

UNITED STATES,) APPELLANT’S MOTION
Appellee,) FOR ENLARGEMENT
) OF TIME (FIRST)
v.)
) Before Panel No. 1
Staff Sergeant (E-5),)
ERIC W. SINGLETON,) No. ACM 40535
United States Air Force,)
Appellant.) 8 January 2024

Pursuant to Rule 23.3(m)(1) and (2) 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 60 days, which will end on **19 March 2024**. The record of trial was docketed with this Court on 20 November 2023. From the date of docketing to the present date, 49 days have elapsed. On the date requested, 120 days will have elapsed.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

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

[REDACTED]

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8 January 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Staff Sergeant (E-5)	)	ACM 40535
ERIC W. SINGLETON, USAF,	)	
<i>Appellant.</i>	)	Panel No. 3
	)	

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its 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.

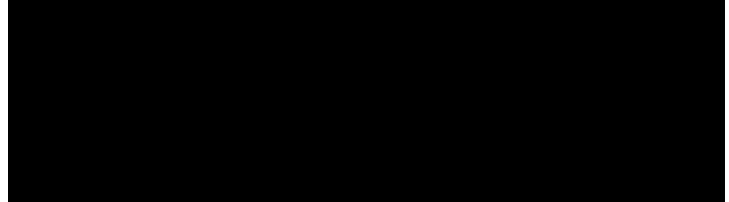
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J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division

[REDACTED]
[REDACTED]
[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 8 January 2024.



J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division



UNITED STATES,) APPELLANT’S MOTION
Appellee,) FOR ENLARGEMENT
) OF TIME (SECOND)
v.)
) Before Panel No. 1
Staff Sergeant (E-5),)
ERIC W. SINGLETON,) No. ACM 40535
United States Air Force,)
Appellant.) 7 March 2024

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE) brief. Appellant requests an enlargement for a period of 30 days, which will end on **18 April 2024**. The record of trial was docketed with this Court on 20 November 2023. From the date of docketing to the present date, 108 days have elapsed. On the date requested, 150 days will have elapsed.

On 16 June 2023, a general court-martial convened at Moody Air Force Base, Georgia, consisting of officer and enlisted members found Appellant, contrary to his pleas, guilty of one charge and two specifications of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ). R. at 1, 12, 175-76, 1588. Consistent with his pleas, Appellant was acquitted of one charge and two specifications of domestic violence, in violation of Article 128b, UCMJ, and one charge and one specification of assault consummated by a battery upon a child under 16 years of age, in violation of Article 128, UCMJ. R. at 12, 176, 1588. On 17 June 2023, the panel of officer and enlisted members sentenced Appellant to be reduced to the grade of E-2, to forfeit all pay and allowances, to be confinement for one year and six months, and to be dishonorably discharged.

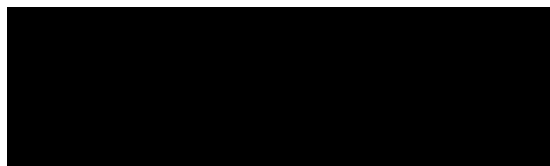
R. at 1735-36. The convening authority took no action on the findings or sentence and denied Appellant's request for deferment of the reduction in grade. Record of Trial, Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Eric W. Singleton, dated 11 July 2023.

The trial transcript is 1738 pages long and the record of trial is comprised of twelve volumes containing six Prosecution Exhibits, 17 Defense Exhibits, one Court Exhibit, and 89 Appellate Exhibits. Appellant is currently confined.

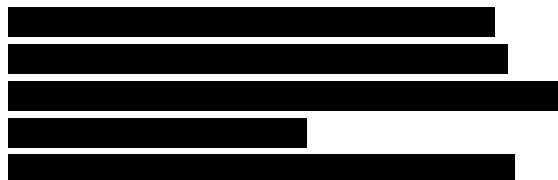
Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

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

Respectfully submitted,

A large rectangular black box redacting the signature of Samantha M. Castanién.

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel

Five horizontal black bars of varying lengths redacting contact information, likely a phone number and email address.

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 Air Force Government Trial and Appellate Operations Division on 7 March 2024.

[REDACTED]

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

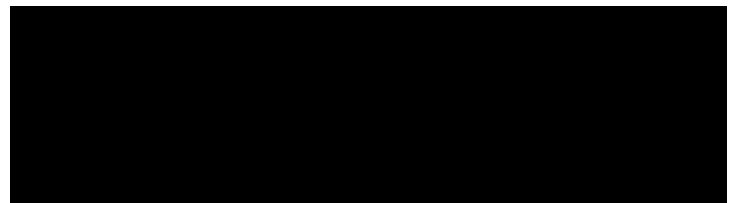
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Staff Sergeant (E-5)	)	ACM 40535
ERIC W. SINGLETON, USAF,	)	
<i>Appellant.</i>	)	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.

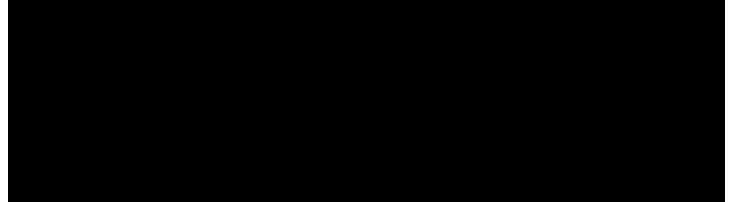


J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 7 March 2024.



J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division



UNITED STATES,) APPELLANT’S MOTION
Appellee,) FOR ENLARGEMENT
) OF TIME (THIRD)
v.)
) Before Panel No. 1
Staff Sergeant (E-5))
ERIC W. SINGLETON,) No. ACM 40535
United States Air Force,)
Appellant.) 8 April 2024

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE) brief. Appellant requests an enlargement for a period of 30 days, which will end on **18 May 2024**. The record of trial was docketed with this Court on 20 November 2023. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 16 June 2023, a general court-martial convened at Moody Air Force Base, Georgia, consisting of officer and enlisted members found Appellant, contrary to his pleas, guilty of one charge and two specifications of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ). R. at 1, 12, 175-76, 1588. Consistent with his pleas, Appellant was acquitted of one charge and two specifications of domestic violence, in violation of Article 128b, UCMJ, and one charge and one specification of assault consummated by a battery upon a child under 16 years of age, in violation of Article 128, UCMJ. R. at 12, 176, 1588. On 17 June 2023, the panel of officer and enlisted members sentenced Appellant to be reduced to the grade of E-2, to forfeit all pay and allowances, to be confinement for one year and six months, and to be dishonorably discharged.

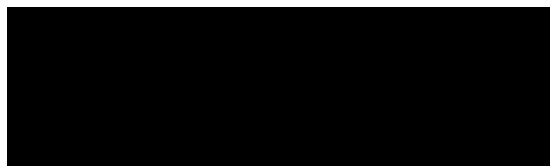
R. at 1735-36. The convening authority took no action on the findings or sentence and denied Appellant's request for deferment of the reduction in grade. Record of Trial, Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Eric W. Singleton, dated 11 July 2023.

The trial transcript is 1738 pages long and the record of trial is comprised of twelve volumes containing six Prosecution Exhibits, 17 Defense Exhibits, one Court Exhibit, and 89 Appellate Exhibits. Appellant is currently confined.

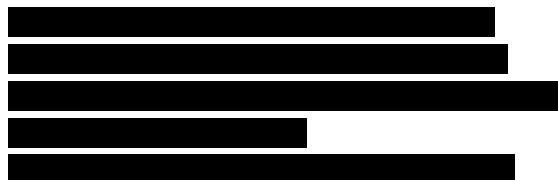
Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

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

Respectfully submitted,

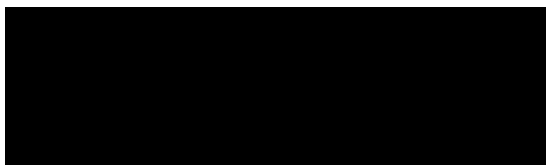
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SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel

Five horizontal black bars of varying lengths redacting contact information, likely a phone number and email address.

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 Air Force Government Trial and Appellate Operations Division on 8 April 2024.



SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel



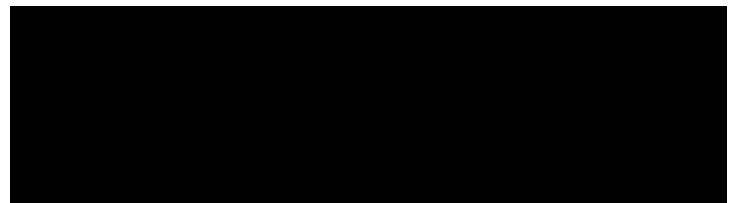
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Staff Sergeant (E-5)	)	ACM 40535
ERIC W. SINGLETON, USAF,	)	
<i>Appellant.</i>	)	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.

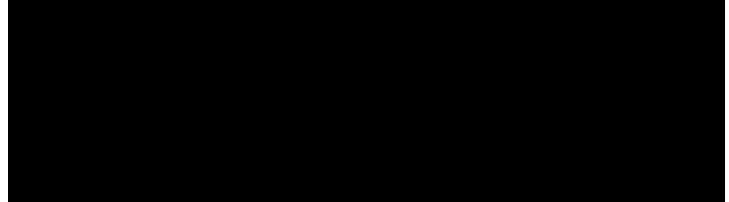


J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division



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 9 April 2024.



J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division



UNITED STATES,) APPELLANT’S MOTION
Appellee,) FOR ENLARGEMENT
) OF TIME (FOURTH)
v.)
) Before Panel No. 1
Staff Sergeant (E-5))
ERIC W. SINGLETON,) No. ACM 40535
United States Air Force,)
Appellant.) 3 May 2024

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE) brief. Appellant requests an enlargement for a period of 30 days, which will end on **17 June 2024**. The record of trial was docketed with this Court on 20 November 2023. From the date of docketing to the present date, 165¹ days have elapsed. On the date requested, 210 days will have elapsed.

¹ This request for an extension of time is being submitted well in advance since undersigned counsel is on leave starting 10 May 2024. Thereafter she will be out of the country from 11 to 24 May 2024.

and enlisted members sentenced Appellant to be reduced to the grade of E-2, to forfeit all pay and allowances, to be confinement for one year and six months, and to be dishonorably discharged. R. at 1735-36. The convening authority took no action on the findings or sentence and denied Appellant's request for deferment of the reduction in grade. Record of Trial, Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Eric W. Singleton, dated 11 July 2023.

The trial transcript is 1,738 pages long and the record of trial is comprised of twelve volumes containing six Prosecution Exhibits, 17 Defense Exhibits, one Court Exhibit, and 89 Appellate Exhibits. Appellant is currently confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is assigned 22 cases; 19 cases are pending AOE's before this Court and three cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). To date, seven cases have priority over the present case:

1. *United States v. Folts*, No. ACM 40322 – The trial transcript is 2,141 pages long and the record of trial contains eight volumes consisting of ten Prosecution Exhibits, 40 Defense Exhibits, 66 Appellate Exhibits, and one Court Exhibit. Appellant is not currently confined. Civilian appellate defense counsel, who was also trial defense counsel, has begun drafting the AOE and undersigned counsel has completed her review of the record. Undersigned counsel is coordinating with civilian appellate defense counsel and this appellant on the identified issues and finalizing the AOE, currently due 19 May 2024.

2. *United States v. Baumgartner*, No. ACM 40413 – The trial transcript is 797 pages long and the record of trial contains seven volumes consisting of six Prosecution Exhibits, 17 Defense Exhibits, 44 Appellate Exhibits, and one Court Exhibit. Appellant is currently confined. Undersigned counsel has written the draft AOE, which is pending civilian appellate defense

counsel's addition of one potential issue relating to ineffective assistance of counsel. This AOE will be submitted early June.

3. *United States v. Dominguez-Garcia*, No. ACM S32694 (f rev) – This appellant's AOE was submitted on 24 April 2024. The Government's Answer is expected by 28 May 2024, upon which undersigned counsel will assess whether a reply is warranted.

4. *United States v. Clark*, No. ACM 40461 – The trial transcript is 1,060 pages long and the record of trial is 11 volumes consisting of 19 Prosecution Exhibits, 26 Defense Exhibits, 59 Appellate Exhibits, and one court exhibit. Appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

5. *United States v. Giles*, No. ACM 40482 – The trial transcript is 791 pages long and the record of trial is comprised of seven volumes containing seven Prosecution Exhibits, 14 Defense Exhibits, and 49 Appellate Exhibits. Appellant is not currently confined. Counsel has not yet completed her review of this appellant's record.

6. *United States v. Baker*, No. ACM 40521 – The trial transcript is 157 pages long and the record of trial is comprised of four volumes containing eight Prosecution Exhibits, one Defense Exhibit with several subparts, and 18 Appellate Exhibits. Appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

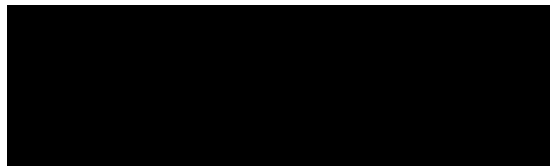
7. *United States v. Santiago Roldan*, No. ACM S32761 - The trial transcript is 149 pages long and the record of trial is comprised of three volumes containing nine Prosecution Exhibits, seven Defense Exhibits, and three Appellate Exhibits. Appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

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

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

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

Respectfully submitted,

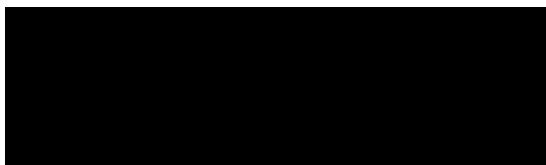
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SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel

Five horizontal black rectangular redaction boxes of varying lengths covering contact information.

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 Air Force Government Trial and Appellate Operations Division on 3 May 2024.



SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel



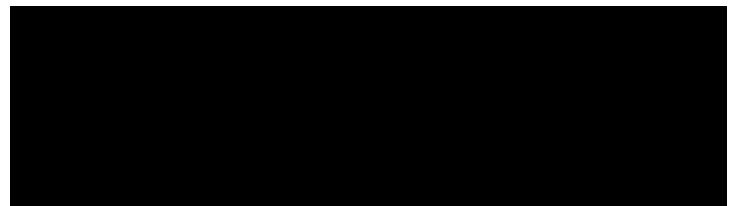
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Staff Sergeant (E-5)	)	ACM 40535
ERIC W. SINGLETON, USAF,	)	
<i>Appellant.</i>	)	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.

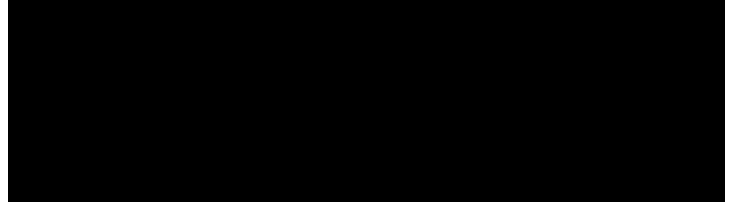


J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division



CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 7 May 2024.



J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division



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

UNITED STATES	)	No. ACM 40535
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Eric W. SINGLETON	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 1

On 4 June 2024, 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. Appellant's case has been docketed with this court since 20 November 2023. While we consider the days since docketing, we also consider the number of days that have passed since Appellant's sentencing on 16 June 2023, which is currently 356 days.

Accordingly, it is by the court on this 6th day of June, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant shall file any assignments of error not later than **17 July 2024**.

Each request for an enlargement of time will be considered on its merits. Appellant's counsel is advised that any subsequent motions for enlargement of time, shall include, in addition to matters required under this court's Rules of Practice and Procedure, statements as to: (1) whether Appellant was advised of Appellant's right to a timely appeal, (2) whether Appellant was provided an update of the status of counsel's progress on Appellant's case, (3) whether Appellant was advised of the request for an enlargement of time, and (4) whether Appellant agrees with the request for an enlargement of time.



FOR THE COURT

[Redacted signature block]

OLGA STANFORD, Capt, USAF
Commissioner

UNITED STATES,) APPELLANT’S MOTION
Appellee,) FOR ENLARGEMENT
) OF TIME (FIFTH)
v.)
) Before Panel No. 1
Staff Sergeant (E-5))
ERIC W. SINGLETON,) No. ACM 40535
United States Air Force,)
Appellant.) 4 June 2024

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE) brief. Appellant requests an enlargement for a period of 30 days, which will end on **17 July 2024**. The record of trial was docketed with this Court on 20 November 2023. From the date of docketing to the present date, 197 days have elapsed. On the date requested, 240 days will have elapsed.

On 16 June 2023, a general court-martial convened at Moody Air Force Base, Georgia, consisting of officer and enlisted members found Appellant, contrary to his pleas, guilty of one charge and two specifications of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ). R. at 1, 12, 175-76, 1588. Consistent with his pleas, Appellant was acquitted of one charge and two specifications of domestic violence, in violation of Article 128b, UCMJ, and one charge and one specification of assault consummated by a battery upon a child under 16 years of age, in violation of Article 128, UCMJ. R. at 12, 176, 1588. On 17 June 2023, the panel of officer and enlisted members sentenced Appellant to be reduced to the grade of E-2, to forfeit all pay and allowances, to be confinement for one year and six months, and to be dishonorably discharged.

R. at 1735-36. The convening authority took no action on the findings or sentence and denied Appellant's request for deferment of the reduction in grade. Record of Trial, Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Eric W. Singleton, dated 11 July 2023.

The trial transcript is 1,738 pages long and the record of trial is comprised of twelve volumes containing six Prosecution Exhibits, 17 Defense Exhibits, one Court Exhibit, and 89 Appellate Exhibits. Appellant is currently confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned 25 cases; 21 cases are pending before this Court (18 cases are pending AOE's) and four cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). To date, seven cases have priority over the present case:

1. *United States v. Dominguez-Garcia*, No. ACM S32694 (f rev) – Undersigned counsel is currently drafting the petition for grant of review and supplement to the petition for grant of review for the CAAF.

2. *United States v. Clark*, No. ACM 40461 – The trial transcript is 1,060 pages long and the record of trial is 11 volumes consisting of 19 Prosecution Exhibits, 26 Defense Exhibits, 59 Appellate Exhibits, and one court exhibit. Appellant is not currently confined. Counsel is reviewing the record.

3. *United States v. Folts*, No. ACM 40322 – Since Appellant's last request for an enlargement of time, undersigned counsel read the 2,141-page transcript for *United States v. Folts* and assisted civilian counsel with drafting and finalizing the AOE before going on two weeks of overseas leave. Civilian appellant defense counsel filed this appellant's AOE on 16 May 2024 (while undersigned counsel was on leave). The Government's Answer is expected on or near

15 June 2024 (a Saturday), upon which undersigned counsel will turn to drafting a reply brief. Any reply brief may impact undersigned counsel's processing and review of *United States v. Clark*, No. ACM 40461.

