

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

UNITED STATES	)	No. ACM 40231
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Nathanial H. PAUGH	)	
Airman First Class (E-3)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 1

On 25 October 2021, Appellant was convicted by a general court-martial convened at Mountain Home Air Force Base, Idaho. In accordance with his pleas, and pursuant to a plea agreement, a military judge found Appellant guilty of two specifications of communicating a threat, four specifications of assault consummated by battery, 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.<sup>1</sup>

On 17 January 2023, Appellant submitted his brief raising three issues before this court. As to one of these issues, Appellant argues, *inter alia*, that “the record of trial is incomplete in that it contains two incomplete prosecution exhibits and requires remand.” Specifically, Appellant states that Prosecution Exhibit 3, a computer disc, is missing two video files. Additionally, Appellant contends that Prosecution Exhibit 6, another computer disc, contains a number of video files in which some do not function properly. Specifically, Appellant states, “Of 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.”<sup>2</sup>

On 16 February 2023, the Government submitted its answer to Appellant’s brief, concurring that Prosecution Exhibit 3 was missing two video files and

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

<sup>2</sup> Also, according to Appellant’s brief, the military judge at Appellant’s court-martial commented that Prosecution Exhibit 6 “contain[ed] 55 files with ‘a fair number’ of the videos showing a hallway that was ‘completely empty,’” and that one file would not play. The trial counsel agreed that “one file erroneously had no content, but did not ask to correct the exhibit,” and that the military judge did not mention any other errors relating to the files.

agreeing that remand of the record of trial for correction under Rule for Courts-Martial (R.C.M.) 1112(d)(2) was appropriate. However, in regard to Prosecution Exhibit 6, the Government “reviewed both the [G]overnment’s copy and the [c]ourt’s copy of Prosecution Exhibit 6 and found that *all 55 videos functioned properly*.” (Emphasis added). The Government further stated the issue was resolved because it provided Appellant with “an additional copy of Prosecution Exhibit 6 with *all 55 functional video files*.” (Emphasis added). The Government “posits that with regard to Prosecution Exhibit 6, the record is complete, and remand is not required.”

On 22 February 2023, Appellant filed a reply brief acknowledging that he had been provided “an improved copy” of Prosecution Exhibit 6, but states “a number of files will still not fully play for counsel.”<sup>3</sup> Appellant requests this court return the record for correction of Prosecution Exhibits 3 and 6.

Accordingly, it is by the court on this 7th day of March, 2023,

**ORDERED:**

The record of trial in Appellant’s case is returned to the Chief Trial Judge, Air Force Trial Judiciary, for correction under R.C.M. 1112(d) to account for the missing video files of Prosecution Exhibit 3, and to provide Appellant fully functional video files to Prosecution Exhibit 6. *See* Article 66(g), UCMJ, 10 U.S.C. § 866(g); R.C.M. 1112(d)(2)–(3). Thereafter, the record of trial will be returned to this court for completion of its appellate review under Article 66(d), UCMJ, 10 U.S.C. § 866(d).

The record of trial will be returned to the court not later than **4 April 2023**. If the record cannot be returned to the court by that date, the Government will inform the court in writing not later than **4 April 2023** of the status of the Government’s compliance with this order.



FOR THE COURT

*Carol K. Joyce*

CAROL K. JOYCE  
Clerk of the Court

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<sup>3</sup> In Appellant’s reply brief, he lists seven files that were still not fully functional, to include the one file (ch20\_202000104010330-converted) raised at trial that had no content at all. The court notes that Prosecution Exhibit 6 in the original record with the court shows six of the seven files as playable videos, with the exception of the one file identified at trial as having no content at all.