

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

|                            |   |                            |
|----------------------------|---|----------------------------|
| <b>UNITED STATES</b>       | ) | <b>No. ACM 23034</b>       |
| <i>Appellee</i>            | ) |                            |
|                            | ) |                            |
| <b>v.</b>                  | ) |                            |
|                            | ) | <b>NOTICE OF DOCKETING</b> |
| <b>Andrew V. LAWSON</b>    | ) |                            |
| <b>Senior Airman (E-4)</b> | ) |                            |
| <b>U.S. Air Force</b>      | ) |                            |
| <i>Appellant</i>           | ) | <b>Panel 2</b>             |

A notice of direct appeal pursuant to Article 66(b)(1)(A), Uniform Code of Military Justice, 10 U.S.C. § 866(b)(1)(A), was submitted by Appellant and received by this court in the above-styled case on 12 June 2023. On 22 June 2023, the record of trial was received by the Military Appellate Records Branch.

Accordingly, it is by the court on this 22d day of June, 2023,

**ORDERED:**

The case in the above-styled matter is referred to Panel 2. Briefs will be filed in accordance with Rule 18 of the Joint Rules of Appellate Procedure and Rule 23.3(m) of this court's Rules of Practice and Procedure. *See* JT. CT. CRIM. APP. R. 18, A.F. Ct. Crim. App. R. 23.3(m).



FOR THE COURT

TANICA S. BAGMON  
Appellate Court Paralegal

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

|                         |   |                                |
|-------------------------|---|--------------------------------|
| <b>UNITED STATES</b>    | ) | <b>NOTICE OF DIRECT APPEAL</b> |
|                         | ) | <b>PURSUANT TO ARTICLE</b>     |
| <i>Appellee</i>         | ) | <b>66(b)(1)(A)</b>             |
|                         | ) |                                |
| v.                      | ) |                                |
|                         | ) |                                |
| Senior Airman (E-4)     | ) | No. ACM _____                  |
| <b>ANDREW V. LAWSON</b> | ) |                                |
| United States Air Force | ) | 12 June 2023                   |
| <i>Appellant</i>        | ) |                                |

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

On 3 February 2023, a military judge sitting at a special court-martial convicted Senior Airman (SrA) Lawson, against his pleas, of four specifications of possession and introduction of a controlled substance, in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a (2019); one specification and one charge of unlawful entry, in violation of Article 129, UCMJ, 10 U.S.C. § 929 (2019); and one specification and one charge of disorderly conduct, in violation of Article 134, UCMJ, 10 U.S.C. § 934 (2019).<sup>1</sup> Record of Trial (ROT), Vol. 1, *Entry of Judgment*, dated 3 March 2023. Members sentenced SrA Lawson to 2 months confinement, reduction to the grade of E-1, and \$200 of forfeitures per month for 12 months. *Id.*

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<sup>1</sup> Various specifications were “conditionally SET ASIDE” and “CONDITIONALLY dismissed” without prejudice. The dismissal of these specifications was conditioned upon the specifications “surviving the completion of appellate review.” ROT, Vol. 1, *Entry of Judgment*, dated 3 March 2023

On 21 April 2023, the Government sent SrA Lawson the required notice by mail of his right to appeal within 90 days. Pursuant to Article 66(b)(1)(A), UCMJ, 10 U.S.C. § 866(b)(1)(A) (2022), SrA Lawson files his notice of direct appeal with this Court.

Respectfully submitted,

SPENCER R. NELSON, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 12 June 2023.

Respectfully submitted,

SPENCER R. NELSON, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

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

|                          |   |                                  |
|--------------------------|---|----------------------------------|
| UNITED STATES,           | ) | <b>MOTION FOR ENLARGEMENT OF</b> |
| <i>Appellee,</i>         | ) | <b>TIME (FIRST)</b>              |
|                          | ) |                                  |
| v.                       | ) | Before Panel No. 2               |
|                          | ) |                                  |
| Senior Airman (E-4),     | ) | No. ACM 23034                    |
| <b>ANDREW V. LAWSON,</b> | ) |                                  |
| United States Air Force, | ) | 12 August 2023                   |
|                          | ) |                                  |
| <i>Appellant.</i>        | ) |                                  |

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

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **20 October 2023**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 51 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Division on 12 August 2023.