4. *United States v. Giles*, No. ACM 40482 – The trial transcript is 791 pages long and the record of trial is comprised of seven volumes containing seven Prosecution Exhibits, 14 Defense Exhibits, and 49 Appellate Exhibits. Appellant is not currently confined. Counsel has not yet completed her review of this appellant's record.

5. *United States v. Baumgartner*, No. ACM 40413 – Since Appellant's last request for an enlargement of time, undersigned counsel finalized and submitted this appellant's AOE on 3 June 2024 (after two weeks of overseas leave). The Government's Answer is expected sometime in July, although pending motions in this case may affect the anticipated filing date. Depending on timing, any reply brief may impact undersigned counsel's review of *United States v. Clark*, No. ACM 40461, and *United States v. Giles*, No. ACM 40482.

6. *United States v. Baker*, No. ACM 40521 – The trial transcript is 157 pages long and the record of trial is comprised of four volumes containing eight Prosecution Exhibits, one Defense Exhibit with several subparts, and 18 Appellate Exhibits. Appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

7. *United States v. Santiago Roldan*, No. ACM S32761 - The trial transcript is 149 pages long and the record of trial is comprised of three volumes containing nine Prosecution Exhibits, seven Defense Exhibits, and three Appellate Exhibits. Appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

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

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

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

Respectfully submitted,

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SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel

Five horizontal black rectangular redaction boxes of varying lengths, covering contact information such as address, phone number, and email.

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 Air Force Government Trial and Appellate Operations Division on 4 June 2024.

[REDACTED]

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Staff Sergeant (E-5)	)	ACM 40535
ERIC W. SINGLETON, USAF,	)	
<i>Appellant.</i>	)	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.

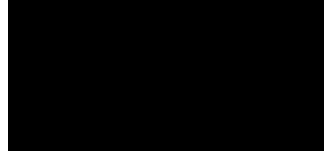
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BRITTANY M. SPEIRS, Maj, USAFR
Appellate Government Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 5 June 2024.



BRITTANY M. SPEIRS, Maj, USAFR
Appellate Government Counsel



UNITED STATES,) APPELLANT’S MOTION
Appellee,) FOR ENLARGEMENT
) OF TIME (SIXTH)
v.)
) Before Panel No. 1
Staff Sergeant (E-5))
ERIC W. SINGLETON,) No. ACM 40535
United States Air Force,)
Appellant.) 3 July 2024

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE) brief. Appellant requests an enlargement for a period of 30 days, which will end on **16 August 2024**. The record of trial was docketed with this Court on 20 November 2023. From the date of docketing to the present date, 226 days have elapsed. On the date requested, 270 days will have elapsed.

On 16 June 2023, a general court-martial convened at Moody Air Force Base, Georgia, consisting of officer and enlisted members found Appellant, contrary to his pleas, guilty of one charge and two specifications of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ). R. at 1, 12, 175-76, 1588. Consistent with his pleas, Appellant was acquitted of one charge and two specifications of domestic violence, in violation of Article 128b, UCMJ, and one charge and one specification of assault consummated by a battery upon a child under 16 years of age, in violation of Article 128, UCMJ. R. at 12, 176, 1588. On 17 June 2023, the panel of officer and enlisted members sentenced Appellant to be reduced to the grade of E-2, to forfeit all pay and allowances, to be confinement for one year and six months, and to be dishonorably discharged.

R. at 1735-36. The convening authority took no action on the findings or sentence and denied Appellant's request for deferment of the reduction in grade. Record of Trial, Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Eric W. Singleton, dated 11 July 2023.

The trial transcript is 1,738 pages long and the record of trial is comprised of twelve volumes containing six Prosecution Exhibits, 17 Defense Exhibits, one Court Exhibit, and 89 Appellate Exhibits. Appellant is currently confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned 29 cases; 24 cases are pending before this Court (20 cases are pending AOE's) and five cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). To date, six cases have priority over the present case:

1. *United States v. Clark*, No. ACM 40461 – The trial transcript is 1,060 pages long and the record of trial is 11 volumes consisting of 19 Prosecution Exhibits, 26 Defense Exhibits, 59 Appellate Exhibits, and one court exhibit. Appellant is not currently confined. Undersigned counsel is in the midst of completing her record review to be able to advise this appellant on assignments of error and file the AOE.

2. *United States v. Giles*, No. ACM 40482 – The trial transcript is 791 pages long and the record of trial is comprised of seven volumes containing seven Prosecution Exhibits, 14 Defense Exhibits, and 49 Appellate Exhibits. Appellant is not currently confined. Counsel has not yet completed her review of this appellant's record.

3. *United States v. Baker*, No. ACM 40521 – The trial transcript is 157 pages long and the record of trial is comprised of four volumes containing eight Prosecution Exhibits, one Defense

Exhibit with several subparts, and 18 Appellate Exhibits. Appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

4. *United States v. Baumgartner*, No. ACM 40413 – Since Appellant’s last request for an enlargement of time, undersigned counsel finalized and submitted this appellant’s AOE on 3 June 2024. This Court ordered affidavits from trial defense counsel in this case, due to the Court no later than 26 July 2024. The Government’s Answer is expected within 14 days after.

5. *United States v. Santiago Roldan*, No. ACM S32761 - The trial transcript is 149 pages long and the record of trial is comprised of three volumes containing nine Prosecution Exhibits, seven Defense Exhibits, and three Appellate Exhibits. Appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

6. *United States v. Casillas*, No. 24-0089/AF - Undersigned counsel was recently assigned to take over this case from an appellate defense counsel who is changing assignments. This case was recently granted at the CAAF (14 June 2024), and undersigned counsel is assisting with the Grant Brief and will be handling the Reply Brief and any oral argument.

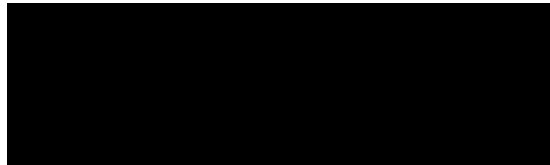
Additionally, since Appellant’s last request for an enlargement of time, undersigned counsel completed briefing in *United States v. Folts*, No. ACM 40322, filing the Reply Brief on 28 June 2024, and participated in oral argument and preparation for *United States v. Braum*, No. ACM 40434.

Appellant was advised of his right to a timely appeal. Appellant was provided an update of the status of undersigned counsel’s progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

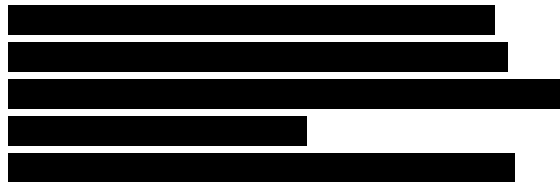
Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

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

Respectfully submitted,

A large black rectangular redaction box covering the signature and name of the undersigned counsel.

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel

Five horizontal black rectangular redaction boxes of varying lengths, covering the contact information of the undersigned counsel.

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 Air Force Government Trial and Appellate Operations Division on 3 July 2024.

[REDACTED]

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Staff Sergeant (E-5)	)	ACM 40535
ERIC W. SINGLETON, USAF,	)	
<i>Appellant.</i>	)	Panel No. 1
	)	

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

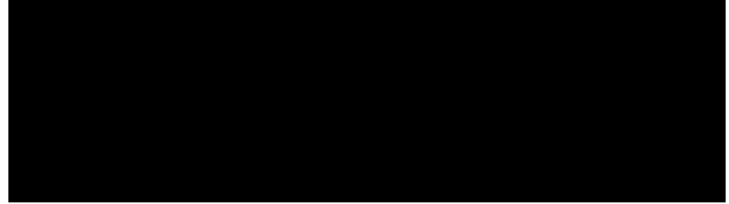
Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division

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 3 July 2024.



J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division



UNITED STATES,) APPELLANT’S MOTION
Appellee,) FOR ENLARGEMENT
) OF TIME (SEVENTH)
v.)
) Before Panel No. 1
Staff Sergeant (E-5))
ERIC W. SINGLETON,) No. ACM 40535
United States Air Force,)
Appellant.) 5 August 2024

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE) brief. Appellant requests an enlargement for a period of 30 days, which will end on **15 September 2024**. The record of trial was docketed with this Court on 20 November 2023. From the date of docketing to the present date, 259 days have elapsed. On the date requested, 300 days will have elapsed.

On 16 June 2023, a general court-martial convened at Moody Air Force Base, Georgia, consisting of officer and enlisted members found Appellant, contrary to his pleas, guilty of one charge and two specifications of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ). R. at 1, 12, 175-76, 1588. Consistent with his pleas, Appellant was acquitted of one charge and two specifications of domestic violence, in violation of Article 128b, UCMJ, and one charge and one specification of assault consummated by a battery upon a child under 16 years of age, in violation of Article 128, UCMJ. R. at 12, 176, 1588. On 17 June 2023, the panel of officer and enlisted members sentenced Appellant to be reduced to the grade of E-2, to forfeit all pay and allowances, to be confinement for one year and six months, and to be dishonorably discharged.

R. at 1735-36. The convening authority took no action on the findings or sentence and denied Appellant's request for deferment of the reduction in grade. Record of Trial, Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Eric W. Singleton, dated 11 July 2023.

The trial transcript is 1,738 pages long and the record of trial is comprised of twelve volumes containing six Prosecution Exhibits, 17 Defense Exhibits, one Court Exhibit, and 89 Appellate Exhibits. Appellant is currently confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned 32 cases; 23 cases are pending before this Court (14 cases are pending AOE's) and nine cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). To date, four cases have priority over the present case:

1. *United States v. Giles*, No. ACM 40482 – Undersigned counsel has completed her review of the record and conducting research for the AOE. This AOE is expected to be submitted early September, after completing the two anticipated Reply Briefs below.

2. *United States v. Baumgartner*, No. ACM 40413 – The Government's Answer is expected on or before 6 August 2024. Upon receipt, undersigned counsel will begin the Reply Brief.

3. *United States v. Casillas*, No. 24-0089/AF – Undersigned counsel was recently assigned to take over this case from an appellate defense counsel who is changing assignments. The Grant Brief was filed 22 July 2024. The Government's Answer is expected on or before 21 August 2024. Upon receipt, undersigned counsel will begin the Reply Brief.

4. *United States v. Leipart*, No. 23-0163/AF – The CAAF issued a decision in this case on 1 August 2024. Undersigned counsel anticipates filing a petition of certiorari to the United States Supreme Court within 90 days, barring any extensions.

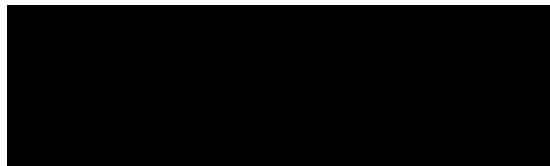
Since Appellant's last request for an EOT, undersigned counsel reviewed *United States v. Clark*, No. ACM 40461 (an 11-volume and 1,060-page transcript case), and she conducted necessary research to advise that appellant on a possible AOE brief. Undersigned counsel also assisted with the four-issue Grant Brief for *United States v. Casillas*, and reviewed the 791-page, seven-volume record for *United States v. Giles*, No. ACM 40482.

Appellant was advised of his right to a timely appeal. Appellant was provided an update of the status of undersigned counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

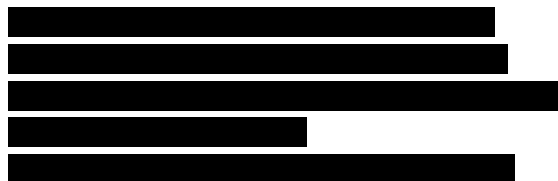
Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

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

Respectfully submitted,

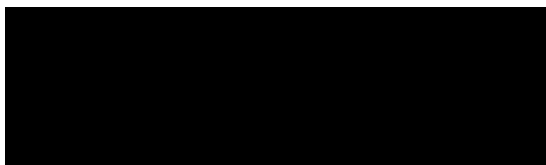
A large black rectangular redaction box covering the signature area.

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel

Five horizontal black rectangular redaction boxes of varying lengths covering contact information.

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 Air Force Government Trial and Appellate Operations Division on 5 August 2024.



SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Staff Sergeant (E-5)	)	ACM 40535
ERIC W. SINGLETON, USAF,	)	
<i>Appellant.</i>	)	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 to file an Assignment of Error in this case.

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

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

[REDACTED]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division

[REDACTED]
[REDACTED]
[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 6 August 2024.

[REDACTED]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division

[REDACTED]
[REDACTED]
[REDACTED]

UNITED STATES,) APPELLANT’S MOTION
Appellee,) FOR ENLARGEMENT
) OF TIME (EIGHTH)
v.)
) Before Panel No. 1
Staff Sergeant (E-5))
ERIC W. SINGLETON,) No. ACM 40535
United States Air Force,)
Appellant.) 3 September 2024

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE) brief. Appellant requests an enlargement for a period of 30 days, which will end on **15 October 2024**. The record of trial was docketed with this Court on 20 November 2023. From the date of docketing to the present date, 288 days have elapsed. On the date requested, 330 days will have elapsed.

On 16 June 2023, a general court-martial convened at Moody Air Force Base, Georgia, consisting of officer and enlisted members found Appellant, contrary to his pleas, guilty of one charge and two specifications of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ). R. at 1, 12, 175-76, 1588. Consistent with his pleas, Appellant was acquitted of one charge and two specifications of domestic violence, in violation of Article 128b, UCMJ, and one charge and one specification of assault consummated by a battery upon a child under 16 years of age, in violation of Article 128, UCMJ. R. at 12, 176, 1588. On 17 June 2023, the panel of officer and enlisted members sentenced Appellant to be reduced to the grade of E-2, to forfeit all pay and allowances, to be confinement for one year and six months, and to be dishonorably discharged.

R. at 1735-36. The convening authority took no action on the findings or sentence and denied Appellant's request for deferment of the reduction in grade. Record of Trial, Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Eric W. Singleton, dated 11 July 2023.

The trial transcript is 1,738 pages long and the record of trial is comprised of twelve volumes containing six Prosecution Exhibits, 17 Defense Exhibits, one Court Exhibit, and 89 Appellate Exhibits. Appellant is not currently confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned 34 cases; 21 cases are pending before this Court (15 cases are pending AOE's); 12 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF); and one case is pending a petition to the United States Supreme Court. To date, four cases have priority over the present case:

1. *United States v. Giles*, No. ACM 40482 – Undersigned counsel has drafted the AOE, which is undergoing final review. This AOE will be submitted on 5 September 2024.

2. *United States v. Casillas*, No. 24-0089/AF – Undersigned counsel is currently researching and drafting the Reply Brief for a four-issue appeal to the CAAF, due 16 September 2024. Undersigned counsel anticipates oral argument for this case will be later this year, which will likely impact her ability to review Appellant's case.

3. *United States v. Leipart*, No. 23-0163/AF – The CAAF issued a decision in this case on 1 August 2024. Undersigned counsel anticipates filing a petition of certiorari to the United States Supreme Court within 90 days, barring any extensions.

4. *United States v. Folts*, No. ACM 40322 – On 26 August 2024, this Court issued an opinion in this appellant's case. Undersigned counsel is working with civilian counsel to draft a petition and supplement to the CAAF.

Additionally, military appellate defense counsel took on eight cases from departing military appellate defense counsel. Three of these cases are now pending petitions and supplements to the CAAF; their timing may impact Appellant's case. The remaining cases are awaiting a decision from this Court and the CAAF. Depending on timing and next steps, these other cases may be prioritized over Appellant's case. Finally, *United States v. Gray*, No. ACM 40648, is a direct appeal case that was docketed with this Court on 4 October 2023 (over a month before Appellant's case was docketed). It took the Government 293 days to produce the 399-page verbatim transcript. This case is substantially smaller and has been docketed longer than Appellant's; therefore, it is possible this case will be prioritized over Appellant's case. Appellant has been notified of this possibility and will be updated accordingly should such prioritization occur.

Since Appellant's last request for an enlargement of time, undersigned counsel drafted and filed the reply brief for *United States v. Baumgartner*, No. ACM 40413. She also researched and drafted the AOE for *United States v. Giles*, No. ACM 40482, and began prepping for *United States v. Casillas*, No. 24-0089/AF.

Appellant was advised of his right to a timely appeal. Appellant was provided an update of the status of undersigned counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

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

Respectfully submitted,

[REDACTED]

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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 Air Force Government Trial and Appellate Operations Division on 3 September 2024.

[REDACTED]

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Staff Sergeant (E-5)	)	ACM 40535
ERIC W. SINGLETON, USAF,	)	
<i>Appellant.</i>	)	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 to file an Assignment of Error in this case.

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

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

[REDACTED]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division

[REDACTED]
[REDACTED]
[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 4 September 2024.

[REDACTED]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division

[REDACTED]
[REDACTED]
[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee,

V.

Staff Sergeant (E-5)

ERIC W. SINGLETON,

United States Air Force,

Appellant.

) APPELLANT'S MOTION

) FOR ENLARGEMENT

) OF TIME (NINETH)

)

) Before Panel No. 1

)

) No. ACM 40535

)

) 30 September 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE) brief. Appellant requests an enlargement for a period of 30 days, which will end on **14 November 2024**. The record of trial was docketed with this Court on 20 November 2023. From the date of docketing to the present date, 315 days have elapsed. On the date requested, 360 days will have elapsed.

On 16 June 2023, a general court-martial convened at Moody Air Force Base, Georgia, consisting of officer and enlisted members found Appellant, contrary to his pleas, guilty of one charge and two specifications of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ). R. at 1, 12, 175-76, 1588. Consistent with his pleas, Appellant was acquitted of one charge and two specifications of domestic violence, in violation of Article 128b, UCMJ, and one charge and one specification of assault consummated by a battery upon a child under 16 years of age, in violation of Article 128, UCMJ. R. at 12, 176, 1588. On 17 June 2023, the panel of officer and enlisted members sentenced Appellant to be reduced to the grade of E-2, to forfeit all pay and allowances, to be confinement for one year and six months, and to be dishonorably discharged. R. at 1735-36. The convening authority took no action on the findings

or sentence and denied Appellant's request for deferment of the reduction in grade. Record of Trial, Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Eric W. Singleton, dated 11 July 2023.

The trial transcript is 1,738 pages long and the record of trial is comprised of twelve volumes containing six Prosecution Exhibits, 17 Defense Exhibits, one Court Exhibit, and 89 Appellate Exhibits. Appellant is not currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned 37 cases; 24 cases are pending before this Court (15 cases are pending AOE's), 11 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF), and two cases are pending petitions to the United States Supreme Court. To date, five cases have priority over the present case:

1. *United States v. Johnson*, No. 24-0004/SF – On 24 September 2024, the CAAF specified two issues in this case for briefing. Undersigned counsel inherited this case from an appellate defense counsel who changed duty assignments. This appellant's brief, which counsel is currently drafting, is due on 24 October 2024. Appellant has been updated about this prioritized case.

2. *United States v. Giles*, No. ACM 40482 – This AOE was submitted on 5 September 2024. Upon receipt of the Government's Answer Brief, undersigned counsel will assess whether a Reply Brief is warranted and then draft any such Reply.

