judge's failure to dismiss two specifications for UMC, but exercising Article 66(d) authority to consolidate three specifications to remedy the UMC issue).

The second point relates to applying the proper test. The Government claims that "the court in *Quiroz* found that 'offenses are separate if each offense requires proof of an element not required to prove the other.'" (Ans. at 11–12 (citing 55 M.J. at 334 (citing *Blockburger v. United States*, 284 U.S. 299 (1932))).) It was the dissent in *Quiroz* that made this point, and it was discussing multiplicity, not UMC. 55 M.J. at 339, 341 (Crawford, C.J., dissenting) (arguing that UMC cannot exist apart from multiplicity). The *Quiroz* factors—which address UMC—are the correct rubric for analysis.

2. The Quiroz factors support dismissal of the duplicative specification.

The Government's analysis of the second, third, and fourth *Quiroz* factors requires close scrutiny. For the second factor—whether each specification addresses distinctly separate criminal acts—the Government reaches an untenable conclusion by failing to grapple with what A1C Paugh actually said in his *Care* inquiry. The relevant passages are included in A1C Paugh's opening brief at pages 4–5, and in the transcript at pages 108–12. The Government's analysis contends that "[e]ach of [the specifications] requires proof of a victim not mentioned in the other." (Ans. at 11.) But the point of this Assignment of Error is that both specifications addressed the same "people": KC and SA in Specification 1 are the "people" in Specification 2. A1C Paugh was unequivocal that he threatened to "go to the [Logistics Readiness Squadron (LRS)] building and shoot them both" and that the threat referred only to KC and SA. (R. at 108–09.) Those words must have weight in the analysis. *Cf. United States v. Day*, 2022 CAAF LEXIS 892, at *11 (C.A.A.F. 13 Dec. 2022) (rejecting the Government's argument that it should ignore a military judge's error in a plea agreement inquiry because that would mean the plea agreement inquiry and the parties' understanding "would have no consequence"). Based on the *Care* inquiry and the stipulation of fact, A1C Paugh essentially made one threat to KC and SA; the distinction of where he would execute the threat does not render one threat into two specifications.

On the third *Quiroz* factor—whether the number of specifications misrepresents or exaggerates A1C Paugh's criminality—the Government's

interpretation of the threats cannot square with the *Care* inquiry. The Government claims that the second threat against "people" at LRS "went significantly farther, threatening to murder or endanger an even greater number of people in their on-base workplace by perpetrating what would have been a terrifying mass shooting incident." (Ans. at 11–12 (citing R. at 108–09).) Respectfully, when this Honorable Court reads those pages in the transcript, it will not be able to draw the same conclusion as the Government. A1C Paugh threated to shoot KC and SA at the LRS building; he did not threaten to engage in an indiscriminate, "terrifying mass shooting incident" that would "murder or endanger" anyone else.

As to the fourth *Quiroz* factor—whether the specifications unfairly increase punitive exposure—the Government relies entirely on the structure of the plea agreement, which required the sentences to run concurrently. (Ans. at 12.) Since the sentences for each threat were identical, there was no additional increase in confinement. (R. at 221.) But this ignores that an additional conviction is, itself, an important consequence "quite apart from any sentence imposed." *United States v. Doss*, 15 M.J. 409, 411–12 (C.M.A. 1983) (quoting *Missouri v. Hunter*, 459 U.S. 359, 372–73 (Marshall, J., dissenting)). *See also Massey*, unpub. op. at *38 (questioning whether allowing the appellant to remain convicted of three separate offenses was a just outcome, even if the punishment remained the same). Even if more confinement did not result, there was still an unfair increase in punitive exposure within the meaning of the fourth *Quiroz* factor.

In sum, the *Quiroz* factors weigh in favor of A1C Paugh. This Honorable Court should pierce waiver and correct this unreasonable multiplication of charges, which transforms "what is substantially one transaction" into two offenses.

WHEREFORE, A1C Paugh respectfully requests this Honorable Court dismiss Specification 2 of Charge II.

II.

THE RECORD OF TRIAL CONTAINS TWO INCOMPLETE PROSECUTION EXHIBITS AND REQUIRES REMAND FOR CORRECTION.

A1C Paugh concurs with the Government that remand is required to correct Prosecution Exhibit 3. As to Prosecution Exhibit 6, the Government has indeed provided undersigned counsel with an improved copy, which resolves many, but not all, of the issues. A number of files will still not fully play for counsel.[1] This issue is diminished because most files play; however, since remand is appropriate anyway, A1C Paugh asks this Court to additionally order fully functional videos in Prosecution Exhibit 6.

WHEREFORE, A1C Paugh respectfully requests this Honorable Court return the record of trial to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the two incomplete exhibits.

---

[1] ch20_20200104010126-converted, ch20_20200104010238-converted, ch20_20200104010330-converted; ch20_20200104010437-converted; ch20_20200103225448-converted; ch20_20200103225704-converted; ch20_20200103235022-converted.

III.[2]

THE ASSISTANT TRIAL COUNSEL ENGAGED IN IMPROPER ARGUMENT BY: (1) ARGUING FACTS NOT IN EVIDENCE; (2) HIGHLIGHTING UNCHARGED MISCONDUCT; (3) PERSONALLY ATTACKING A1C PAUGH; AND, (4) MAKING A SENTENCING RECOMMENDATION BASED ON WHAT THE VICTIM "DESERVES."

On arguing facts not in evidence, the Government contends the assistant trial counsel (ATC) did not err. But in so asserting, the Government repeats the ATC's error: using "reasonable" inferences and "common sense and knowledge of the ways of the world" to elide the absence of evidence. (Ans. at 21–22.) The point here is that the ATC built an elaborate theme of manipulation that left behind the admitted evidence on A1C Paugh and CB's relationship. The sentence is supposed to reflect the convicted offenses, not the quality, or lack thereof, in their relationship.

Regarding personal attacks, the Government argues that because the ATC was arguing for a dishonorable discharge, the context justifies her arguments that A1C Paugh "is a wrecking ball of chaos that has affected so many people around him, as well as his unit's mission" and "is the posterchild of dishonor." (Ans. at 24.) A1C Paugh rejects the notion that context allows for personal attacks—and hopes this Court will as well. A fair reading of *United States v. Voorhees*, 79 M.J. 5, 9 (C.A.A.F. 2019) plainly disallows such personal attacks. This Court should find plain and obvious error in these comments.

WHEREFORE, this Honorable Court should reassess the sentence.

---

[2] Issue III was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Respectfully submitted,

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)

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 22 February 2023.

MATTHEW L. BLYTH, Maj, USAF
Appellate Defense Counsel
Appellate Defense Division (AF/JAJA)