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

**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                   |
|                         | ) |                           |
| Senior Airman (E-4)     | ) | ACM 23034                 |
| ANDREW V. LAWSON, USAF, | ) |                           |
| <i>Appellant.</i>       | ) | Panel No. 2               |
|                         | ) |                           |

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

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 14 August 2023.

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



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

|                          |   |                                  |
|--------------------------|---|----------------------------------|
| <b>UNITED STATES,</b>    | ) | <b>MOTION FOR ENLARGEMENT OF</b> |
| <i>Appellee,</i>         | ) | <b>TIME (SECOND)</b>             |
|                          | ) |                                  |
| v.                       | ) | Before Panel No. 2               |
|                          | ) |                                  |
| Senior Airman (E-4),     | ) | No. ACM 23034                    |
| <b>ANDREW V. LAWSON,</b> | ) |                                  |
| United States Air Force, | ) | 12 October 2023                  |
|                          | ) |                                  |
| <i>Appellant.</i>        | ) |                                  |

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his second enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **19 November 2023**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 112 days have elapsed. On the date requested, 150 days will have elapsed.

On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a;<sup>1</sup> one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934.<sup>2</sup> R. at 174,

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<sup>1</sup> Specifications 1 and 2 were “conditionally set aside” and “conditionally dismissed without prejudice” if Specification 4 and 5 of Charge I, respectively, survived “completion of appellate review.” Members acquitted Appellant of Specifications 3 and 6.

<sup>2</sup> Charge III was “conditionally set aside” and “conditionally dismissed without prejudice” if the unlawful entry charge and its specification survived “completion of appellate review.”

204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit \$200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023.

The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started a review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Division on 12 October 2023.

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

**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                   |
|                         | ) |                           |
| Senior Airman (E-4)     | ) | ACM 23034                 |
| ANDREW V. LAWSON, USAF, | ) |                           |
| <i>Appellant.</i>       | ) | Panel No. 2               |
|                         | ) |                           |

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

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

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

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

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

|                          |   |                                  |
|--------------------------|---|----------------------------------|
| <b>UNITED STATES,</b>    | ) | <b>MOTION FOR ENLARGEMENT OF</b> |
| <i>Appellee,</i>         | ) | <b>TIME (THIRD)</b>              |
|                          | ) |                                  |
| v.                       | ) | Before Panel No. 2               |
|                          | ) |                                  |
| Senior Airman (E-4),     | ) | No. ACM 23034                    |
| <b>ANDREW V. LAWSON,</b> | ) |                                  |
| United States Air Force, | ) | 9 November 2023                  |
|                          | ) |                                  |
| <i>Appellant.</i>        | ) |                                  |

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his third enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **19 December 2023**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a;<sup>1</sup> one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934.<sup>2</sup> R. at 174,

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<sup>1</sup> Specifications 1 and 2 were “conditionally set aside” and “conditionally dismissed without prejudice” if Specification 4 and 5 of Charge I, respectively, survived “completion of appellate review.” Members acquitted Appellant of Specifications 3 and 6.

<sup>2</sup> Charge III was “conditionally set aside” and “conditionally dismissed without prejudice” if the unlawful entry charge and its specification survived “completion of appellate review.”

204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit \$200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023.

The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started a review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

**CERTIFICATE OF FILING AND SERVICE**

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

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force



**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                   |
|                         | ) |                           |
| Senior Airman (E-4)     | ) | ACM 23034                 |
| ANDREW V. LAWSON, USAF, | ) |                           |
| <i>Appellant.</i>       | ) | Panel No. 2               |
|                         | ) |                           |

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

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 14 November 2023.

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

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

|                          |   |                                  |
|--------------------------|---|----------------------------------|
| <b>UNITED STATES,</b>    | ) | <b>MOTION FOR ENLARGEMENT OF</b> |
| <i>Appellee,</i>         | ) | <b>TIME (FOURTH)</b>             |
|                          | ) |                                  |
| v.                       | ) | Before Panel No. 2               |
|                          | ) |                                  |
| Senior Airman (E-4),     | ) | No. ACM 23034                    |
| <b>ANDREW V. LAWSON,</b> | ) |                                  |
| United States Air Force, | ) | 12 December 2023                 |
|                          | ) |                                  |
| <i>Appellant.</i>        | ) |                                  |

**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 Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his fourth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **18 January 2024**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 173 days have elapsed. On the date requested, 210 days will have elapsed.