3. *United States v. Leipart*, No. 24A288 – The CAAF issued a decision in this case on 1 August 2024. Undersigned counsel will file a petition of certiorari to the United States Supreme Court by 29 December 2024.

4. *United States v. Wells*, No. 23-0219/AF - The CAAF issued a decision in this case on 24 September 2024. Undersigned counsel anticipates filing a petition of certiorari to the United

States Supreme Court by 23 December 2024, barring any extensions. Appellant has been updated about this prioritized case.

5. *United States v. Casillas*, No. 24-0089/AF – Undersigned counsel filed the Reply Brief on 16 September 2024. Oral argument has yet to be scheduled.

Additionally, military appellate defense counsel took on ten cases from departing military appellate defense counsel. Two of these cases are pending petitions and supplements to the CAAF; their timing may impact Appellant's case. The remaining cases are awaiting a decision from this Court and the CAAF. Depending on timing and next steps, these other cases may be prioritized over Appellant's case.

Since Appellant's last request for an enlargement of time, undersigned counsel drafted and filed the reply brief for *United States v. Casillas*, No. 24-0089/AF, filed three motions for reconsideration at this Court due to new CAAF precedent, filed a petition and supplement to the CAAF for *United States v. Hollenback*, 24-0235/AF, and filed an application to the Supreme Court to request additional time for *United States v. Leipart*, No. 24A288. Counsel also attended the Joint Appellate Advocacy Training from 26-27 September 2024.

Appellant was advised of his right to a timely appeal. Appellant was provided an update of the status of undersigned counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

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

Respectfully submitted,

[REDACTED]

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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 Air Force Government Trial and Appellate Operations Division on 30 September 2024.

[REDACTED]

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Staff Sergeant (E-5)	)	ACM 40535
ERIC W. SINGLETON, USAF,	)	
<i>Appellant.</i>	)	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 to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 360 days in length. Appellant's 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.

[REDACTED]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division

[REDACTED]
[REDACTED]
[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 1 October 2024.

[REDACTED]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division

[REDACTED]
[REDACTED]
[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee,

V.

Staff Sergeant (E-5)

ERIC W. SINGLETON,

United States Air Force,

Appellant.

) APPELLANT'S MOTION

) **FOR ENLARGEMENT**

) OF TIME (TENTH)

)

) Before Panel No. 1

)

) No. ACM 40535

)

) 4 November 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file an Assignments of Error (AOE) brief. Appellant requests an enlargement for a period of 30 days, which will end on **14 December 2024**. The record of trial was docketed with this Court on 20 November 2023. From the date of docketing to the present date, 350 days have elapsed. On the date requested, 390 days will have elapsed.

On 16 June 2023, a general court-martial convened at Moody Air Force Base, Georgia, consisting of officer and enlisted members found Appellant, contrary to his pleas, guilty of one charge and two specifications of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ). R. at 1, 12, 175-76, 1588. Consistent with his pleas, Appellant was acquitted of one charge and two specifications of domestic violence, in violation of Article 128b, UCMJ, and one charge and one specification of assault consummated by a battery upon a child under 16 years of age, in violation of Article 128, UCMJ. R. at 12, 176, 1588. On 17 June 2023, the panel of officer and enlisted members sentenced Appellant to be reduced to the grade of E-2, to forfeit all pay and allowances, to be confinement for one year and six months, and to be dishonorably discharged. R. at 1735-36. The convening authority took no action on the findings

or sentence and denied Appellant's request for deferment of the reduction in grade. Record of Trial, Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Eric W. Singleton, dated 11 July 2023.

The trial transcript is 1,738 pages long and the record of trial is comprised of twelve volumes containing six Prosecution Exhibits, 17 Defense Exhibits, one Court Exhibit, and 89 Appellate Exhibits. Appellant is not currently confined.

Captain Jordan Grande was recently detailed to take over this case after considering new developments to Capt Castanien's docket. Captain Castanien has not moved to withdraw as counsel yet. Both undersigned counsel's priority lists are below. Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provide the following information.

Captain Grande is currently assigned 19 cases; 15 cases are pending before this Court (14 cases are pending AOE's); and one case is pending a Grant Brief before the United States Court of Appeals for the Armed Forces (CAAF). Only her case before the CAAF is prioritized over Appellant's case: *United States v. Roan*, No. 24-0104/AF. Capt Grande is currently researching and drafting this two-issue Grant Brief, due 20 November 2024. Upon completion, she anticipates being able to turn to Appellant's case.

Captain Castanien is currently assigned 38 cases; 22 cases are pending before this Court (17 cases are pending AOE's), 14 cases are pending before the CAAF, and two cases are pending petitions to the United States Supreme Court. To date, five cases have priority over the present case:

1. *United States v. Johnson*, No. 24-0004/SF – Capt Castanien is finalizing this two-issue Grant Brief, due today, 4 November 2024. Any reply brief will be due after the Government's answer, sometime in early December.

2. *United States v. Casillas*, No. 24-0089/AF – On 29 October 2024, the CAAF ordered additional briefing in this case. Briefs are currently due 28 November 2024.

3. *United States v. Leipart*, No. 24A288 – The CAAF issued a decision in this case on 1 August 2024. Undersigned counsel will file a petition of certiorari to the United States Supreme Court by 29 December 2024.

4. *United States v. Wells*, No. 23-0219/AF – The CAAF issued a decision in this case on 24 September 2024. Undersigned counsel anticipates filing a petition of certiorari to the United States Supreme Court by 23 December 2024, barring any extensions.

5. *United States v. Folts*, No. ACM 40322 – On 26 August 2024, this Court issued an opinion in this appellant’s case. As this Court denied the motion for reconsideration, undersigned counsel is now working with civilian appellate defense counsel on drafting the petition and supplement to the CAAF, due in early December.

Since Appellant’s last EOT, Capt Castanien wrote the Grant Brief for *Johnson*, drafted and filed the reply brief for *United States v. Giles*, No. ACM 40482, drafted and filed the supplement to the petition for grant of review for *United States v. Wood*, No. 25-0005/AF, and drafted another motion for reconsideration based on *United States v. Williams*, __ M.J. __, 2024 CAAF LEXIS 501 (C.A.A.F. Sept. 5, 2024).

The additional briefing ordered in *Casillas* prompted Capt Castanien to review her docket with supervisory counsel to assess the possibility of assigning substitute counsel to expedite review of Appellant’s case. Captain Grande was detailed to this case on 30 October 2024. Transfer and turnover of Appellant’s case from Capt Castanien to Capt Grande will begin this week.

Appellant was advised of his right to a timely appeal. Appellant was provided an update of the status of undersigned counsel’s progress on his case. Appellant was advised of the request

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

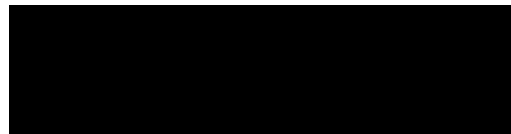
Through no fault of Appellant, undersigned counsel have been unable complete their review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

WHEREFORE, Appellant respectfully requests that this Court grant the requested enlargement of time for good cause shown.

Respectfully submitted,



SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel



JORDAN L. GRANDE, Capt, USAF
Appellate Defense Counsel



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 Air Force Government Trial and Appellate Operations Division on 4 November 2024.

[REDACTED]

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Staff Sergeant (E-5)	)	ACM 40535
ERIC W. SINGLETON, USAF,	)	
<i>Appellant.</i>	)	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 to file an Assignment of Error in this case.

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

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

[REDACTED]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division

[REDACTED]
[REDACTED]
[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 4 November 2024.

[REDACTED]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division

[REDACTED]
[REDACTED]
[REDACTED]

UNITED STATES,) **CONSENT MOTION**
) **TO EXAMINE SEALED**
) **MATERIALS**
)
) Before Panel No. 1
)
) No. ACM 40535
)
) 2 December 2024
)
)

Appellee,

v.

Staff Sergeant (E-5)
ERIC W. SINGLETON
United States Air Force,
Appellant.

Pursuant to Rules 3.1, 23.1(b), and 23.3(f) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel hereby moves this Court to permit appellate counsel for the Appellant and the Government to examine the following sealed materials in Appellant’s record of trial:

- ## Facts

¹ All references to the Record in this EOT refer to the second transcript included in the ROT. The first transcript appears to be a different version of a portion of the transcript. It is 540 pages long and begins with the 20 December 2022 Article 39(a) session and ends with the 19 January 2023 Article 39(a) session. The second transcript begins again with the 20 December session.

acquitted of one charge and two specifications of domestic violence, in violation of Article 128b, UCMJ, and one charge and one specification of assault consummated by a battery upon a child under 16 years of age, in violation of Article 128, UCMJ. R. at 12, 176, 1588. On 17 June 2023, the panel of officer and enlisted members sentenced Appellant to be reduced to the grade of E-2, to forfeit all pay and allowances, to be confinement for one year and six months, and to be dishonorably discharged. R. at 1735-36. The convening authority took no action on the findings or sentence and denied Appellant's request for deferment of the reduction in grade. Record of Trial, Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Eric W. Singleton, dated 11 July 2023.

During the proceedings, the parties argued both M.R.E. 412 and M.R.E. 513 issues. Appellate Exhibits III – VII and transcript pages 24-56 relate to the M.R.E. 412 issue discussed by the parties. Appellate Exhibits XVII – XX and XXV – XLVI; and transcript pages 105-154 and 295-322, relate to an M.R.E. 513 issue discussed by the parties. Appellate Exhibits XXI and XXIV – XXVI relate to the rulings on these two issues. All the sealed material was available to the parties at trial and ordered sealed by the Military Judge.

Law

Pursuant to Rule for Court Martial (R.C.M.) 1113(b)(3)(B)(i), “materials presented or reviewed at trial and sealed . . . may be examined by appellate counsel upon a colorable showing to the reviewing or appellate authority that examination is reasonably necessary to a proper fulfillment of the appellate counsel's responsibilities[.]”

Although Courts of Criminal Appeals have a broad mandate to review the record unconstrained by an appellant's assignments of error, that broad mandate does not reduce the importance of adequate representation. As we said in *United States v. Ortiz*, 24 M.J. 323, 325 (C.M.A. 1987), independent review is not the same as competent appellate representation.

United States v. May, 47 M.J. 478, 481 (C.A.A.F. 1998).

Air Force regulations governing professional duties and conduct of appellate defense counsel impose upon counsel, *inter alia*, a duty to provide “competent representation,”² perform “reasonable diligence,”³ and to “give a client his or her best professional evaluation of the questions that might be presented on appeal...[to] consider all issues that might affect the validity of the judgment of conviction and sentence...[to] advise on the probable outcome of a challenge to the conviction or sentence...[and to] endeavor to persuade the client to abandon a wholly frivolous appeal or to eliminate contentions lacking in substance.”⁴ These requirements are consistent with those imposed by the state bar to which counsel belong.⁵

This Court may grant relief “on the basis of the entire record” of trial. Article 66, UCMJ, 10 U.S.C. § 866. Appellate defense counsel detailed by the Judge Advocate General shall represent accused servicemembers before this Court. Article 70, UCMJ, 10 U.S.C. § 870.

Analysis

The parties “presented” and “reviewed” the sealed material at trial. It is reasonably necessary for counsel to review this sealed material for counsel to competently conduct a professional evaluation of the case and to uncover all potential issues which might afford Appellant relief. Because examination of the material in question is reasonably necessary to the fulfillment of counsel’s Article 70, UCMJ, duties, and because the materials were made available to the parties at trial, Appellant has provided the “colorable showing” required by R.C.M. 1113(b)(3)(B)(i) to permit counsel’s examination of the sealed material and has shown good cause

² Air Force Instruction (AFI) 51-110, *Professional Responsibility Program*, Attachment 2: Air Force Rules of Professional Conduct, Rule 1.1 (11 Dec. 2018).

³ *Id.* at Rule 1.3.

⁴ AFI 51-110, Attachment 7: Air Force Standards for Criminal Justice, Standard 4-8.3(b).

⁵ Undersigned counsel is licensed to practice law in Connecticut.

to grant this motion.

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

WHEREFORE, Appellant respectfully requests that this Honorable Court grant this consent motion and permit appellate counsel for the Appellant and the Government to examine the aforementioned sealed material contained within the original record of trial.

Respectfully submitted,

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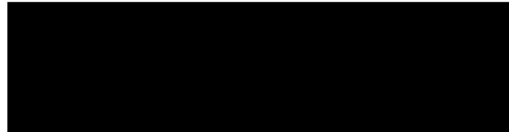
JORDAN L. GRANDE, Capt, USAF
Appellate Defense Counsel

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 2 December 2024.

Respectfully submitted,

A large black rectangular redaction box covering the signature of the sender.

JORDAN L. GRANDE, Capt, USAF
Appellate Defense Counsel

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

UNITED STATES	)	No. ACM 40535
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Eric W. SINGLETON	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 1

On 2 December 2024, counsel for Appellant submitted a Consent Motion to Examine Sealed Materials, requesting both parties be allowed to examine Appellate Exhibits III–VII, XVII–XXI, XXIV–XXVI, and XXXIV–XLVI, and transcript pages 24–56, 105–154, and 295–322, which were reviewed by trial and defense counsel at Appellant’s court-martial.

This court held a status conference on 11 December 2024 to discuss the Consent Motion to Examine Sealed Materials. Colonel Matthew D. Talcott, Chief of Government Trial and Appellate Operations, represented the Government. Captain Jordan L. Grande represented Appellant. Colonel Pilar G. Wennrich, Chief of Appellate Defense, also attended. The purpose for this status conference was for the court to discuss its initial review of the motion and of Appellant’s record of trial.

The court noted that there appears to be two copies of transcript pages reflecting a page count of 1–540, though the pagination varies among each of the two versions. Further, with regard to the sealed portions of the record, the requested appellate exhibits were properly sealed and listed in the court reporter’s Exhibit List. As for the sealed portions of the transcript pages, the following transcript pages are identified as sealed in the record and on the court reporter’s Index of Proceedings document: pages 24–56, 105–154, and 295–322. However, the following transcript pages, not identified on an index in Appellant’s record of trial, are also sealed: pages 25–58, 109–160, 308–337, 581–716, 755–757, and 1167–1169. The record does not reflect any sealed materials being reviewed by the trial judge *in camera*.

Appellant’s counsel clarified that she was moving to examine all sealed transcript pages, including the sealed audio of the closed sessions, and the sealed appellate exhibits. The Government agreed with appellate defense counsel; therefore, the motion remained a Consent Motion to Examine Sealed Materials, specifically Appellate Exhibits III–VII, XVII–XXI, XXIV–XXVI, and

XXXIV–XLVI; from the first transcript, the sealed transcript pages 24–56, 105–154, and 295–322; and now from the discussion at the status conference, and appellate defense counsel and the Government’s request to view *all sealed materials* in the record, the sealed transcript pages 25–58, 109–160, 308–337, 581–716, 755–757, and 1167–1169, from the second transcript. Their request would also include the sealed audio discs of the closed sessions from 17 January 2023, and from 12–14 June 2023.

Appellate counsel may examine sealed materials released to counsel at trial “upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities.” Rule for Courts-Martial 1113(b)(3)(B)(i), *Manual for Courts-Martial, United States* (2024 ed.).

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

Accordingly, it is by the court on this 13th day of December 2024,

ORDERED:

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

Appellate defense counsel and appellate government counsel may view **Appellate Exhibits III–VII, XVII–XXI, XXIV–XXVI, and XXXIV–XLVI, and from the first transcript, the sealed transcript pages 24–56, 105–154, and 295–322, and from the second transcript, the sealed transcript pages 25–58, 109–160, 308–337, 581–716, 755–757, and 1167–1169, and the sealed audio discs of the closed sessions from 17 January 2023, and from 12–14 June 2023, subject to the following conditions:**

To view the sealed materials, counsel will coordinate with the court.

No counsel granted access to the materials may photocopy, photograph, reproduce, disclose, or make available the content to any other individual without the court’s prior written authorization.



FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

UNITED STATES,) APPELLANT’S MOTION
) FOR ENLARGEMENT
) OF TIME (ELEVENTH)
)
) Before Panel No. 1
)
)
) No. ACM 40535
)
)
) 2 December 2024

Appellee,

v.

Staff Sergeant (E-5)

ERIC W. SINGLETON,

United States Air Force,

Appellant.

Pursuant to Rule 23.3(m)(3) and (6) of this Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file an Assignments of Error (AOE) brief. Appellant requests an enlargement for a period of 30 days, which will end on **13 January 2025**. The record of trial was docketed with this Court on 20 November 2023. From the date of docketing to the present date, 378 days have elapsed. On the date requested, 420 days will have elapsed.

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the panel of officer and enlisted members sentenced Appellant to be reduced to the grade of E-2, to forfeit all pay and allowances, to be confinement for one year and six months, and to be dishonorably discharged. R. at 1735-36. The convening authority took no action on the findings or sentence and denied Appellant's request for deferment of the reduction in grade. Record of Trial, Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Eric W. Singleton, dated 11 July 2023.

The trial transcript is 1,738 pages long and the record of trial is comprised of twelve volumes containing six Prosecution Exhibits, 17 Defense Exhibits, one Court Exhibit, and 89 Appellate Exhibits. Appellant is not currently confined.

Captain Jordan Grande took over this case from Captain Samantha Castanien, who has not yet requested to withdraw as counsel. Capt Grande is lead counsel and diligently working on Appellant's case. Both undersigned counsel's priority lists are below. Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information.

Captain Grande is currently assigned 19 cases; 15 cases are pending before this Court (14 cases are pending AOE's); and one case is pending a Reply Brief before the United States Court of Appeals for the Armed Forces (CAAF). Only her case before the CAAF is prioritized over Appellant's case: *United States v. Roan*, No. 24-0104/AF. The Government's Answer Brief is currently due 27 December 2024, though the Government indicated it may file a request for an extension. Upon receipt, she will evaluate whether a reply is required. Since filing the Grant Brief in *Roan* on 27 November 2024, Capt Grande has begun review of Appellant's case. She has reviewed 750 pages of transcript, 86 exhibits, and all the pretrial and post-trial documents. She plans on filing the motion to review sealed materials this week. While Capt Grande is optimistic about completing her review of the record, issue spotting, and conferring with Appellant by 13

January 2025, she anticipates one more EOT request will be necessary to complete briefing due to the size of Appellant's record.

Captain Castanien is currently assigned 37 cases; 21 cases are pending before this Court (16 cases are pending AOE's), 14 cases are pending before the CAAF, and two cases are pending petitions to the United States Supreme Court. To date, five cases have priority over the present case:

1. *United States v. Casillas*, No. 24-0089/AF – On 29 October 2024, the CAAF ordered additional briefing in this case on three issues. Briefs are due 9 December 2024, which Capt Castanien is currently working.

2. *United States v. Leipart*, No. 24A288 – The CAAF issued a decision in this case on 1 August 2024. Capt Castanien drafted the petition of certiorari to the United States Supreme Court, which is undergoing final review before being sent to print. It will be filed by 29 December 2024.