On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a;<sup>1</sup> one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934.<sup>2</sup> R. at 174,

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<sup>1</sup> Specifications 1 and 2 were “conditionally set aside” and “conditionally dismissed without prejudice” if Specification 4 and 5 of Charge I, respectively, survived “completion of appellate review.” Members acquitted Appellant of Specifications 3 and 6.

<sup>2</sup> Charge III was “conditionally set aside” and “conditionally dismissed without prejudice” if the unlawful entry charge and its specification survived “completion of appellate review.”

204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit \$200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023.

The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined.

Appellate counsel is currently assigned 23 cases; 13 cases are pending initial AOE's before this Court. Counsel has one pending CAAF petition and supplement. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Seven Air Force Court cases have priority over the present case:

1. *United States v. Ramirez*, No. ACM 40373 – On 26 August 2022, contrary to his pleas, a Military Judge sitting at a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of wrongfully possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 705. The Military Judge sentenced Appellant to be reprimanded, confined for 14 months, and dishonorably discharged. R. at 767. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, 26 Sep 2022. The Convening Authority denied Appellant's request for waiver of automatic forfeitures. *Id.* The ROT consists of seven volumes, 16 prosecution exhibits, 40 defense exhibits, and 35 appellate exhibits. The transcript is 767 pages. The Appellant is not confined. Counsel has reviewed the allied papers, all unsealed exhibits, and has started reviewing the transcript.

2. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant’s request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant’s request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of this case.

3. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant’s clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits.

The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

4. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant’s request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is currently confined. Counsel has not started his review of this case.

5. *United States v. Ellis*, No. ACM 40430 – On 21 October 2022, in accordance with his pleas, a Military Judge in a general court-martial, at Spangdahlem Air Base, Germany, convicted Appellant of one charge, two specifications of assault, in violation of Article 128, UCMJ; and an additional charge, three specifications of assault in violation of Article 128, UCMJ. ROT, Vol. 1, Entry of Judgment, dated 13 December 2022.<sup>3</sup> R. at 359. The Military Judge sentenced Appellant to be reprimanded, to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 640 days, to be discharged from the service with a bad conduct service characterization. Id.; R. at 398. The Convening Authority took no actions on the findings, sentence, and denied Appellant’s requests for deferments. ROT, Vol. 1, Convening Authority Decision on

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<sup>3</sup> Various charges and specifications were withdrawn and dismissed with prejudice.

Action, 26 November 2022. The ROT consists of seven volumes, nine prosecution exhibits, ten defense exhibits, 38 appellate exhibits, and one court exhibit. Appellant is currently confined. Counsel has not yet started his review of this case.

6. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

7. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant's request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three

prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

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

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Division on 12 December 2023.

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

**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                   |
|                         | ) |                           |
| Senior Airman (E-4)     | ) | ACM 23034                 |
| ANDREW V. LAWSON, USAF, | ) |                           |
| <i>Appellant.</i>       | ) | Panel No. 2               |
|                         | ) |                           |

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

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 13 December 2023.

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

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

|                          |   |                                  |
|--------------------------|---|----------------------------------|
| <b>UNITED STATES,</b>    | ) | <b>MOTION FOR ENLARGEMENT OF</b> |
| <i>Appellee,</i>         | ) | <b>TIME (FIFTH)</b>              |
|                          | ) |                                  |
| v.                       | ) | Before Panel No. 2               |
|                          | ) |                                  |
| Senior Airman (E-4),     | ) | No. ACM 23034                    |
| <b>ANDREW V. LAWSON,</b> | ) |                                  |
| United States Air Force, | ) | 11 January 2024                  |
|                          | ) |                                  |
| <i>Appellant.</i>        | ) |                                  |

**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 Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his fifth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 February 2024**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 203 days have elapsed. On the date requested, 240 days will have elapsed.

On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a;<sup>1</sup> one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934.<sup>2</sup> R. at 174,

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<sup>1</sup> Specifications 1 and 2 were “conditionally set aside” and “conditionally dismissed without prejudice” if Specification 4 and 5 of Charge I, respectively, survived “completion of appellate review.” Members acquitted Appellant of Specifications 3 and 6.

<sup>2</sup> Charge III was “conditionally set aside” and “conditionally dismissed without prejudice” if the unlawful entry charge and its specification survived “completion of appellate review.”

204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit \$200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023.

The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined.