3. *United States v. Folts*, No. ACM 40322 – On 26 August 2024, this Court issued an opinion in this appellant's case. As this Court denied the motion for reconsideration, Capt Castanien is working with civilian appellate defense counsel to complete the supplement to the petition for grant of review, which will be due to the CAAF mid-December.

4. *United States v. Johnson*, No. 24-0004/SF – Capt Castanien filed this two-issue Grant Brief on 4 November 2024. Any reply brief will be due after the Government's answer, which is due 20 December.

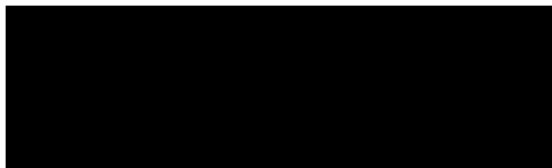
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Appellant was advised of his right to a timely appeal. Appellant was provided an update of the status of undersigned counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel have been unable complete their review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

WHEREFORE, Appellant respectfully requests that this Court grant the requested enlargement of time for good cause shown.

Respectfully submitted,



SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel

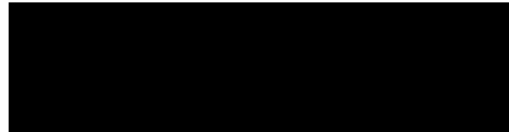


JORDAN L. GRANDE, Capt, USAF
Appellate Defense Counsel



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 Air Force Government Trial and Appellate Operations Division on 2 December 2024.

A large black rectangular redaction box covering the signature of Jordan L. Grande.

JORDAN L. GRANDE, Capt, USAF
Appellate Defense Counsel

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Staff Sergeant (E-5)	)	ACM 40535
ERIC W. SINGLETON, USAF,	)	
<i>Appellant.</i>	)	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 to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 420 days in length. Appellant’s over year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 4 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not completed review of the record of trial at this late stage of the appellate process.

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

[REDACTED]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division

[REDACTED]
[REDACTED]
[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 3 December 2024.

[REDACTED]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division

[REDACTED]
[REDACTED]
[REDACTED]

UNITED STATES,
Appellee,

v.

Staff Sergeant (E-5)
ERIC W. SINGLETON,
United States Air Force,
Appellant.

) **APPELLANT’S MOTION**
) **FOR ENLARGEMENT**
) **OF TIME (TWELFTH)**
)
) Before Panel No. 1
)
) No. ACM 40535
)
) 5 January 2025

Pursuant to Rule 23.3(m)(3) and (6) of this Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file an Assignments of Error (AOE) brief. Appellant requests an enlargement for a period of three days, which will end on **16 January 2025**. The record of trial was docketed with this Court on 20 November 2023. From the date of docketing to the present date, 412 days have elapsed. On the date requested, 423 days will have elapsed.

On 16 June 2023, a general court-martial convened at Moody Air Force Base, Georgia, consisting of officer and enlisted members found Appellant, contrary to his pleas, guilty of one charge and two specifications of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ). R. at 1, 12, 175-76, 1588.¹ Consistent with his pleas, Appellant was acquitted of one charge and two specifications of domestic violence, in violation of Article 128b, UCMJ, and one charge and one specification of assault consummated by a battery upon a child under 16 years of age, in violation of Article 128, UCMJ. R. at 12, 176, 1588. On 17 June 2023,

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the panel of officer and enlisted members sentenced Appellant to be reduced to the grade of E-2, to forfeit all pay and allowances, to be confinement for one year and six months, and to be dishonorably discharged. R. at 1735-36. The convening authority took no action on the findings or sentence and denied Appellant's request for deferment of the reduction in grade. Record of Trial, Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Eric W. Singleton, dated 11 July 2023.

The trial transcript is 1,738 pages long and the record of trial is comprised of twelve volumes containing six Prosecution Exhibits, 17 Defense Exhibits, one Court Exhibit, and 89 Appellate Exhibits. Appellant is not currently confined.

Captain Jordan Grande took over this case from Captain Samantha Castanien. Capt Grande is lead counsel and diligently working on Appellant's case. Capt Grande anticipated completing the AOE by 13 January 2025, however, both she and her 4-year-old son became ill with flu-like symptoms the week of 30 December 2024. Capt Grande is a single mother and her own illness, as well as time spent caring for her son while he was ill, lead to a decrease in the amount of time she anticipated working on Appellant's case. This, combined with the anticipated closure of school for weather on 6 January 2025, and the closure of school on 9 January 2025 to mark President Carter's passing as announced by President Biden on 30 December 2024, has delayed progress on this AOE. The requested three additional days will ensure that Appellant's case is thoroughly reviewed and briefed, despite these unexpected events.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Capt Grande remains lead on this case and Captain Castanien does not intend to withdraw as counsel. Capt Castanien remaining on this case will not delay Capt Grande's filing of

the AOE. However, because she has not withdrawn, Capt Castanien's priority list is included with Capt Grande's below. A.F. Ct. Crim. App. R. 23.3(m)(6).

Captain Grande is currently assigned 21 cases; 17 cases are pending before this Court (14 cases are pending AOE's); and one case is pending a Reply Brief before the United States Court of Appeals for the Armed Forces (CAAF). Only her case before the CAAF is prioritized over Appellant's case: *United States v. Roan*, No. 24-0104/AF. The Government filed its Answer Brief 3 January 2025, and Capt Grande and civilian counsel are currently drafting a Reply Brief.

Capt Castanien is currently assigned 38 cases; 19 cases are pending before this Court (16 cases are pending AOE's), 17 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF), and one case is pending a petition to the United States Supreme Court. Since Appellant's last request for an extension of time, Capt Castanien filed the petition for *United States v. Leipart* with the United States Supreme Court, filed the additional briefing for *United States v. Casillas*, No. 24-0089/AF, with the CAAF, filed the three-issue supplement to the petition for grant of review in *United States v. Folts*, No. 25-0043/AF, at the CAAF, filed an additional petition and supplement to the CAAF (*United States v. Scott*), and completed the reply brief in *United States v. Johnson*, No. 24-0004/SF, for the CAAF. To date, several cases have priority over Appellant's case, although these cases and Capt Castanien's prioritization will not delay the filing of Appellant's AOE any further due to Capt Grande taking lead:

1. *United States v. Casillas*, No. 24-0089/AF – Capt Castanien is preparing for oral argument on 14 January 2025.

2. *United States v. Johnson*, No. 24-0004/SF – Capt Castanien is preparing for oral argument on 29 January 2025.

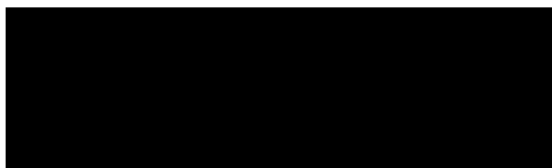
3. *United States v. Wells*, No. 24A520 – The CAAF issued a decision in this case on 24 September 2024. Capt Castanien will file a petition of certiorari to the United States Supreme Court by 21 February 2025. She intends to work this case simultaneously with *United States v. Kim*, No. ACM 24007.

Appellant was advised of his right to a timely appeal. Appellant was provided an update of the status of undersigned counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel have been unable complete their review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise him regarding potential errors.

WHEREFORE, Appellant respectfully requests that this Court grant the requested enlargement of time for good cause shown.

Respectfully submitted,



SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel

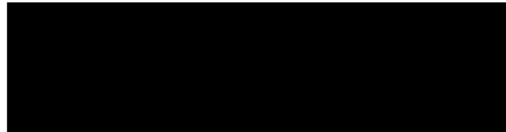


JORDAN L. GRANDE, Capt, USAF
Appellate Defense Counsel



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 Air Force Government Trial and Appellate Operations Division on 5 January 2025.

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JORDAN L. GRANDE, Capt, USAF
Appellate Defense Counsel

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Staff Sergeant (E-5)	)	ACM 40535
ERIC W. SINGLETON, USAF,	)	
<i>Appellant.</i>	)	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 to file an Assignment of Error in this case.

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

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

[REDACTED]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division

[REDACTED]
[REDACTED]
[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 7 January 2025.

[REDACTED]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division

[REDACTED]
[REDACTED]
[REDACTED]

Filed 16 January 2025

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

UNITED STATES,
Appellee,

v.

Staff Sergeant (E-5)
ERIC W. SINGLETON,
United States Air Force,
Appellant.

Before Panel No. 1

No. ACM 40535

BRIEF ON BEHALF OF APPELLANT

JORDAN L. GRANDE, Capt, USAF
Appellate Defense Counsel



Counsel for Appellant

Statement of the Case

On 16 June 2023, a general court-martial convened at Moody Air Force Base, Georgia, consisting of officer and enlisted members found Staff Sergeant (SSgt) Singleton, contrary to his pleas, guilty of one charge and two specifications of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920.¹ R. at 1, 12, 175-76, 1588.² SSgt Singleton was acquitted of one charge and two specifications of domestic violence, in violation of Article 128b, UCMJ, 10 U.S.C. § 928b, and one charge and one specification of assault consummated by a battery upon a child under 16 years of age, in violation of Article 128, UCMJ, 10 U.S.C. § 928. R. at 176, 1588. The military judge merged the specifications of Charge I for the purposes of sentencing. R. at 1601-03. On 17 June 2023, the members sentenced SSgt Singleton to be reduced to the grade of E-2, to forfeit all pay and allowances, to be confined for one year and six months, and to be dishonorably discharged.³ R. at 1735-36. The convening authority took no action on the findings or sentence and denied Staff Sergeant's request for deferment of the reduction in grade. Convening Authority Decision on Action.

Statement of Facts

SJ met SSgt Singleton in August or September 2021 when she was 20 years old. R. at 806. The two met on a dating application. R. at 964. At the time, SJ had a one-year-old son and was

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

² All references to the Record in this Brief refer to the second transcript included in the ROT. The first transcript is 540 pages long and begins with the 20 December 2022 Article 39(a) session and ends with the 19 January 2023 Article 39(a) session. The second transcript is 1738 pages long and begins with the 20 December 2022 session and is a record of all sessions.

³ The dishonorable discharge was a mandatory minimum punishment. Article 120(d)(2), UCMJ.

pregnant by a former partner. R. at 776-77. Within six months of meeting, SJ and SSgt Singleton moved in together and got married. R. at 776-78.

1. SJ's delayed sexual assault report.

SJ and SSgt Singleton broke up in July 2021. R. at 812. On 9 July 2021, SJ reported that SSgt Singleton hit her oldest son on the back in June 2021. R. at 813.⁴ She interviewed with Security Forces and denied that SSgt Singleton ever sexually abused her, despite Security Forces specifically asking her about any issues in her relationship with SSgt Singleton. R. at 1232-33. Between July 2021 and October 2021, SJ interviewed with Security Forces and OSI four times, and never disclosed any sexual assault. R. at 1232, 1252, 1404. SSgt Singleton filed for divorce in August 2021. R. at 830-31. In October 2021, the case involving SJ's child abuse allegations against SSgt Singleton was to be closed out with no action. R. at 1295, 1298. During this closeout phone call with the legal office, SJ for the first time reported that SSgt Singleton sexually assaulted her approximately one month after her youngest son was born. R. at 808.

2. SJ previously lost custody of her oldest son.

Before meeting SSgt Singleton, SJ exhibited erratic behavior. R. at 869. For example, a civilian court determined that SJ was a danger to her oldest son. R. at 869. SJ's parents were granted emergency custody in June 2020 (a few months before she met SSgt Singleton) because SJ presented "an imminent threat of emotional, mental, and physical harm" to her son. R. at 843-44; Def. Ex. A. Later in July 2020, SJ's parents were granted full custody. R. at 870; Def. Ex. A. There is nothing in the record to indicate that order was ever rescinded. R. at 873-74. SJ was in violation of the order throughout the charged timeframe. R. at 874.

3. SJ was diagnosed with borderline personality disorder during the charged timeframe.

⁴ This allegation is the subject of Charge III. SSgt Singleton was acquitted of this charge.

SJ's youngest son was born in March 2021. R. at 807. SSgt Singleton was listed as the baby's father on the birth certificate, though he was not the biological father. *Id.* In May 2021, shortly after her youngest son was born, SJ began seeing a therapist. R. at 807, 1184-85. The therapist diagnosed SJ with borderline personality disorder (BPD) and treated her for her inability to accurately perceive events, a distorted sense of reality, and manipulative behavior during the charged timeframe. R. at 1187-88. In describing the manipulative behavior, her therapist stated:

Manipulation is experienced as telling somebody part of the story, significant parts, telling them, mother called and she really didn't call because she's upset with you. Just, all kinds of different things are being distorted, lied about, or put into extreme situations. There's a lot of catastrophizing that goes on, so you're not always sure what's really being said.

R. at 1191. The therapist described the inaccurate perception of events in the following way:

It's because their perceptions are fairly distorted. Again, typically because of unresolved trauma, typically because of the intensity of their emotions. There's a term called affect regulation, and if people – most mood disorders, specifically borderline, they react on their mood, not on the cognitive. So when their moods are so high, they don't hear and clearly able to process what's going on around them.

R. at 1187-88.

Argument

I.

SSgt Singleton's convictions are not factually sufficient because (1) SJ is the only source of evidence and she is not credible and (2) the assault could not have physically occurred in the way she described.

Additional Facts

1. SJ's description of the sexual assault

SJ testified that a few weeks after she gave birth in March 2021, she was home cooking when SSgt Singleton came home from work for lunch. R. at 781. After they ate lunch, she was washing dishes when SSgt Singleton came up from behind her and pressed her into the counter. He stuck his hand in her leggings and was "pushing [her] to engage with him." R. at 782. She told him no, and

then he penetrated her vagina with two fingers on his left hand as she tried to move away. R. at 782-84, 838. He then pulled her tight leggings down to her mid-thigh with one hand while the other was still penetrating her. R. at 783-84, 838-39. He allegedly then unfastened his belt with both hands while still penetrating her with his left hand and pulled his own OCP uniform pants down. *Id.* The belt was the type that required a “pinch and release” to unclasp it. R. at 838-39. He allegedly next pinned her against the counter, grabbed her hip with his hand, and penetrated her vagina with his penis. R. at 784.

During cross-examination, trial defense counsel asked a compound question: “So in this scenario how is that he’s able to remove the leggings with one hand in your underwear and the other hand being on its own? Were you assisting him with removing your leggings?” R. at 839. SJ replied only, “No, sir.” *Id.* Trial defense counsel did not follow up on the unanswered first question, though he later attempted to clarify the issue. He asked:

Now you indicated just now as you were describing the belt you used a two-handed motion, but you testified both here in court and previously to OSI, that during this entire period of time one of his hands was in your underwear. So how is it possible that he was using both hands to remove the belt while one hand was still in your underwear?

R. at 839. SJ answered: “It – it’s hard to describe the belt. It’s one of those – it’s not a regular belt. It has two prongs on one side of it where it releases at.” *Id.*

Defense Counsel asked, “In both your testimony today and prior interviews, you have routinely used both hands to symbolize removing of the belt; is that right?” R. at 839-40. SJ began to answer by stating “Of disconnecting the belt . . .” but was then interrupted by a computer noise in the courtroom. She never finished her answer and trial defense counsel did not return to this topic. *Id.* On re-direct examination, the prosecutor attempted to get SJ to agree that she meant the belt had to be fastened with two hands but could be opened with one hand. R. at 882. On re-cross

examination, SJ again acknowledged that she demonstrated both hands pulling apart the belt. R. at 887.

2. SJ interviewed with law enforcement multiple times about SSgt Singleton and never mentioned sexual assault until the legal office was closing out the child abuse case.

SJ interviewed with Security Forces and OSI four times, collectively. R. at 1232, 1252, 1404. SJ never mentioned that SSgt Singleton sexually assaulted her during any of these interviews, even when specifically asked questions about her relationship with SSgt Singleton. R. at 1232-33.

In October 2021, a base legal office Victim Witness Assistant Program (VWAP) representative contacted SJ to close out the child abuse case. R. at 837. As part of the close-out process, the VWAP representative went through a checklist with SJ. *Id.* In response to a question on the checklist, SJ for the first time reported a sexual assault allegation, even though she had already interviewed with law enforcement four times regarding SSgt Singleton and had never mentioned sexual assault. R. at 837-38.

The same day that SJ made the sexual assault allegation during the conversation with the VWAP representative, SJ posted on Facebook, “I am the red flag. Welcome to hell, baby. Enjoy the ride. Ain’t no stopping.” R. at 837.

3. SJ reported SSgt Singleton for child abuse.

In June 2021, SJ was in the car with her brother Adam and her two sons driving to Florida when she told Adam that SSgt Singleton hit her son on the back two weeks earlier. R. at 944-45. Adam asked her for proof of the incident, but SJ provided none. R. at 946.

Approximately two weeks after that car ride, during an argument with SSgt Singleton, SJ sent Adam photographs that she claimed showed marks on her son’s back from “the handprint incident” and reported him for child abuse. R. at 813, 822. The military investigation into SJ’s child

abuse claims against SSgt Singleton closed out in September 2021. R. at 835. This incident was the subject of Charge III; SSgt Singleton was acquitted of this charge. EOJ.

In her November 2021 OSI interview, when asked about whether SSgt Singleton ever abused the children, SJ told investigators only that he had “flicked” her son on his fingers. R. at 841, 880-81. When confronted during cross-examination about why she did not mention the handprint incident during this interview, SJ stated, “I was aware that it was already had been investigated and I felt like it wasn’t – it wasn’t relevant to keep bringing it up if it was already been investigated.” R. at 880.

4. SJ contacted SSgt Singleton’s ex-fiancée.

SJ and her brother Adam contacted SSgt Singleton’s ex-fiancée, AH (who was the alleged victim in Charge II, Article 128b, UCMJ) through Facebook during the investigation. R. at 923-24, 1015-17. SJ and AH had at least one telephone conversation regarding SSgt Singleton and exchanged messages. R. at 1017. SJ wanted AH’s help with her divorce. *Id.* Adam and AH had a 45-minute telephone conversation in July 2021 wherein they discussed SSgt Singleton. R. at 923-24. AH later made claims about SSgt Singleton pointing a gun at her on several occasions while he was asleep, which formed the basis for the allegations in Charge II. R. at 1024.⁵

When asked under oath at trial about her conversations with AH, SJ first stated she did not talk to AH and then claimed she could not recall speaking with AH or “friending” her on Facebook. R. at 826-27. When confronted on cross-examination about her admission in her OSI interview that she had spoken with AH before reporting SSgt Singleton, she stated that she “[couldn’t] recall if she knew that.” *Id.*

⁵ SSgt Singleton was acquitted of all charges related to AH. EOJ.

The Defense's forensic psychologist, who is an expert on memory, Dr. T.C., testified that these witness interactions prior to trial had the potential to cause memory distortion. R. at 1349, 1353, 1358, 1366.

5. SJ testified for the first time at trial that she had disclosed the sexual assault to her therapist before her October 2021 report.

SJ stated, for the first time during her in-court testimony and after sitting through the Military Rule of Evidence (MRE) 513 hearing regarding her conversations with her therapist, that she previously told her therapist about the sexual assault before reporting to law enforcement. R. at 1379. When confronted about the fact that she never told OSI that she had previously disclosed the sexual assault allegation to her therapist, SJ claimed she told OSI this during her November 2021 interview and acknowledged that she was aware the entire interview was recorded. R. at 1379-80.

The lead OSI agent testified that she had reviewed the entire interview video the day before her testimony and that SJ made no mention of having previously disclosed the sexual assault allegation to her therapist. R. at 1416-17. The therapist testified that SJ never disclosed the assault to her, and she had reviewed her therapy notes to confirm. R. at 1191, 1449. The therapist also testified that she had asked SJ several times during therapy whether SSgt Singleton had ever "forced himself on her" and she said, "no." R. at 1448-49.

Standard of Review

This Court reviews questions of factual sufficiency when an appellant asserts an assignment of error and shows a specific deficiency in proof. *United States v. Harvey*, ___ M.J. ___, 2024 CAAF LEXIS 502, at *5 (C.A.A.F. Sept. 6, 2024) (citing Article 66(d)(1)(B) UCMJ). If this Court "is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding." That assessment is made de novo. *United States v. Williams*, No. ACM 40410, 2024 CCA LEXIS 317, at *32 (A.F. Ct. Crim.

App. July 31, 2024).

Law

For cases in where every finding of guilty entered into the record is for an offense that occurred on or after 1 January 2021, the UCMJ specifies this Court “may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.” Article 66(d)(1)(B)(i), UCMJ, 10 U.S.C. § 866(d)(1)(B)(i), William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 542(e), 134 Stat. 3388, 3612-13 (2021). If “the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding.”⁶ Article 66(d)(1)(B)(iii), UCMJ, 10 U.S.C. § 866(d)(1)(B)(iii) (2024 *MCM*). The Court of Appeals for the Armed Forces held “weight of the evidence” and “clearly convinced” do not change the burden of proof beyond a reasonable doubt given the quantum of proof required to sustain a conviction is the same. *Harvey*, 2024 CAAF LEXIS 502, at *10-12.

The previous test for factual sufficiency was “whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, the members of [this Court] are themselves convinced of appellant’s guilt beyond a reasonable doubt.” *United States v. Rosario*, 76 M.J. 114, 117 (C.A.A.F. 2017) (quoting *United States v. Oliver*, 70 M.J. 64, 68 (C.A.A.F. 2011)).

The standards for factual sufficiency review under the new statutory language are still not settled. As such, the CAAF granted review in *United States v. Csiti*, __ M.J. __, No. 24-0175/AF,

⁶ This standard does not require an appellant to show a total lack of evidence supporting an element, which would be redundant with legal sufficiency review. *United States v. Csiti*, No. ACM 40386, 2024 CCA LEXIS 160, at *18 (A.F. Ct. Crim. App. Apr. 29, 2024), *petition granted*, __ M.J. __, No. 24-0175/AF, 2024 CAAF LEXIS 533 (C.A.A.F. Sep. 11, 2024). [As noted above CAAF decided *Harvey* on Sept. 6, 2024.]

2024 CAAF LEXIS 533 (C.A.A.F. Sep. 11, 2024) (mem.); *United States v. McLeod*, __ M.J. __, No. 24-0189/AF, 2024 CAAF LEXIS 530 (C.A.A.F. Sep. 12, 2024) (mem.); and *United States v. Zhong*, __ M.J. __, No. 25-0011/AF, 2024 CAAF LEXIS 812 (C.A.A.F. Dec. 16, 2024) (mem.).

The changes to Article 66, UCMJ, do not hollow out factual sufficiency review. The prior version of Article 66(d), UCMJ, provided that the Courts of Criminal Appeals (CCAs) would approve only findings that are “correct in law and fact and . . . on the basis of the entire record, should be approved.”⁷ The Court of Military Appeals interpreted this language to require that members of a CCA “are themselves convinced of the accused’s guilt beyond a reasonable doubt.”⁸ Neither the old nor the new statute explicitly requires the CCAs believe the accused’s guilt beyond a reasonable doubt—this flows from case law alone. Where the standard is yet undetermined by the C.A.A.F., this Court should hesitate before interpreting revisions to strip an accused of a key substantive aspect of an appeal. Where this Court is not convinced beyond a reasonable doubt that evidence is sufficient, this should suffice to clearly convince this Court that the finding was against the weight of the evidence. In any event, the evidence in this case was so weak that, regardless of how the revised Article 66(d) is construed, reversal for factual insufficiency is warranted.

Analysis

SJ is the sole source of the Government’s evidence for SSgt Singleton’s conviction; the factual sufficiency of the Government’s case depends on the reliability and the accuracy of her testimony alone. SJ is not a credible narrator; her testimony is both incredulous and unreliable. She is unable to accurately perceive events, lied on the stand, and is motivated by the significant possibility of losing custody of her son. Moreover, it is physically impossible for the assault to

⁷ Article 66(d), UCMJ, 10 U.S.C. § 866(d) (2019).

⁸ *United States v. Turner*, 25 M.J. 324, 324-25 (C.M.A. 1987).

have occurred in the way she described, unless SSgt Singleton had three arms. Collectively these issues render the sole evidence supporting the conviction (SJ's testimony) factually insufficient.

1. SSgt Singleton's conviction for sexual assault is factually insufficient because SJ had significant credibility issues, and her testimony was the only evidence of any alleged assault.

No reasonable fact finder could have found SSgt Singleton sexually assaulted SJ because SJ was not a credible witness, and the only evidence of the assault is her in-court testimony. During the charged timeframe, SJ had a condition that caused her to misperceive events and exist in a distorted sense of reality. Throughout the trial, her testimony contradicted itself and was inconsistent with her OSI interview. Moreover, she committed perjury when she testified that she had previously disclosed the sexual assault to her therapist and that she told OSI about this disclosure in November 2021. Proof beyond a reasonable doubt cannot exist where SJ lied on the stand, exhibited these symptoms during the charged timeframe, and had a motive to fabricate the allegation to avoid losing custody of her youngest son.

When evaluating the factual sufficiency of these specifications, the Court should look to the detail or lack thereof with which SJ could recall the events as charged, the extent to which her in-court testimony was consistent with or inconsistent with her prior statements, and how significant those variations were. *See United States v. Palik*, No. ACM 40225, 2023 CCA LEXIS 185, at *12-14 (A.F. Ct. Crim. App. April 28, 2023), *rev'd on other grounds*, 84 M.J. 284 (C.A.A.F. 2024). In *Palik*, this Court found a conviction factually sufficient where the victim was able to describe the assault with great detail, where she testified with clarity as to the sequence of events, where the victim's prior statements were consistent with her in-court testimony, and where the Government introduced corroborating evidence of the assault in the form of photographs. *Id.* The strong evidence present in *Palik* does not exist to support the convictions in SSgt Singleton's case. Even though

Palik was decided under the prior standard for factual sufficiency, this Court can and should still review the strength of SJ's testimony considering the same factors it identified in *Palik*. Even making allowances for not having seen SJ's testimony⁹ and affording the appropriate deference to the factfinder, the evidence shows that SJ testified with minimal detail about the assault, described it in a way that is physically impossible, contradicted her OSI statement repeatedly, and the Government introduced no corroborating evidence of the assault. Under these circumstances, this Court should be clearly convinced that the finding of guilty was against the weight of the evidence.

a. SJ's perception of events cannot be trusted.

SJ had a condition during the charged timeframe that caused her to misperceive events. She was diagnosed with borderline personality disorder (BPD) in May 2021. R. at 1185. SJ was being treated for the following symptoms of BPD during the charged timeframe: dissociation, anger, difficulty accurately perceiving events, a distorted sense of reality, and manipulative behavior. R. at 1186-88. SJ's recollection of events through her testimony is the only evidence to support SSgt Singleton's convictions, yet her account of events cannot be trusted beyond a reasonable doubt based on these symptoms.

SJ previously had lost custody of her elder son because per her parents' June 2020 petition and a civil court's agreement, she presented a physical danger to him due to her mental instability. Def. Ex. A. In accordance with the civilian court's order, she was only supposed to see her son during supervised visits, but she was in violation of that order throughout the charged timeframe. R. at 874. There is no evidence that the order had been rescinded or modified. R. at 873-74; Def. Ex.

⁹ This Court's ability to assess witness credibility is bolstered in cases to which the Military Justice Act of 2016 reforms apply because the record now consists of an audio recording of the trial rather than a bare written transcript. This Court is now in a better position to assess witness credibility than it was in cases litigated before 2019, when the new R.C.M. 1112 took effect. Exec. Order No. 13,825, 83 Fed. Reg. 9889 (2018).

A. This removal of custody occurred only months before she met SSgt Singleton, and the order was still in place during the charged timeframe. SJ's therapist testified that in May 2021, after the birth of her second son and within the charged timeframe, SJ was still experiencing mental instability and was diagnosed with BPD. R. at 1187-88.

At trial, SJ's therapist testified that part of her treatment plan included a focus on helping her better understand perception and reality. R. at 1191. SJ misperceived events. R. at 1199. Her treatment included helping her understand "what really did happen" during events. R. at 1448. SJ's treatment plan also included addressing aspects of BPD that manifested as manipulation. R. at 1188. SJ's therapist made this diagnosis and treated her for these symptoms during the charged timeframe. This direct testimony from a neutral party who had the opportunity to clinically observe SJ's distortion of reality and her character for manipulation establishes reasonable doubt about whether her testimony should be trusted. This, along with the physical impossibility of her description of the alleged assault (which is discussed below) indicates that, even if SJ and SSgt Singleton did engage in sexual intercourse during the charged event, SJ did not accurately perceive this event and her perception about whether it was consensual cannot be trusted.

b. SJ's character for exaggerating and lying extended to her testimony at trial.

Throughout her testimony, SJ contradicted her many OSI interviews and often stated she "couldn't recall" when confronted with these inconsistencies. She lied about her collusion with AH, stating on cross-examination that she never spoke with AH, R. at 826-27, and then claiming she "couldn't recall" when confronted with the fact that she told OSI she had spoken with AH. *Id.* SJ, after sitting through the MRE 513 hearing, then claimed for the first time at trial that she had previously disclosed the sexual assault to her therapist. R. at 1379. Her therapist, a neutral third-party, testified that not only did SJ never disclose that SSgt Singleton sexually assaulted her, she

also specifically denied that SSgt Singleton had ever “forced himself on her.” R. at 1191, 1448-49. SJ then doubled down on this narrative, claiming that she told OSI in November 2021 that she had disclosed the sexual assault to her therapist. R. at 1379-80. The lead OSI agent contradicted SJ, stating that she had reviewed the entire interview video the day before her testimony and that SJ made no mention of having previously disclosed the sexual assault allegation to her therapist. R. at 1416-17.

SJ’s testimony is in direct conflict with two neutral witnesses – the lead OSI agent and her therapist. One of two things is necessarily true: (1) SJ is a perjurer; or (2) SJ honestly believes that she experiences events that *never* occurred.

Perjury constitutes a fraud on the court. *United States v. Giambra*, 33 M.J. 331 (C.A.A.F. 1991). The knowing use of perjured testimony is “fundamentally unfair, and [the testimony] must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.” *United States v. Thompson*, 2018 CCA LEXIS 599, at *2 (A. Ct. Crim. App. Dec. 19, 2018) (quoting *United States v. Agurs*, 427 U.S. 97, 103 (1976)). In *Agurs*, the Supreme Court held that “the knowing use of perjured testimony...involves a corruption of the truth-seeking function of the trial process.” *Id.* at 104. While it is unclear whether the prosecutors in this case were *necessarily* aware that SJ perjured herself, it is abundantly clear that they *should have known* that the testimony was perjured, given 1) she had never made this statement prior to trial and only made it after sitting through the MRE 513 hearing and the therapist’s testimony during the Defense’s case-in-chief, and 2) that two independent fact witnesses, who had both reviewed independent evidence, testified that she had not, in fact, ever disclosed a sexual assault to her therapist. *Agurs* makes clear that even where the prosecution *should have known* of a perjury, a conviction obtained

is” fundamentally unfair” and “must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.” *Id.* at 103.

The second possibility, that SJ honestly believes that she experiences events that never occurred, is perhaps even more concerning. This possibility is supported by her therapist’s testimony that during the charged timeframe she was being treated for an inability to accurately perceive events, and that she needed treatment for a therapist to understand “what actually happened” during events. R. at 1448, 1999. Her assertions that she previously disclosed the sexual assault to her therapist and that she told OSI about this disclosure during her November 2021 interview, despite objective evidence to the contrary, are reason to doubt the entirety of her testimony.

In either case, her uncorroborated testimony is not sufficient to provide proof beyond a reasonable doubt. These contradictions, untruths, and inconsistencies, coupled with SJ’s motive to fabricate and a clinical diagnosis that manifested as difficulty perceiving events and manipulation, demonstrate that this Court should be convinced that the findings of guilt are against the greater weight of the evidence.

c. SJ was motivated to fabricate the sexual assault allegation to avoid losing custody of her youngest son.

The timeline of SJ’s delayed report is evidence of her motive to fabricate the allegation. SJ previously lost custody of her oldest son, and at the time of the allegations, she was in violation of that custody order. R. at 873-74. SSgt Singleton, though not her son’s biological father, had signed the birth certificate. R. at 807. SJ only alleged SSgt Singleton had sexually assaulted her after the civilian and military child abuse investigations were to be closed out without action and after SSgt Singleton had filed for divorce. R. at 830-31, 1295, 1298.

SJ had cause for concern about the custody of her youngest son, given that she did not even legally have custody of her oldest son during the charged timeframe, SSgt Singleton had filed for

divorce, and she was diagnosed with BPD in May 2021.¹⁰ Despite interviewing with law enforcement four times in the summer of 2021, SJ never mentioned sexual assault until after the child abuse investigations were to be closed with no action and her window of opportunity to protect her custody of her son with baseless accusations was narrowing. It is only when the legal office called to close out these investigations and asked a series of questions from a checklist that SJ, who required treatment for manipulative behavior and to better understand perception versus reality according to her therapist, R. at 1185, 1187-8, 1191, saw an opportunity to fabricate a sexual assault allegation to avoid losing custody of her youngest son.

2. SSgt Singleton's conviction for sexual assault is factually insufficient because the assault as SJ described was physically impossible.

SJ is the only source of the Government's evidence for the finding of guilt in this case. Her description of the sexual assault does not make sense and where her testimony is the only evidence of the sexual assault, this Court should be clearly convinced that the conviction is against the weight of the evidence. Article 66(d)(1)(B)(iii), UCMJ. SJ was only briefly asked to describe the alleged sexual assault on direct examination. R. at 782-85. This was undoubtedly the most serious of the charges SSgt Singleton faced and, yet the Government spent almost no time asking SJ to describe the mechanics or provide a detailed description of the sexual assault. What little description SJ did provide described an assault that required SSgt Singleton to have three arms to perpetrate. Though the Government attempted to clarify the physical impossibility on redirect examination, SJ's testimony did not resolve the issue, because on re-cross examination SJ again acknowledged that the belt required two hands to unclasp. R. at 887.

¹⁰ SJ's previous mental health struggles led to the removal of custody of her oldest son. Def. Ex. A.

SJ described that at the same time SSgt Singleton was pressing her up against the kitchen counter, he also was penetrating her vagina with two fingers from his left hand and simultaneously managed to pull down her tight leggings with his one free hand without her assistance. R. at 783-84, 838-39. He then somehow unbuckled his uniform belt with *two hands* and pulled his pants down before then penetrating her with his penis, all the while still penetrating her with his left hand. R. at 784. During the little testimony SJ did provide about the sexual assault, she used two hands to describe how SSgt Singleton undid his belt. *Id.* Despite at one point agreeing with the prosecutor that what she *actually* meant was that two hands were required to *clasp* the belt, but only one was required to *undo* the belt, that testimony contradicted her testimony both before and after that statement. *Id.* This, too, was just one of many instances in which SJ's testimony flip-flopped and contradicted her own testimony throughout the proceedings. Given that the only evidence of this assault, SJ's testimony, describes a physically impossible act and the Government did not meet its burden to resolve that issue at trial, this Court should be clearly convinced that the finding of guilty in this case was against the weight of the evidence.

SSgt Singleton has made specific showings of deficiency in proof – that SJ's description of the assault was physically impossible, and she is not a credible witness. The issues with SJ's credibility are significant. This Court can give the proper deference to the factfinder given the members' opportunity to view the witness' demeanor in person. *Harvey*, 2024 CAAF LEXIS 502, at *8. However, here, there is no corroborating evidence to support SJ's testimony. When this Court evaluates the credibility of her testimony, it should consider that SJ has a diagnosis that manifests as manipulative behavior and an inability to accurately perceive events, her testimony is riddled with inconsistencies and outright, objectively proven perjury, and there is a strong motive for her to fabricate to minimize the risk of losing custody of her youngest son. Given these issues with the

Government's only evidence, the weight of the evidence is against the conviction. *See United States v. Pringle*, No. ACM 39172, 2017 CCA LEXIS 652, at *17-18 (A.F. Ct. Crim. App. Oct. 13, 2017) (where multiple inconsistencies in the victim's testimony, which could not be reconciled as honest but mistaken lapses of memory, led to a finding the evidence was factually insufficient). While *Pringle* was decided based on the previous test for factual sufficiency, this Court determined that the current test for factual sufficiency does not deprive it of the power to determine the credibility of witnesses and that "the significance of the credibility of particular witnesses or testimony will vary depending on the circumstances of the case." *United States v. Csiti*, No. ACM 40386, 2024 CCA LEXIS 160, at *18 (A.F. Ct. Crim. App. Apr. 29, 2024), *petition granted*, __ M.J. __, No. 24-0175/AF, 2024 CAAF LEXIS 533 (C.A.A.F. Sep. 11, 2024). Indeed, this Court's ability to assess witness credibility is bolstered in cases to which the Military Justice Act of 2016 reforms apply because the record now consists of an audio recording of the trial rather than a bare written transcript. This Court is now in a better position to assess witness credibility than it was in cases litigated before 2019, when the new R.C.M. 1112 took effect. Exec. Order No. 13,825, 83 Fed. Reg. 9889 (2018). As such, this Court should still consider SJ's testimony and her credibility in terms of the same factors analyzed in *Pringle* and find her testimony, as the Government's sole evidence in this case, clearly convinces this Court that the findings of guilty were against the weight of the evidence.

WHEREFORE, Appellant respectfully requests that this Honorable Court set aside of all the findings of guilty and the sentence.

[REDACTED]

JORDAN L. GRANDE, Capt, USAF
Appellate Defense Counsel

[REDACTED]

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 Air Force Government Trial and Appellate Operations Division on 16 January 2025.