Appellate counsel is currently assigned 23 cases; 13 cases are pending initial AOE's before this Court. Counsel has four pending CAAF Petitions and Supplements. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Seven Air Force Court cases have priority over the present case:

1. *United States v. Ramirez*, No. ACM 40373 – On 26 August 2022, contrary to his pleas, a Military Judge sitting at a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of wrongfully possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 705. The Military Judge sentenced Appellant to be reprimanded, confined for 14 months, and dishonorably discharged. R. at 767. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, 26 Sep 2022. The Convening Authority denied Appellant's request for waiver of automatic forfeitures. *Id.* The ROT consists of seven volumes, 16 prosecution exhibits, 40 defense exhibits, and 35 appellate exhibits. The transcript is 767 pages. The Appellant is not confined. Except for sealed materials, Counsel has finished his review of this case. Counsel filed a motion to view

sealed materials on 3 January 2024 which was granted. In his last EOT motion on 3 January 2024, which was also granted, Counsel forecasted to this Court that he does not anticipate needing another EOT unless unforeseen circumstances arise.

2. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of this case.

3. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency

submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

4. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant’s request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is currently confined. Counsel has not started his review of this case.

5. *United States v. Ellis*, No. ACM 40430 – On 21 October 2022, in accordance with his pleas, a Military Judge in a general court-martial, at Spangdahlem Air Base, Germany, convicted Appellant of one charge, two specifications of assault, in violation of Article 128, UCMJ; and an additional charge, three specifications of assault in violation of Article 128, UCMJ. ROT, Vol. 1, Entry of Judgment, dated 13 December 2022.<sup>3</sup> R. at 359. The Military Judge sentenced Appellant to be reprimanded, to forfeit all pay and allowances, to be reduced to the grade of E-1, to be

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<sup>3</sup> Various charges and specifications were withdrawn and dismissed with prejudice.

confined for 640 days, to be discharged from the service with a bad conduct service characterization. Id.; R. at 398. The Convening Authority took no actions on the findings, sentence, and denied Appellant's requests for deferments. ROT, Vol. 1, Convening Authority Decision on Action, 26 November 2022. The ROT consists of seven volumes, nine prosecution exhibits, ten defense exhibits, 38 appellate exhibits, and one court exhibit. Appellant is currently confined. Counsel has not yet started his review of this case.

6. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

7. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and



approved Appellant's request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

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

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Division on 11 January 2024.

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

**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                   |
|                         | ) |                           |
| Senior Airman (E-4)     | ) | ACM 23034                 |
| ANDREW V. LAWSON, USAF, | ) |                           |
| <i>Appellant.</i>       | ) | Panel No. 2               |
|                         | ) |                           |

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

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 16 January 2024.

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

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

|                         |   |                              |
|-------------------------|---|------------------------------|
| <b>UNITED STATES,</b>   | ) | <b>UNITED STATES’ MOTION</b> |
| <i>Appellee,</i>        | ) | <b>TO ATTACH DOCUMENT</b>    |
|                         | ) |                              |
| v.                      | ) | Before Panel No. 2           |
|                         | ) |                              |
| Senior Airmen (E-4)     | ) | No. ACM 23034                |
| <b>ANDREW V. LAWSON</b> | ) |                              |
| United States Air Force | ) | 19 January 2024              |
| <i>Appellant.</i>       | ) |                              |

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

Pursuant to Rule 23.3(b) of this Court’s Rules of Practice and Procedure, the United States moves the Court to attach the following document to this motion:

**A. Appendix – Special Court-Martial Certified Verbatim Transcript - *United States v. Senior Airman Andrew V. Lawson*, dated 30 January 2023 (749 pages)**

On 12 June 2023, Appellant, through Appellate Defense Counsel, filed his notice of direct appeal pursuant to Article 66(b)(1)(A) with this Court. (*Notice of Direct Appeal Pursuant to Article 66(b)(1)(A)*, dated 12 June 2023.) In the interest of justice and for this Court and all counsel involved to complete meaningful appellate review, the United States is filing this motion to attach the above listed appendix. See United States v. Credit, 4 M.J. 118, 119 (C.M.A. 1977) (explaining that “a trial transcript is, indeed, the very heart of the criminal proceedings and the single element essential to our meaningful appellate review...).

WHEREFORE, the United States respectfully requests this Court grant this Motion to Attach the Document.

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

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force  
Appellate Defense Division on 19 January 2024.