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JORDAN L. GRANDE, Capt, USAF
Appellate Defense Counsel

A large black rectangular redaction box covering the contact information of the certifier.

APPENDIX A

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

II.

SSgt Singleton’s constitutional rights were violated by being convicted of offenses with no requirement that the court-martial panel (the functional equivalent of the jury) vote unanimously for guilt.

Additional Facts

While delivering findings instructions, the military judge informed the members, “The concurrence of at least three-fourths of the members present when the vote is taken is required for any finding of guilty. Since we have eight members, that means six members must concur in any finding of guilty.” R. at 1517. The members found SSgt Singleton guilty of Charge I. R. at 1588. It is unknown and unknowable whether that conviction was unanimous.

Standard of Review

The standard of review for questions of constitutional law is *de novo*. *United States v. Busch*, 75 M.J. 87, 91 (C.A.A.F. 2016).

Law and Analysis

In *United States v. Anderson*, the Court of Appeals for the Armed Forces (CAAF) held that non-unanimous findings of guilty do not violate a court-martial accused’s constitutional rights. *United States v. Anderson*, 83 M.J. 291 (C.A.A.F. 2023), *cert. denied*, 144 S. Ct. 1003 (2024). SSgt Singleton acknowledges that, absent intervening CAAF or Supreme Court case law, this Court is bound by the *Anderson* opinion. Nevertheless, SSgt Singleton maintains that *Anderson* was wrongly decided and expressly preserves this issue for further appellate review.

WHEREFORE, this Honorable Court should reverse the findings of guilty and the sentence and remand this case for further proceedings at which SSgt Singleton may be found guilty only upon a unanimous vote of the court-martial members.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	
<i>Appellee,</i>	)	ANSWER TO ASSIGNMENTS
	)	OF ERROR
v.	)	
	)	ACM 40535
Staff Sergeant (E-5)	)	
ERIC W. SINGLETON, USAF	)	Panel No. 1
<i>Appellant.</i>	)	

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

ISSUES PRESENTED

I.

**WHETHER APPELLANT'S CONVICTIONS ARE
FACTUALLY INSUFFICIENT?¹**

II.²

**WHETHER APPELLANT WAS DENIED HIS
CONSTITUTIONAL RIGHT TO A UNANIMOUS VERDICT?**

STATEMENT OF THE CASE

The United States generally accepts Appellant's Statement of the Case.

STATEMENT OF FACTS

Ms. SJ met Appellant in late August or early September 2020, and they married in March 2021. (R. at 775-76.) When they met, Ms. SJ had a one-year-old son and was pregnant with her

¹ Contrary to Appendix A and Rule 18 of this Court's Rules of Practice and Procedure, Appellant's brief fails to include an Assignments of Error section where he specifically sets forth either of his two presented issues. Based on section titles in Appellant's argument section, the Government believes the wording of the issues above properly codify the issues Appellant intends to raise to this Court.

² This issue is raised in the appendix pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

second son. (R. at 776.) Ms. SJ's second son was born in early March 2021 before Appellant and Ms. SJ were married. Ms. SJ said Appellant became a dad to both sons and signed Ms. SJ's second son's birth certificate. (R. at 777, 807.)

The birth of her second son brought complications. Ms. SJ said she was given the wrong medication which almost caused her to hemorrhage. (R. at 778.) Ms. SJ said her recovery after the birth was "long," more difficult than her first, and involved a lot of bleeding. (R. at 779.) Ms. SJ said the bleeding lasted several months and that she suffered "unbearable cramps" for the first month that persisted into the second month following the birth. (R. at 780.) Her doctor recommended no sexual activity for eight weeks. (Id.) Ms. SJ said Appellant was present when this recommendation was given to her by her medical provider.

Approximately one month after giving birth, Ms. SJ said Appellant came home for lunch and the two ate together. (R. at 781-82.) Ms. SJ recalled taking Appellant's plate to the sink when Appellant came up behind her and said that he had had a "difficult day." (R. at 782.) Appellant then stuck his hand down Ms. SJ's pants. Ms. SJ responded, "no not right now" and "that I was still bleeding and I was very uncomfortable." (Id.) Appellant then told Ms. SJ that it was her "wifely duty to take care of her husband" and kept saying how he had a long day at work. However, Ms. SJ kept telling Appellant "no." (Id.)

Ms. SJ continued, "He kept being forceful. He stuck his – he still had his hand in my pants and that's when he pulled down my leggings that I was wearing and he stated that 'it would be quick.'" (R. at 783.) Ms. SJ said Appellant penetrated her with his fingers and that she "tried pushing his hand away and pushing him back off of me from the counter." (Id.) On cross-examination, Ms. SJ agreed that Appellant used two fingers from his left hand to penetrate her and used his right hand to pull down her pants. (R. at 838.)

Appellant then unfasted his belt and pulled his OCP military pants down. (R. at 783, 838.) Ms. SJ agreed that Appellant's belt was the kind of belt that could be opened with one hand. (R. at 881-82.) When asked, "So you would need two hands to fasten it but you can open it with one hand," Ms. SJ replied, "Yes, ma'am." (R. at 881.)

Ms. SJ explained what happened next:

He pushed up against me, pinning me up against the counter. The water in the sink was still running and my son started crying and I told him "no" again, I needed to see why [my son] was crying, and he said that it wouldn't take long. That he needed to go back to work anyway.

...

He – he grabbed my hip with his hand and he stuck it inside.

(R. at 784.) Ms. SJ said she had told Appellant "no" two times before he placed his penis inside of her vagina.

Appellant continued until he ejaculated on Ms. SJ's back and said, "I don't need my easy bake oven getting pregnant." (R. at 785.) Ms. SJ said Appellant then asked for a paper towel, adjusted himself, pulled up his pants, and went back to work. Ms. SJ said the intercourse caused her pain because she was "very, very sore down there" and that she "just felt disgusting." (Id.)

After the incident, the couple moved to Ms. SJ's family farm because she "didn't feel safe" and "money issues." (R. at 787.) Ms. SJ also testified that there were times when Appellant prevented her from trying to go places with her kids. Ms. SJ described an instance where Appellant grabbed her arm as she was walking out of her backdoor carrying her son in his car seat. (R. at 789.) Ms. SJ said this bruised her arm. Appellant would also make comments about Ms. SJ's weight, saying things like "if I ever became fat or if I looked like my mother he

would leave and take the kids.” (R. at 790.) Appellant also tried to restrict what Ms. SJ ate. (R. at 790.)

The couple attended marriage counseling with Ms. NW to “bridge the communication gap between us two about sex.” (Id.) Ms. SJ also attended individual counseling due to postpartum depression concerns. (R. at 791.) Ms. SJ was seen by Ms. NW from May to June 2021. Ms. SJ said she was never made aware of any diagnosis or treatment plan from Ms. NW. (Id.)

On cross-examination, Ms. SJ was asked if she ever told Ms. NW that she was sexually assaulted. (R. at 809.) Ms. SJ answered, “Yes, I did tell her.” However, Ms. SJ did not feel that Ms. NW supported her when she made the disclosure. (R. at 883.)

Ms. SJ detailed an incident in the summer of 2021 where she had asked Appellant to watch the children while she went out and mowed the grass. (R. at 792.) As she was cutting the grass, Ms. SJ said Appellant came outside holding her oldest son, who was about a year-and-a-half old, at arm’s length. Appellant told Ms. SJ that her son had “pooped his diaper, and stuck his hands in it, and that I needed to come clean it up.” (R. at 793.) Ms. SJ noticed that her son was hysterical and crying uncontrollably. Upon cleaning him up, Ms. SJ saw “a handprint on my son’s back.” (Id.) A photo of the handprint is at Prosecution Exhibits 1 and 2.³

Ms. SJ testified that the couple broke up in July 2021, and she agreed that she initiated the breakup and that she left Appellant. (R. at 812.) When Appellant counsel asked, “You handed him your ring,” Ms. SJ replied, “Yes, sir.” (R. at 813.) Appellant would later serve her with divorce paperwork in August 2021. (R. at 830.) Ms. SJ testified that Appellant did not

³ Appellant was charged with battery upon a child but was acquitted of that offense.

provide her any money for groceries or other things because she received food stamps from the state of Georgia. She also had her own bank accounts. (R. at 786.)

On 9 July 2021, SSgt CJ, Ms. SJ's brother, contacted the authorities about the incident involving Ms. SJ's son. On 14 July 2021, Security Forces came to Ms. SJ's house to interview her. (R. at 826.) Ms. SJ denied having any knowledge of her brother contacting Ms. AH, Appellant's ex-fiancée,⁴ via Facebook messenger that day and did not recall if she knew her brother called Ms. AH that day. Ms. SJ denied having any conversations with Ms. AH on that day. (Id.) Ms. SJ did acknowledge becoming Facebook friends with Ms. AH at some point, but stated that she had never met Ms. AH in person. (R. at 827, 878.)

Ms. SJ also acknowledged that she did not tell law enforcement about being sexually assaulted when interviewed in July 2021. (Id.) Ms. SJ agreed that the focus of that interview was on her son, not her. (R. at 879.) When asked why she did not report the sexual assault to medical personnel, Ms. SJ said she "tried to go to the emergency room, but I didn't feel safe." (R. at 841.) Ms. SJ also highlighted that Appellant accompanied her to medical appointments. (R. at 882.)

Ms. SJ also acknowledged on cross-examination that she suffered postpartum depression after giving birth to her first son and that her parents sought a temporary custody order for the child. (R. at 843.) Defense Exhibit A is a court order granting temporary custody of the oldest child to Ms. SJ's parents, as well as a consent agreement between Ms. SJ and her parents. (Def. Ex. A.) The consent decree was signed in July 2020.

⁴ Appellant was charged with two domestic violence specifications involving Ms. AH but was acquitted of both specifications.

On cross-examination, Appellant’s counsel noted that she had testified that her son began living with her after this consent agreement went into effect. Ms. SJ said her son began living with her full-time again in the October-November timeframe of 2020. (R. at 875.) Noting that the consent agreement stated that Ms. SJ could only have visits with her son that were supervised by her parents, Appellant’s counsel asked, “Are you aware of any subsequent court order that returned custody to you?” (R. at 872-73.) Ms. SJ answered, “I – me and my parents had an understanding that I was more than capable to take care of and supervise my own children as it came to the agreement that they found I was no longer in an unstable and unsafe environment. So they did not supervise me while I had my children.” (R. at 873.)

Ms. SJ explained that she and her parents discussed her circumstances at that time and everyone agreed it would be a safe environment for her son to come back to her. (R. at 876.) When asked why she and her parents did not go back to court to amend the agreement, Ms. SJ said the impression was that “the temporary order only lasted for six months and after that time he would be returned to me.” (Id.)

Mr. AJ, Ms. SJ’s other brother, testified that Appellant “always came to me for advice and he would ask me what he should do in certain situations that he would ask about.” (R. at 891.) In early 2021, Mr. AJ said Appellant initiated a conversation about “having sex with my sister.” (R. at 897.) Mr. AJ testified, “[Appellant] told me – he said, ‘I have to force everything on your sister,’ and I didn’t know what he was talking about.” (Id.) Appellant also told Mr. AJ “I shouldn’t have to ask my wife to have sex with her.” (R. at 898.) Mr. AJ continued:

I – whenever he first initially started talking to me he said, “I always have to force everything with your sister”. I said, “what do you mean”, and that’s when he told me he said that he was just explaining that he had to force everything with – he said he had to force her to have sex.

(Id.) Mr. AJ said this alarmed him because “H[h]e had a sinister laugh whenever I told him, ‘you’re married you still have to ask her to have sex with you’, and he said, ‘I shouldn’t have to ask my wife to have sex with me.’” (R. at 908.)

Mr. AJ also testified that Ms. SJ told him in July 2021 that Appellant had sexually assaulted her. (R. at 922.)

Mr. AJ acknowledged contacting Ms. AH after law enforcement became involved in the child abuse allegations. (R. at 923.) Mr. AJ said he reached out to Ms. AH through Facebook to see how she knew Appellant. Mr. AJ said, “I reach out to [Ms. AH] completely on my own without anybody’s being asked – asking of me.” (Id.) Mr. AJ said he eventually spoke with Ms. AJ for about 45 minutes. (R. at 924.)

TSgt CJ testified that he had been in contact with his sister his entire life and stated that Ms. SJ was a truthful person. (R. at 942.)

Ms. AH testified that Mr. AJ reached out to her via Facebook messenger and that she spoke with him on the phone. (R. at 1012-13.) The two talked about how Ms. AH knew Appellant and their relationship. (R. at 1014.) Ms. AH did not think Ms. SJ was with Mr. AJ during that conversation, adding that she did not hear or speak to Ms. SJ. (R. at 1015.) Ms. AH said she had never met Ms. SJ. (R. at 1012.) Ms. AH said she later spoke with Ms. SJ on the phone for about 20 minutes “to tell her that she wasn’t crazy and that what she was experiencing happened to me as well.” (R. at 1017-18.) Ms. AH said Ms. SJ sked her to testifying during the divorce proceeding with Appellant but Ms. AH did not because “I didn’t really know her.” (R. at 1018.) When asked if Ms. SJ had ever told her that she was sexually assaulted, Ms. AH replied,

“I don’t believe she ever used that word, no. I believe she said that things happened that she didn’t want to but I don’t believe she ever said the word sexual assault.” (Id.)

In Appellant’s case-in-chief, Ms. NW testified that she was a licensed clinical social worker who provided family, marital, and individual counseling as well as trauma and substance abuse therapy. (R. at 1178.) Ms. NW said she was not qualified to prescribe medication or could not perform psychological testing. (R. at 1178, 1198.)

Ms. NW testified that Ms. SJ did not ever disclose to her that she had been sexually assaulted. (Id.) Ms. NW said Ms. SJ came to her clinic for individual counseling and counseling with Appellant. (R. at 1184.) Ms. NW saw Ms. SJ a total of five times over approximately a one-month timespan between 20 May 2021 and 24 June 2021. (R. at 1185.) Ms. NW said the duration of each visit was “[c]lose to an hour each time.” (R. at 1450.) Ms. NW said during that time she determined a provisional diagnosis of borderline personality disorder (BPD). (Id.) Ms. NW said that someone diagnosed with borderline personality disorder could perceive events inaccurately and that their perceptions could be “fairly distorted.” (R. at 1187.) Ms. NW said her treatment plan for Ms. SJ included addressing mood management and resolving trauma Ms. SJ had suffered. (R. at 1189-90.)

Even though Ms. NW said “I don’t do medicine,” she said that Ms. SJ was resistant to medication. (R. at 1190.) On cross-examination, Ms. NW again said Ms. SJ was resistant to taking medications. (R. at 1199.) However, Ms. NW also acknowledged that Ms. SJ had just given birth a couple of months earlier and was still breastfeeding when she was being seen by Ms. NW. (Id.)

Ms. NW also stated that she never saw either Ms. SJ or Appellant outside of their sessions and had only observed them in the therapy sessions, in the lobby, and in the parking lot. (R. at 1200.) Ms. NW said she never talked or interviewed any of Ms. SJ's friends or relatives.

Ms. NW explained that she would have individual therapy sessions with Ms. SJ while Appellant would have an individual therapy session with another therapist at the same time. Then, the two, along with their two therapists, would come together for a joint session. (R. at 1193-94.) When asked if it was her general practice to see the same individual for couples counseling and individual counseling sessions, Ms. NW said, "No. Typically not." (R. at 1216.)

Ms. NW and the trial counsel then discussed an incident during one session where Ms. SJ told Ms. NW something during the private session and Ms. NW immediately left the session with Ms. SJ, and interrupted Appellant's session. (R. at 1194.-95.) When asked if the thing Ms. SJ said to her was a conversation about sex, Ms. NW responded, "I would not use the word sex. It was about intimacies. Those were the words that were used." (R. at 1195.) Ms. NW said, "It was about a postpartum woman not on birth control that wasn't sure all the time if she wanted to have sex at the same time her husband did." (R. at 1196.) Ms. NW explained more:

In that particular session that the prosecutor was referencing was one that she was postpartum, and most postpartum women are still struggling with having sex. It's not uncommon. And they often don't want to have a lot of sex or sex at all. So I was trying to get some clarity on what she was really saying and understanding that, and she just said that, *I don't want to have as much sex as he does.*"

(R. at 1202.) (emphasis added.)

After Ms. NW testified and denied that Ms. SJ ever told her about being sexually assaulted, Ms. SJ was recalled and again testified that she disclosed the sexual assault to Ms. NW. (R. at 1371.) Ms. SJ explained, "I told her about what had happened with me and

[Appellant], and I asked her not to report it because I didn't feel comfortable.” (R. at 1372.) Ms. SJ agreed that what she told Ms. NW about was the incident in the kitchen. When asked how Ms. NW did and she told Ms. NW that she did not want to report it, Ms. SJ said, “She got up from our session and went to pull [Appellant] out of his session and brought him into my session and confronted me.” (Id.) Ms. SJ said she felt “cornered” because Appellant was standing over her with Ms. NW standing next to him. (R. at 1375.) Because of this, Ms. SJ said she “started agreeing with everything that they said, and I basically felt uncomfortable, and I shut down.” (R. at 1376.) Ms. SJ said she never returned to see Ms. NW again after this incident.

When asked if she provided these details to law enforcement, Ms. SJ replied, “Yes, sir,” adding, “It was . . . when OSI came and interviewed me.” (R. at 1380.) The defense then called Air Force Office of Special Investigations (AFOSI) Special Agent (SA) RD, who was present for AFOSI’s interview with Ms. SJ. SA RD and Appellant’s counsel had the following exchange:

DC: And so, my prior question was that there's been testimony that in that 18 November interview, [Ms. SJ] disclosed to her therapist, [Ms. NW], that she was sexually assaulted, told her not to disclose, that she then retrieved [Appellant] and had him come in and stand over her. Did she say any of that in the 18 November 2021 interview?

SA RD: No, sir.

DC: Did she say any portion of that in her 18 November 2021 interview?

SA RD: The only thing slightly similar she mentioned to me was that she spoke to a therapist, like, once a week.

(R. at 1416.) SA RD continued, “[Ms. SJ] later said it wasn’t a therapist, but it was a victim’s advocate.” SA RD agreed that she did not ask Ms. SJ to recount every detail that was shared

with the victim advocate and agreed that Ms. SJ initially said her disclosure was to a therapist before later saying the disclosure was to a victim advocate. (R. at 1418.)

The defense also recalled Ms. NW who denied that Ms. SJ disclosed to her that Appellant had sexually assaulted her, denied that Ms. SJ asked her not to tell anyone, and denied that she brought Appellant into the session with Ms. SJ after the disclosure. (R. at 1447-48.)

Additional facts necessary to the disposition of this case are discussed in the specific issues below.

ARGUMENT

I.

APPELLANT’S CONVICTIONS ARE FACTUALLY SUFFICIENT.