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

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

|                          |   |                                  |
|--------------------------|---|----------------------------------|
| <b>UNITED STATES,</b>    | ) | <b>MOTION FOR ENLARGEMENT OF</b> |
| <i>Appellee,</i>         | ) | <b>TIME (SIXTH)</b>              |
|                          | ) |                                  |
| v.                       | ) | Before Panel No. 2               |
|                          | ) |                                  |
| Senior Airman (E-4),     | ) | No. ACM 23034                    |
| <b>ANDREW V. LAWSON,</b> | ) |                                  |
| United States Air Force, | ) | 8 February 2024                  |
|                          | ) |                                  |
| <i>Appellant.</i>        | ) |                                  |

**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 Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his sixth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **18 March 2024**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 231 days have elapsed. On the date requested, 270 days will have elapsed.

On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a;<sup>1</sup> one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934.<sup>2</sup> R. at 174,

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<sup>1</sup> Specifications 1 and 2 were “conditionally set aside” and “conditionally dismissed without prejudice” if Specification 4 and 5 of Charge I, respectively, survived “completion of appellate review.” Members acquitted Appellant of Specifications 3 and 6.

<sup>2</sup> Charge III was “conditionally set aside” and “conditionally dismissed without prejudice” if the unlawful entry charge and its specification survived “completion of appellate review.”



204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit \$200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023.

The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined.

Appellate counsel is currently assigned 23 cases; 12 cases are pending initial AOE's before this Court. Counsel has one pending Supreme Court Reply Brief (Answer due to Court and Counsel on 20 February 2024) and four pending CAAF Petitions and Supplements. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Six Air Force Court cases have priority over the present case:

1. *United States v. Ellis*, No. ACM 40430<sup>3</sup> – On 21 October 2022, in accordance with his pleas, a Military Judge in a general court-martial, at Spangdahlem Air Base, Germany, convicted Appellant of one charge, two specifications of assault, in violation of Article 128, UCMJ; and an additional charge, three specifications of assault in violation of Article 128, UCMJ. ROT, Vol. 1, Entry of Judgment, dated 13 December 2022.<sup>4</sup> R. at 359. The Military Judge sentenced Appellant to be reprimanded, to forfeit all pay and allowances, to be reduced to the grade of E-1, to be

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<sup>3</sup> On 29 January 2024, this Court (Panel 1) approved Appellant's request for EOT 9. Without prior notice and without any status conferences, this Court said, "Given the nature of the case and the number of enlargements granted thus far, the court is not willing to grant any further enlargements of time absent exceptional circumstances." As such, Counsel has changed the prioritization of this guilty plea case over the two cases docketed before this case.

<sup>4</sup> Various charges and specifications were withdrawn and dismissed with prejudice.

confined for 640 days, to be discharged from the service with a bad conduct service characterization. Id.; R. at 398. The Convening Authority took no actions on the findings, sentence, and denied Appellant's requests for deferments. ROT, Vol. 1, Convening Authority Decision on Action, 26 November 2022. The ROT consists of seven volumes, nine prosecution exhibits, ten defense exhibits, 38 appellate exhibits, and one court exhibit. Appellant is currently confined. Counsel will begin his review of this case on Monday, 12 February 2024. Contemporaneous with this request, counsel filed a 116-page AOE in *United States v. Ramirez*, No. ACM 40373. Counsel is on leave .

2. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of this case.

3. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement and a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

4. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant's request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is currently confined. Counsel has not started his review of this case.

5. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

6. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant’s request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

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

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

**CERTIFICATE OF FILING AND SERVICE**

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

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

**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                   |
|                         | ) |                           |
| Senior Airman (E-4)     | ) | ACM 23034                 |
| ANDREW V. LAWSON, USAF, | ) |                           |
| <i>Appellant.</i>       | ) | Panel No. 2               |
|                         | ) |                           |

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

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

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

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



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

|                          |   |                                  |
|--------------------------|---|----------------------------------|
| <b>UNITED STATES,</b>    | ) | <b>MOTION FOR ENLARGEMENT OF</b> |
| <i>Appellee,</i>         | ) | <b>TIME (SEVENTH)</b>            |
|                          | ) |                                  |
| v.                       | ) | Before Panel No. 2               |
|                          | ) |                                  |
| Senior Airman (E-4),     | ) | No. ACM 23034                    |
| <b>ANDREW V. LAWSON,</b> | ) |                                  |
| United States Air Force, | ) | 7 March 2024                     |
|                          | ) |                                  |
| <i>Appellant.</i>        | ) |                                  |

**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 Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his seventh enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 April 2024**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 259 days have elapsed. On the date requested, 300 days will have elapsed.