Standard of Review and Law

While this Court has not yet determined a clear standard of review for issues of factual sufficiency under the amended Article 66(d)(1), UCMJ, this Court has agreed that Congress intended this new statutory standard to “make [] it more difficult to [an appellant] to prevail on appeal.”⁵ See United States v. Csiti, ACM 40386, 2024 CCA LEXIS 160 (A.F. Ct. Crim. App. 29 April 2024) (*quoting* United States v. Scott, 83 M.J. 778, 780 (A. Ct. Crim. App. 27 Oct. 2023)).

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

(B) Factual sufficiency review

⁵ All specifications in this case occurred after 1 January 2021.

(i) [T]he Court may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.

(ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—

(I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and

(II) appropriate deference to findings of fact entered into the record by the military judge.

(iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

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

The requirement of ‘appropriate deference’ when a Court of Criminal Appeals weighs the evidence and determines controverted questions of fact “depend[s] on the nature of the evidence at issue.” United States v. Harvey, __ M.J. __, No. 23-0239, 2024 CAAF LEXIS 502, at *8 (C.A.A.F. 6 September 2024). This Court has discretion to determine what level of deference is appropriate. Id. “[T]he quantum of proof necessary to sustain a finding of guilty during a factual sufficiency review is proof beyond a reasonable doubt, the same as the quantum of proof necessary to find an accused guilty at trial.” Id. at *10. For this Court “to be clearly convinced that the finding of guilty was against the weight of the evidence, two requirements must be met.” Id. at *12. First, this Court must decide that the evidence, as it weighs it, “does

not prove that the appellant is guilty beyond a reasonable doubt.” Id. Second, this Court “must be clearly convinced of the correctness of this decision.” Id.⁶

Analysis

The panel at Appellant’s court-martial correctly found Appellant guilty of sexual assault, and there is no credible basis in the record for this Court to disturb Appellant’s just verdict and sentence. Here, the United States presented the panel with ample evidence to convince them of Appellant’s guilt beyond a reasonable doubt. This Honorable Court should equally be convinced and affirm Appellant’s convictions.

Under the new factual sufficiency standard, Appellant has failed to make a specific showing of a deficiency of proof. Yet even if he had, after making the appropriate deference to the trial court hearing the witnesses at trial, the Court should not be clearly convinced that the finding of guilty was against the weight of the evidence.

Here, Appellant was convicted of penetrating his wife’s vulva with his finger and penetrating his wife’s vulva with his penis, both without his wife’s consent. Ms. SJ’s testimony regarding the two sexual assaults was clear. Approximately one month after giving birth to her son, Appellant came home for lunch with his wife. (R. at 781-82.) Ms. SJ recalled what she was doing that day, what she was wearing that day, and even recalled what the two ate for lunch. Ms. SJ also recalled that the birth of her son a month earlier had brought complications, specifically a lot of bleeding that still continued on the day in question. (R. at 779-80.) Ms. SJ also testified

⁶ In his brief, Appellant seems to imply that this Court set out specific factors for reviewing factual sufficiency cases in the unpublished decision in United States v. Palik, No. ACM 40225, 2023 CCA LEXIS 185 (A.F. Ct. Crim. App. April 28, 2023). (See App. Br. at 10-11.) However, a review of that case shows this Court did not create a list of specific factors to analyze in factual sufficiency cases, but instead simply highlighted factors pertinent to the specific facts and circumstances to that case.

that Appellant knew her doctor had recommended Ms. SJ not have sex for a period of eight weeks after the birth – well after the date of the incident.

Ms. SJ also recalled Appellant following her to the sink, saying he had a bad day, and sticking his hand down her pants. Ms. SJ reminded Appellant that she was still bleeding, that she was uncomfortable, and told him “no not right now.” (R. at 782.) Yet, Appellant persisted even though Ms. SJ kept telling Appellant “no.”

Appellant first penetrated Ms. SJ’s vulva with is fingers while, with this other hand, pulled down her pants and unbuckled his belt. (R. at 783, 838.) Appellant told Ms. SJ that “it would be quick.” (R. at 783.) Ms. SJ tried pushing him away, but to no avail. Despite her continuing to say “no,” Appellant put his penis inside Ms. SJ’s vulva and continued penetrating her until he ejaculated on her back. (R. at 784-85.)

Ms. SJ’s testimony shows Appellant penetrated Ms. SJ’s vulva with both his fingers and penis. This evidence further shows Appellant’s acts were done without Ms. SJ’s consent as manifested by Ms. SJ repeatedly telling Appellant “no,” telling him she was still bleeding and uncomfortable, and by physically trying to push him away from her.

Moreover, additional evidence showed Appellant had a penchant for wanting, and expecting, sex from his wife whether she wanted to or not. Mr. AJ, Ms. SJ’s brother, testified that Appellant came to him for advice often and, on one occasion, told Mr. AJ that he had to “force everything on your sister,” adding that he “shouldn’t have to ask my wife to have sex with her.” (R. at 897-98.) Appellant would tell Mr. AJ that he “had to force her to have sex.” (R. at 898.)

Finally, even Ms. NW, a defense witness, testified that postpartum women “struggl[e] with having sex,” they “often don’t want to have a lot of sex or sex at all,” and that Ms. SJ had

specifically told her Appellant wanted to have sex with her postpartum more than she wanted. (R. at 1196, 1202.)

Here, Appellant held a firm belief that he did not have to ask his wife for sex and confessed to Ms. SJ's brother that he had to "force everything" on Ms. SJ and that he "had to force her to have sex." Considering these admissions, as well as Ms. SJ's clear testimony regards the events of Appellant's sexual assaults and her discussions with Ms. NW about Appellant's postpartum sexual wants despite Ms. SJ not wanting to have sex, the panel members at Appellant's trial had evidence that Appellant committed the act of penetrating Ms. SJ's vulva with his fingers and penis without MS. SJ's consent.

Still, Appellant finds fault. Notably, in his brief, Appellant does not attempt to argue his deeds were done with Ms. SJ's consent or were done based on a reasonable mistake of fact as to consent. Instead, Appellant simply argues Ms. SJ was not credible and that her version of events was physically impossible. (App. Br. at 2.) Appellant is mistaken on both counts.

However, before addressing those claims, Appellant makes various statements in the "Statement of Facts" section of his brief that require clarification. First, Appellant claims Ms. SJ "interviewed with Security Forces and denied that [Appellant] ever sexually abused her, despite Security Forces specifically asking her about any issues in her relationship with [Appellant]." (App. Br. at 2, *citing* R. at 1232-33.) However, a review of pages 1232 and 1233 of the transcript shows no such denial. Instead, those pages consist of testimony from Security Forces Investigator TSgt JS who was recounting interviews she conducted with Ms. SJ. There, TSgt JS agreed that she asked Ms. SJ about her relationship with Appellant. (R. at 1232.) When asked if Ms. SJ ever "made a sex assault allegation to you," TSgt JS responded, "To the best of my memory, I don't remember her saying anything about a sexual assault to me." (R. at 1233.)

TSgt JS also said Ms. SJ's written statement on an AF Form 1168 did not mention anything about a sexual assault by Appellant. (Id.)

However, at no time did TSgt JS ever testify that Ms. SJ *denied* having been sexually assaulted by Appellant. Instead, TSgt JS simply testified that Ms. SJ did not report a sexual assault at that time, which is vastly different than what Appellant claims as "fact" in his brief. Here, Appellant's insinuation that Ms. SJ ever *denied* having been sexually assaulted by Appellant to law enforcement is incorrect.

In addition to severely misconstruing TSgt JS's testimony, Appellant also fails to provide Ms. SJ's explanation for why she did not report Appellant's sexual assault of her at that time. During her testimony, Ms. SJ stated that she did not tell law enforcement about the sexual assault in July 2021 because she felt the focus of the interview at that time, as well as the investigation at that point, was focused on her son, not her. (R. at 879.)

Next, Appellant details the custody agreement between her and her parents, but leaves out key details regarding that order. (See App. Br. at 2.) Specifically, Appellant fails to recount Ms. SJ's testimony about the understanding she and her parents came to months after the custody agreement, how her parents agreed that Ms. SJ's son should be returned to her, and the impression the parties had that the temporary order only lasted for six months, after which time Ms. SJ's son would be returned to her. (R. at 872-73, 876.)

Next, Appellant claims that Ms. SJ was diagnosed with BPD. (App. Br. at 2-3.) However, Appellant fails to note that this "diagnosis" was only a "provisional" one made by a therapist, not a doctor or nurse, and made by someone who was not qualified to prescribe medications or able to perform psychological testing. (R. at 1182, 1196-98.) Moreover, this "provisional "diagnosis was made by Ms. NW after seeing Ms. SJ only five times over the

course of one month for less than an hour each time. (Id.) Indeed, when the Government trial counsel asked, “And ordinarily, wouldn’t a provider observe a patient for an extended period of time before making a borderline personality disorder diagnosis,” Ms. NW answered, “Hence, that’s why I said it was provisional.” (R. at 1198.)

Again, Appellant mentions none of these crucial facts within his brief, omissions which then cloud his claim that Ms. SJ was not credible. Furthermore, each of Appellant’s attacks against Ms. SJ to this court are not new, but instead are the same credibility claims he made at trial that proved unpersuasive to the panel members who had the opportunity to see all of the witnesses, including Ms. SJ. His repeated claims should prove unpersuasive to this court as well.

Appellant first claims Ms. SJ was “unreliable” because she “had a condition that caused her to misperceive events and exist in a distorted sense of reality.” (App. Br. at 10.) Appellant bases this entire argument on again claiming that Ms. SJ had been diagnosed with BPD. (App. Br. at 11.) Yet again, however, Appellant fails to mention this “diagnosis” was a “provisional” one made by a therapist, not a doctor or nurse, who could neither prescribe medications nor perform psychological testing, and who only saw Ms. SJ five times over the course of a month for less than an hour each time. Indeed, Ms. SJ had not even been told about this supposed provisional diagnosis or been given a treatment plan for it. (R. at 791.)

Furthermore, Ms. NW’s entire treatment of Ms. SJ, which included having an individual session with her before bringing in Appellant for a joint session, was unorthodox. Even Ms. NW admitted this setup was “[t]ypically not” her general practice in seeing clients. Moreover, while Ms. NW did say that a distorted sense of reality and difficulty in accurately perceiving events were possible symptoms of BPD, Ms. NW never officially diagnosed Ms. SJ with BPD, but

instead only “provisionally” diagnosed her with BPD due to the very limited time she had spent with her.

Moreover, Ms. NW admitted that there was hesitancy on her field to diagnose people with BPD. When asked, “And that’s because there is a great deal of overlap of symptoms with conditions like depression and other conditions; correct,” Ms. NW replied, “There is some truth there.” (R. at 1197.)

Here, Ms. NW’s “provisional” diagnosis of BPD is skeptical at best considering her admission that her diagnosis was hindered by the lack of time she had actually seen Ms. SJ as well as her essential admission that Ms. SJ could just have easily been experiencing depression, a common occurrence for mothers postpartum. Indeed, Ms. SJ testified that postpartum depression concerns were the very reason she was attending individual counseling sessions with Ms. NW in the first place. (R. at 791.)

Still, Appellant claims Ms. SJ “misperceived events” and had a “distorted sense of reality.” (App. Br. at 11-12.) Yet, a review of Ms. SJ’s recollection of the day in question has no sense of vagueness, distortion, or misperception. Instead, as detailed above, Ms. SJ’s testimony shows she knew exactly what happened that day from describing (1) exactly what she and Appellant had to eat; (2) the statements Appellant said to her about her wifely duties; (3) how she felt about having sex in her postpartum (and bleeding) state; (4) her crying baby; and (5) how Appellant sexually assaulted her with his fingers and penis.

Importantly, many of these recollections are corroborated by other witnesses. The statements Ms. SJ says Appellant made to her that day, including it being her “wifely duty to take care of her husband,” are strikingly similar to statements Appellant made to Mr. AJ on a separated occasion that he had to “force” her to have sex with him and that he should not have to

ask his wife to have sex. (R. at 897-98.) Further, Ms. SJ's testimony that she did not want to have sex with Appellant because she was still bleeding and going through postpartum issues was corroborated by the defense's own witness, Ms. NW, who testified that Ms. SJ expressed similar concerns to her about her postpartum condition and Appellant's want to have sex with her.

Despite these corroborations, Appellant still argues that "even if [Ms.] SJ and [Appellant] did engage in sexual intercourse during the charged event, [Ms.] SJ did not accurately perceive this event and her perception about whether it was consensual cannot be trusted." (App. Br. at 12.) Again here, Appellant misses the corroborated testimony that confirm Ms. SJ never consented to sexual activity with her husband. She told Appellant that day she did not want to have sex with him because she was still bleeding and uncomfortable – statements corroborated by Ms. NW (a defense witness) who heard similar concerns from Ms. SJ. Additionally, Appellant knew Ms. SJ did not want to have sex that day but forced it anyway because it was Ms. SJ's "wifely duty" and because "it would be quick" – statements corroborated by Mr. AJ who testified that Appellant had told him he had to "force everything" on Ms. SJ, that he "shouldn't have to ask [Ms. SJ] to have sex with her," and that he had to "force her to have sex." (R. at 897-898.)

Here, there is no misperception of reality or of the events that occurred that day. The evidence is clear Appellant forced himself onto his wife, who was just a month out of childbirth and still experiencing postpartum symptoms.

Next, Appellant attacks Ms. SJ about the consent agreement between her and her parents that occurred in July 2020, nearly a year prior to Appellant's sexual assault. Appellant argues this shows Ms. SJ was mentally unstable at the time of the sexual assault. Yet, testimony shows that by October of 2020, Ms. SJ's parents had no concerns with Ms. SJ and allowed her son to

return to Ms. SJ full-time. Further, testimony also shows Ms. SJ (and presumably her parents) believed the agreement only lasted for six months. Appellant's contention that Ms. SJ's prior custody agreement with her parents in July 2020 somehow correlates to alleged mental instability nearly one year later, an issue squarely before the members at Appellant's trial, should carry little weight with this Court.

Next, Appellant turns to an alleged "collusion" with Ms. AH, a notion easily dispelled by Ms. SJ, Mr. AJ, and Ms. AH. First, Ms. SJ never "lied" about anything related to Ms. AH. Appellant claims that Ms. SJ said on cross-examination that she "never spoke with [Ms.] AH." (App. Br. at 12, *citing* R. at 826-27.) However, a review of those pages shows that Appellant's counsel was asking Ms. SJ specifically whether she had spoken to Ms. AH on 14 July 2021, the date Security Forces first came to talk to her and TSgt CJ about the child abuse allegations. When Appellant's counsel asked, "Do you recall you and your brother having a conversation with [Ms. AH] *that day*," Ms. SJ replied, "Not – not – I did not." (R. at 826.) (emphasis added.) When Appellant's counsel then asked, "So it's your testimony that you were not involved in any conversation with the other complaining witness in this case *that day*," Ms. SJ replied, "No, sir. I did not have any conversation with [Ms. AH]." (Id.) Thus, Ms. SJ never denied having a conversation with Ms. AH at all, but only denied having a conversation with Ms. AH *that day* – which is what Appellant's counsel asked.

Mr. AJ and Ms. AH both corroborate Ms. SJ's testimony. Mr. AJ said he alone spoke with Ms. AH *that day*. (R. at 923-24.) Ms. AH also testified that on the day in question she only spoke to Mr. AJ, adding that she did not hear or speak to Ms. SJ. (R. at 1014-15.) While Ms. AH did testify that she and Ms. SJ eventually spoke on the phone for 20 minutes and that Ms. SJ sent her a friend request on Facebook, neither the phone call nor the Facebook request occurred

on 14 July 2021, which again was the focus of Appellant's counsel's question to Ms. SJ. There is no lie and no collusion here.

Next, there is a conflict in the testimonies from Ms. SJ and Ms. NW as to whether Ms. SJ told Ms. NW about the sexual assault by Appellant. Ms. SJ testified that she did tell Ms. NW about the incident while Ms. NW testified that she did not. (*See R. at 1182, 1371.*) However, Ms. NW did admit that Ms. SJ talked to her about "intimacies" and postpartum sex concerns about Appellant's want to have sex with her when she did not. Ms. NW also admitted that based on that conversation, she immediately left the session with Ms. SJ and interrupted the session with Appellant. This correlated, in part, with Ms. SJ's testimony that she told Ms. NW about the incident in the kitchen and that Ms. NW went to Appellant's session and then brought Appellant into her session to confront her.

While Ms. SJ and Ms. NW disagree as to the exact circumstances of this incident, both testimonies show Ms. SJ told Ms. NW about something sexual between Ms. SJ and Appellant that startled Ms. NW enough for her to leave her session with Ms. SJ and interrupt Appellant's session. In any case, the dispute between Ms. SJ's testimony and Ms. NW's testimony was squarely before the members at Appellant's trial, who had the opportunity to personally witness both Ms. SJ and Ms. NW testify multiple times.

Next, Appellant claims Ms. SJ committed perjury, alleging that she, after sitting through the Mil. R. Evid. 513 hearing earlier in the trial, then claimed for the first time at trial that she had previously disclosed the sexual assault to her therapist. (*App. Br. at 7, 12, citing R. at 1379.*) Appellant claims Ms. SJ had "never made this statement prior to trial and only made it after sitting through the MRE 513 hearing and the therapist's testimony during the Defense's case-in-chief." (*App. Br. at 13.*)

Appellant is again mistaken. First, Appellant fails to cite to any point in the record where Ms. SJ was present during any of the closed Mil. R. Evid 513 hearings. Indeed, a review of those sealed transcript pages make no mention of Ms. SJ being present in the courtroom. In contrast, in the Mil. R. Evid 513 closed hearings where Ms. NW testified,⁷ the unsealed portions of the transcript show the military judge cleared the courtroom of the entire gallery, including the bailiff, and left only the Government trial counsel, Ms. SJ's Victims' Counsel (Capt CH), Appellant, his defense counsel, one Government expert, and two Defense experts. (See R. at 107-08, 578-80.) There is no indication that Ms. SJ was present for any of Ms. NW's Mil. R. Evid. 513 testimony or, for that matter, any of the Mil. R. Evid. closed hearings at all.⁸

Appellant also claims Ms. SJ did not testify that she told Ms. NW about the sexual assault until "after sitting through . . . [Ms. NW's] testimony during the Defense's case-in-chief." (App. Br. at 13.) Ms. NW testified in Appellant's case-in-chief from pages 1177 through 1218. Appellant supports his contention by citing to Ms. SJ's testimony where she was recalled to testified after Ms. NW's testimony and asked, "is it your testimony today that you provided details to Ms. NW about an alleged sexual assault?" (R. at 1379.) Ms. SJ replied, "Yes sir."

However, contrary to Appellant's assertion, this was not the first time Ms. SJ testified that she had told Ms. NW about the sexual assault. Indeed, during Ms. SJ's initial testimony

⁷ Per the Master Index of the transcripts, Ms. NW testified during the closed session encompassing pages 109-160 of the transcript and pages 581-716 of the transcript. (See ROT, Vol. VI.)