On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a;<sup>1</sup> one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934.<sup>2</sup> R. at 174,

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<sup>1</sup> Specifications 1 and 2 were “conditionally set aside” and “conditionally dismissed without prejudice” if Specification 4 and 5 of Charge I, respectively, survived “completion of appellate review.” Members acquitted Appellant of Specifications 3 and 6.

<sup>2</sup> Charge III was “conditionally set aside” and “conditionally dismissed without prejudice” if the unlawful entry charge and its specification survived “completion of appellate review.”

204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit \$200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023.

The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined.

Appellate counsel is currently assigned 22 cases; 11 cases are pending initial AOE's before this Court. Counsel has one pending CAAF Petition and three Supplements. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Five Air Force Court cases have priority over the present case:

1. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision

on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has reviewed the charging documents (Vol. 1) and all exhibits (Vols. 2-5).

2. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

3. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant's request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT

consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is not confined. Counsel has not started his review of this case.

4. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

5. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant's request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

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

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

**CERTIFICATE OF FILING AND SERVICE**

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

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

**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                   |
|                         | ) |                           |
| Senior Airman (E-4)     | ) | ACM 23034                 |
| ANDREW V. LAWSON, USAF, | ) |                           |
| <i>Appellant.</i>       | ) | Panel No. 2               |
|                         | ) |                           |

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

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

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



**CERTIFICATE OF FILING AND SERVICE**

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

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

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

|                     |   |                |
|---------------------|---|----------------|
| UNITED STATES       | ) | No. ACM 23034  |
| <i>Appellee</i>     | ) |                |
|                     | ) |                |
| v.                  | ) |                |
|                     | ) | <b>ORDER</b>   |
| Andrew V. LAWSON    | ) |                |
| Senior Airman (E-4) | ) |                |
| U.S. Air Force      | ) |                |
| <i>Appellant</i>    | ) | <b>Panel 2</b> |

On 7 March 2024 counsel for Appellant submitted a Motion for Enlargement of Time (Seventh) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

The court has considered Appellant’s motion, the Government’s opposition, case law, and this court’s Rules of Practice and Procedure. Accordingly, it is by the court on this 8th day of March, 2024,

**ORDERED:**

Appellant’s Motion for Enlargement of Time (Seventh) is **GRANTED**. Appellant shall file any assignments of error not later than **17 April 2024**.

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



FOR THE COURT

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

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

|                          |   |                                  |
|--------------------------|---|----------------------------------|
| <b>UNITED STATES,</b>    | ) | <b>MOTION FOR ENLARGEMENT OF</b> |
| <i>Appellee,</i>         | ) | <b>TIME (EIGHTH)</b>             |
|                          | ) |                                  |
| v.                       | ) | Before Panel No. 2               |
|                          | ) |                                  |
| Senior Airman (E-4),     | ) | No. ACM 23034                    |
| <b>ANDREW V. LAWSON,</b> | ) |                                  |
| United States Air Force, | ) | 5 April 2024                     |
|                          | ) |                                  |
| <i>Appellant.</i>        | ) |                                  |

**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 Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his eighth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 May 2024**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 288 days have elapsed. On the date requested, 330 days will have elapsed.

On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a;<sup>1</sup> one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934.<sup>2</sup> R. at 174,

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<sup>1</sup> Specifications 1 and 2 were “conditionally set aside” and “conditionally dismissed without prejudice” if Specification 4 and 5 of Charge I, respectively, survived “completion of appellate review.” Members acquitted Appellant of Specifications 3 and 6.

<sup>2</sup> Charge III was “conditionally set aside” and “conditionally dismissed without prejudice” if the unlawful entry charge and its specification survived “completion of appellate review.”

204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit \$200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023.

The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined.

Appellate counsel is currently assigned 21 cases; 10 cases are pending initial AOE's before this Court. Counsel has two pending CAAF Supplements. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Five Air Force Court cases have priority over the present case:

1. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision

on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has reviewed the entire ROT, except for sealed materials, and has reviewed over 700 pages of the 1448-page transcript.

2. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant’s clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

3. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant’s request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT

consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is not confined. Counsel has not started his review of this case.

4. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

5. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant's request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

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

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 5 April 2024.