⁸ The military judge closed the courtroom on six different occasions during the course of the trial. (See R. at 25-58, 109-160, 308-337, 581-716, 755-757, 1167-1169.) There is no indication that Ms. SJ was present for any of these hearings. Instead, the participants included trial counsel, Appellant's counsel, Appellant, victim's counsel, the military judge, the court reporter, and various Government and defense experts.

during the Government's case-in-chief, which occurred prior to Ms. NW's testimony in the defense's case-in-chief, Appellant's own counsel asked Ms. SJ if she ever told Ms. NW that she was sexually assaulted. (R. at 809.) Specifically, Appellant's defense counsel asked, "At no point in the entirety of these marital counseling sessions, individual, or joint did you ever tell [Ms. NW] that you were sexually assaulted?" (Id.) Ms. SJ answered, "Yes, I did tell her." Appellant's counsel asked again, "So it's your testimony today that you did tell her that you were sexually assaulted by [Appellant]?" (Id.) Ms. SJ again answered, "Yes, sir." (Id.)

As the record shows, Ms. SJ did not make her statement about telling Ms. NW about the sexual assault "only . . . after sitting through the MRE 513 hearing and the therapist's testimony during the Defense's case-in-chief" as Appellant would have this Court believe. Instead, the record shows Ms. SJ never sat through any of Ms. NW's Mil. R. Evid. 513 hearing testimony or any of the Mil. R. Evid. 513 hearings. Further, Ms. SJ testified about making this statement to Ms. NW during the Government's case-in-chief, well before Ms. NW later testified during the defense's case-in-chief. Appellant's claim here that Ms. SJ created a story and committed perjury based on information she alleged gleaned from (1) Mil. R. Evid. 513 hearings she did not attend; and (2) Ms. NW's testimony that occurred *after* Ms. SJ's had already testified, is unfounded.

Next, Appellant again claims perjury because Ms. SJ testified that she told AFOSI about telling Ms. NW about the sexual assault, but then SA RD testified Ms. SJ did not tell AFOSI about it. However, even SA RD said that Ms. SJ initially mentioned speaking to a therapist once a week before later saying it was a victim advocate. SA RD also highlighted that she did not ask Ms. SJ to recount every detail that was shared with this third party.

Notably, Appellant’s main contention here are questions over the reporting of the incident – not the incident itself. Thus, even if Ms. SJ was mistaken in her recollection of whether she told AFOSI about telling her therapist about Appellant’s sexual assault, the fact remains that Ms. SJ did tell AFOSI about the specific facts and circumstances about the sexual assault itself. Further, the issue of whether Ms. SJ told AFOSI that she had told Ms. NW about the sexual assault was raised on multiple occasions throughout the trial by Appellant’s defense counsel and put squarely before the panel to consider in reaching its verdict. And yet, the panel, who had the opportunity to see Ms. SJ’s testimony in person, still found Ms. SJ’s testimony regarding the incident itself proved beyond a reasonable doubt that Appellant sexually assaulted her.

To this point, while Appellant questions whether Ms. SJ told Ms. NW about the incident or if Ms. SJ told AFOSI that she told Ms. NW about the incident, Appellant is notably silent regarding two other individuals who testified about their knowledge of the incident – namely Mr. AJ and Ms. AH. Mr. AJ testified that Ms. SJ told him in July 2021 that Appellant had sexually assaulted her. (R. at 922.) Then, Ms. AH testified that while Ms. SJ never used the term “sexual assault,” Ms. SJ did tell Ms. AH about “things [that] happened that she didn’t want to . . .” (R. at 1018.) Appellant’s brief fails to mention these instances where two other witnesses testified that Ms. SJ talked to them about Appellant’s unwanted sexual advances on her. However, these testimonies show Ms. SJ spoke to numerous people about Appellant’s unwanted sexual advances, including the incident itself, before reporting the incident in October 2021.

Next, Appellant claims Ms. SJ had a motive to “fabricate the sexual assault allegations to avoid losing custody of her youngest son.” (App. Br. at 14.) However, no evidence in this case shows Ms. SJ was ever in danger of losing custody of her youngest son or that the possibility of a

custody battle regarding her youngest son even existed. Devoid of any evidence of a non-existent custody action, Appellant instead fills his claim with conjecture by simply repeating his previous unpersuasive claims. Appellant again brings up Ms. SJ temporarily losing custody of her oldest son, which has already been addressed multiple times above. Appellant next states that even though he was not Ms. SJ's son's biological father, he still signed the child's birth certificate. However, Appellant fails to explain how this would somehow impact Ms. SJ's custody of her son.

Appellant next claims Ms. SJ only alleged the sexual assault after the child abuse investigations had closed and after Appellant "had filed for divorce." (App. Br. at 14.) However, Appellant fails to note that the couple broke up in July 2021 after Ms. SJ, not Appellant, initiated the break up and left him. (R. at 812.) In fact, it was Appellant's own counsel who elicited this info, even having Ms. SJ confirm that she handed her engagement ring back to him. (R. at 813.) Here, while Appellant may have been the one who filed for divorce, the record shows Ms. SJ ended the relationship months before.

Appellant then claims Ms. SJ was in danger of losing custody of because she was "diagnosed with BPD in May 2021." (App. Br. at 15.) Again, this "provisional" diagnosis, as described above, was dubious at best. Further, there is no evidence in the record that anything related to Ms. SJ seeing Ms. NW five times over the course of a month between May and June 2021 was leading toward anything related to Ms. SJ's custody of her youngest son.

Here, the record is devoid of any actual evidence that anyone – Appellant, the authorities, Ms. NW, etc. – was seeking to remove custody of Ms. SJ's youngest son from her care or such an action was even contemplated by anyone when Ms. SJ made her report. This groundless idea was not even an argument made by Appellant's counsel at trial. Indeed, Ms. SJ had no "cause

for concern” about the custody of her son, no one had ever given her “cause for concern” regarding the custody of her son, and Appellant has failed to provide any proof that Ms. SJ fabricated her sexual assault report to supposedly avoid losing her youngest son to a non-existent custody concern. Appellant claims of some “risk” that Ms. SJ might lose custody of her son are unfounded and should be disregarded by this Court.

Finally, Appellant claims Ms. SJ’s “description of the sexual assault does not make sense” because he believes the description was “physically impossible.” (App. Br. at 15.) Per his argument, Appellant believes he would have needed “three arms to perpetrate” the sexual assault Ms. SJ described because Ms. SJ “on re-cross examination . . . again acknowledged that the belt required two hands to unclasp.” (App. Br. at 15, *citing* R. at 887.) Essentially, Appellant contends that it took two hands to unbuckle his uniform belt and that since Ms. SJ said his left hand was penetrating her with his left hand, he would have been unable to undo his belt, pull his pants down, and penetrate her. (Id. at 16.)

Yet again, Appellant is wrong. Ms. SJ’s testimony makes it extremely clear that Appellant’s belt only required one hand to unclasp it. Moreover, a review of her testimony shows she was quite distinct and uncontradictory on this point. In her testimony, Ms. SJ agreed that Appellant’s belt was the kind of belt that could be opened with one hand. (R. at 881-82.) When asked, “So you would need two hands to fasten it but you can open it with one hand,” Ms. SJ replied, “Yes, ma’am.” (R. at 881.) Ms. SJ was asked multiple additional questions where she agreed that the belt could be unbuckled with one hand. (R. at 881-82.) Moreover, the members saw Ms. SJ’s testimony, saw her demonstrations on how the buckle worked, and seemingly had no concerns concluding that Ms. SJ’s description of the attack, including

Appellant unbuckling his belt with one hand, was physically possible. This Court should likewise have no concern for any alleged “physical impossibility.”

All told, considering all of these facts and circumstances, the Government provided the panel ample evidence of Appellant’s guilt beyond a reasonable doubt. Here, Appellant has failed to make a specific showing of a deficiency of proof as to his sexual assault convictions. Yet even if he had, after giving the appropriate deference to the trial court hearing the witnesses at trial, particularly Ms. SJ, the Court should not be clearly convinced that the finding of guilty was against the weight of the evidence. Accordingly, Appellant’s factual sufficiency claim must fail.

II.⁹

THE UNITED STATES DID NOT VIOLATE APPELLANT’S RIGHTS IN NOT REQUIRING A UNANIMOUS VERDICT AT APPELLANT’S MILITARY COURT-MARTIAL.

Standard of Review

The adequacy of a military judge's instructions is reviewed de novo. United States v. Dearing, 63 M.J. 478, 482 (C.A.A.F. 2006) (citations omitted). The constitutionality of a statute is a question of law that is reviewed de novo. United States v. Wright, 53 M.J. 476, 478 (C.A.A.F. 2000) (*citing* United States v. Brown, 25 F.3d 307, 308 (6th Cir. 1994)).

Law and Analysis

In United States v. Anderson, No. ACM 39969, 2022 CCA LEXIS 181, at *55-56 (A.F. Ct. Crim. App. Mar. 25, 2022), this Court rejected the same claims Appellant raises now. Then, as Appellant readily admits, our Superior Court affirmed this Court’s decision and definitively held that military members do not have a right to a unanimous verdict at court-martial under the

⁹ This issue is raised in the appendix pursuant to Grosteffon.

Sixth Amendment, Fifth Amendment due process, or Fifth Amendment equal protection. *See United States v. Anderson*, 83 M.J. 291 (C.A.A.F. 2023), *cert denied*, No 23-437, 144 S. Ct. 1003 (2024). *see also United States v. Cunningham*, 83 M.J. 867 (C.A.A.F. 2023), *cert denied*, No 23-666, 144 S. Ct. 1096 (2024). Accordingly, the military judge did not err in not providing an instruction for a unanimous verdict and Appellant’s claim must fail.

CONCLUSION

WHEREFORE, this Court should deny Appellant’s claims and affirm the findings and sentence.

[REDACTED]

G. MATT OSBORN, Lt Col, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division

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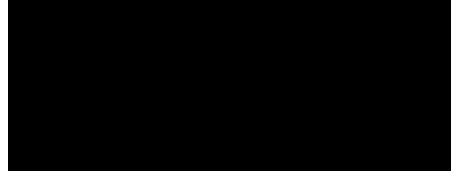
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MARY ELLEN PAYNE
Associate Chief, Government Trial and Appellate
Operations Division

[REDACTED]
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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate counsel, and the Air Force Appellate Defense Division on 18 February 2025 via electronic filing.



G. MATT OSBORN, Lt Col, USAF
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S REPLY BRIEF
<i>Appellee,</i>	)	
	)	Before Panel No. 1
v.	)	
	)	No. ACM 40535
Staff Sergeant (E-5)	)	
ERIC W. SINGLETON,	)	25 February 2025
United States Air Force	)	
<i>Appellant</i>	)	

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

Pursuant to Rule 18(d) of this Honorable Court’s Rules of Practice and Procedure, Appellant, Staff Sergeant (SSgt) Eric W. Singleton, files this Reply to the Appellee’s Answer, dated 18 February 2025 (Ans.). SSgt Singleton stands on the arguments in his opening brief, filed on 16 January 2025 (App. Br.), and in reply to the Answer submits additional arguments for the issue listed below.

I.

Staff Sergeant Singleton’s convictions are not factually sufficient because (1) SJ is the only source of evidence concerning the actus reus and she is not credible and (2) the assault could not have physically occurred in the way she described.

What the Government chooses to address—and not address—is telling. It begins by urging this Court to adopt the reasoning in *United States v. Csiti*, ACM 40386, 2024 CCA LEXIS 160 (A.F. Ct. Crim. App. 29 April 2024), as a “clear standard of review” for factual sufficiency issues under the amended Article 66(d)(1), Uniform Code of Military Justice, stating, “[t]his Court has agreed that Congress intended this new statutory standard to ‘make it more difficult to [an appellant] to prevail on

appeal.” Ans. at 11. Importantly, however, the Government neglects to mention that the standards for factual sufficiency review are still not settled, and the Court of Appeals for the Armed Forces (CAAF) granted review in *Csiti*. *United States v. Csiti*, __ M.J. __, No. 24-0175/AF, 2024 CAAF LEXIS 533 (C.A.A.F. Sep. 11, 2024) (mem.).¹ This Court did not have the benefit of the CAAF’s decision in *United States v. Harvey*, __ M.J. __, 2024 CAAF LEXIS 502, at *5 (C.A.A.F. Sept. 6, 2024), when it conducted a factual sufficiency review in that case. Thus, this Court should be hesitant to rely on *Csiti*, as the Government proposes, to interpret revisions in a manner that diminishes a key substantive protection of a military appellant. In any event, the Government’s case against SSgt Singleton was so weak that regardless of how the revised Article 66(d) is construed, this Court should still reverse for factual insufficiency. The Government downplays SJ’s credibility issues, and urges this Court to overlook key areas of concern such as 1) SJ’s physical description of the alleged sexual assault was far from clear, as the Government urges this Court to believe; and 2) SJ’s failure to report the sexual assault to law enforcement even after she interviewed with investigators four times, and then only reporting once she learned her allegations of child abuse against SSgt Singleton were to be dismissed without action.

The Government dismisses the important factors undermining SJ’s credibility by stating that her testimony regarding the sexual assaults was “clear” because she “even recalled what the two ate for lunch” that day. Ans. at 13, 18. This Court should

¹ The Government’s citation to *Csiti* failed to include its subsequent history. See Ans. at 11.

be far more concerned with how SJ described the sexual assault occurring, rather than that SJ appears to be focused on providing a more detailed description of her lunch than of the sexual assault. R. at 781. While SJ testified that she was still experiencing complications from the birth of her youngest son approximately one month earlier, notably, there was no corroborating evidence of this fact, even though it should have been relatively easy for the Government to provide. R. at 779-80. The Government glosses over the fact that while SJ did at one point agree to the prosecutor's attempt to resolve the physical impossibility problem on re-direct examination by asking a leading question, this attempt failed. R. at 882. SJ described that the belt required two hands to unclasp *both on direct and cross-examination*, and then again on re-cross examination confirmed that the belt buckle required two hands to unclasp. R. at 783-84, 838-89, 887. The Government cannot elide the fact that SJ described that at the same time SSgt Singleton was pressing her up against the kitchen counter, he also was penetrating her vagina with two fingers from his left hand and simultaneously managed to pull down her tight leggings with his one free hand without her assistance. R. at 783-84, 838-39. He then somehow unbuckled his uniform belt with *two hands* and pulled his pants down before then penetrating her with his penis, all the while still penetrating her with his left hand. R. at 784. SJ even physically displayed a two-handed motion in describing the unbuckling of the belt. *Id.* The Government wants this Court, on the one hand, to believe that SJ testified clearly and that her testimony on direct should be completely believed down to what she had for lunch that day, but on the other hand

asks this Court to ignore that when describing the actual act for which SSgt Singleton was convicted, she described a physical impossibility. This Court should not accept the Government's attempt to impart meaning into SJ's testimony beyond what is actually in the record, which is that SSgt Singleton needed three hands to accomplish the sexual assault in the way that she described.

As the Government repeatedly highlights in its brief, *all* of the evidence that suggests both that this alleged assault occurred and what SSgt Singleton allegedly said before and during this assault came from SJ herself. Ans. at 14-15. If one takes all of SJ's self-serving statements as true, the factual sufficiency of SSgt Singleton's conviction obviously becomes a closer call. But this profoundly misses the importance of this Court's assessment of SJ's credibility and this Court has ample basis to question her statements: SJ for the first time *after* her therapist testified returned to the stand and reported that she had told OSI that she previously disclosed to her therapist that she was sexually assaulted,² R. at 1379-80; the only corroboration of any aspect of SJ's testimony comes from her brothers and, at best and if taken as true, amounts to a comment from SSgt Singleton about the difficulties of a sexual relationship after having a baby rather than an admission of sexual assault, Ans. at 6-7; SJ was diagnosed by a medical professional as having borderline personality disorder and a distorted perception of reality after she was assessed in a medical

² This was disputed by the lead OSI investigator, who reviewed the entire interview the day prior to testifying. R. at 1416-17.

setting, R. at 1185-88;³ and SJ never reported the sexual assault during the first four law enforcement interviews, despite being asked open-ended questions about any problems with her relationship with SSgt Singleton, R. at 1232, 1252, 1404, 1185, 1187-88, 1191. Where SJ's testimony provides the only evidence of the sexual assault, her credibility is of enormous importance, and the Government's attempt to explain away each of these challenges to SJ's credibility falls flat.

The Government breezily bypasses the specific arguments demonstrating SP's motive to fabricate. Ans. at 24-25. Yet the motive to fabricate is crucial here, and the timing of SJ's report, immediately after she was told by a legal office representative that her child abuse allegations against SSgt Singleton were to be closed without action, calls into question her motive. R. at 808. Notably, the Government answers the glaring problem with SJ's credibility that she never told law enforcement about the sexual assault in her many law enforcement interviews (until after she was made aware her allegations of child abuse against SSgt Singleton were going to be dropped without action) by claiming that "she felt the focus of the interview at that time, as well as the investigation at that point, was focused on her son." Ans. at 16. But this statement, aside from being unconvincing, is at odds with the investigator's account. R. at 1232. The investigator specifically testified that she asked SJ about her relationship with SSgt Singleton and that the questions were not

³ The Government takes issue with the fact that this diagnosis was "provisional" but SJ's therapist testified to specific symptoms that she noted after assessing SJ in a clinical setting. R. at 1185-88. The underlying symptoms, rather than the semantics of a diagnosis itself, are what this Court should be concerned with as it relates to SJ's credibility.

tailored to child abuse allegations. *Id.* The investigator affirmed that SJ never mentioned that SSgt Singleton had sexually assaulted her. *Id.* The Government argues that SJ never “denied” that SSgt Singleton sexually assaulted her, however, in the context of a law enforcement interview where SJ had made allegations against her husband and was asked specifically about any other issues between she and SSgt Singleton, the fact that SJ did not report the sexual assault is tantamount to a denial. SJ interviewed with Security Forces and OSI four times, collectively. R. at 1232, 1252, 1404. She never claimed during any of these interviews that SSgt Singleton sexually assaulted her, even when specifically asked questions about her relationship with SSgt Singleton. R. at 1232-33. The Government’s argument that she denied any issues about her relationship with SSgt Singleton because she somehow did not realize that this was important to the investigation, which was about SSgt Singleton, should hold no weight with this Court. This failure to report the alleged sexual assault, despite all the opportunities to do so, until such a moment as it benefited SJ when her initial allegations of child abuse were no longer viable, should inform this Court’s view of her credibility. This Court should view her testimony, the only evidence of the actus reus in this case, with skepticism.

The evidence presented, especially when viewing SJ’s testimony with appropriate skepticism, is insufficient to prove beyond a reasonable doubt that SSgt Singleton’ committed sexual assault. The finding of guilty is, therefore, factually insufficient.

SSgt Singleton respectfully requests this Honorable Court set aside the findings of guilty and the sentence.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 25 February 2025.

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