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force



**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                   |
|                         | ) |                           |
| Senior Airman (E-4)     | ) | ACM 23034                 |
| ANDREW V. LAWSON, USAF, | ) |                           |
| <i>Appellant.</i>       | ) | Panel No. 2               |
|                         | ) |                           |

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

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

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

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

|                          |   |                                  |
|--------------------------|---|----------------------------------|
| <b>UNITED STATES,</b>    | ) | <b>MOTION FOR ENLARGEMENT OF</b> |
| <i>Appellee,</i>         | ) | <b>TIME (NINTH)</b>              |
|                          | ) |                                  |
| v.                       | ) | Before Panel No. 2               |
|                          | ) |                                  |
| Senior Airman (E-4),     | ) | No. ACM 23034                    |
| <b>ANDREW V. LAWSON,</b> | ) |                                  |
| United States Air Force, | ) | 8 May 2024                       |
|                          | ) |                                  |
| <i>Appellant.</i>        | ) |                                  |

**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 Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his ninth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **16 June 2024**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 321 days have elapsed. On the date requested, 360 days will have elapsed.

On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a;<sup>1</sup> one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934.<sup>2</sup> R. at 174,

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<sup>1</sup> Specifications 1 and 2 were “conditionally set aside” and “conditionally dismissed without prejudice” if Specification 4 and 5 of Charge I, respectively, survived “completion of appellate review.” Members acquitted Appellant of Specifications 3 and 6.

<sup>2</sup> Charge III was “conditionally set aside” and “conditionally dismissed without prejudice” if the unlawful entry charge and its specification survived “completion of appellate review.”

204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit \$200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023.

The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. Appellant is not confined.

Appellate counsel is currently assigned 20 cases; 10 cases are pending initial AOE's before this Court. Counsel has one pending CAAF Supplement that is due in late May. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Five Air Force Court cases have priority over the present case:

1. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision

on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has finished drafting the AOE, is currently editing, and is working with the client on *Grostefon* matters. Counsel intends to file the AOE on Monday, 13 May.

2. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has reviewed the entire record and is drafting the AOE. Barring unforeseen circumstances, Counsel intends to file the AOE on or before the current deadline of 26 May 2024.

3. *United States v. Wood*, No. ACM 40429 – On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, UCMJ. R. at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant's request for waiver of automatic forfeitures. Record of Trial

(ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022. The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is not confined. Counsel has not started his review of this case.

4. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has not yet started his review of this case.

5. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant's request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three

prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of the case.

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

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force



**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 8 May 2024.

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

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

|                         |   |                           |
|-------------------------|---|---------------------------|
| UNITED STATES,          | ) | UNITED STATES' OPPOSITION |
| <i>Appellee,</i>        | ) | TO APPELLANT'S MOTION FOR |
|                         | ) | ENLARGEMENT OF TIME       |
| v.                      | ) |                           |
|                         | ) |                           |
| Senior Airman (E-4)     | ) | ACM 23034                 |
| ANDREW V. LAWSON, USAF, | ) |                           |
| <i>Appellant.</i>       | ) | Panel No. 2               |
|                         | ) |                           |

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

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 10 May 2024.

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

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

|                            |   |                      |
|----------------------------|---|----------------------|
| <b>UNITED STATES</b>       | ) | <b>No. ACM 23034</b> |
| <i>Appellee</i>            | ) |                      |
|                            | ) |                      |
| <b>v.</b>                  | ) |                      |
|                            | ) | <b>ORDER</b>         |
| <b>Andrew V. LAWSON</b>    | ) |                      |
| <b>Senior Airman (E-4)</b> | ) |                      |
| <b>U.S. Air Force</b>      | ) |                      |
| <i>Appellant</i>           | ) | <b>Panel 2</b>       |

On 8 May 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Ninth) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

In the motion, and consistent with this court’s Rules of Practice and Procedure, Appellant’s counsel identified his cases with priority over Appellant’s case, and his progress on those cases. The five cases listed are the same five cases listed in Appellant’s Motion for Enlargement of Time (Eighth), which this court granted on 8 April 2024. It appears Appellant’s counsel has made some progress towards filing a brief in two of the five cases, and no progress with any other cases.

The court has considered Appellant’s motion, the Government’s opposition, case law, and this court’s Rules of Practice and Procedure. The United States Court of Appeals for the Armed Forces “will apply a presumption of unreasonable delay where appellate review is not completed and a decision is not rendered within eighteen months of docketing the case before the Court of Criminal Appeals.” *United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006).

If granted, nearly twelve months will have elapsed between docketing and submission of Appellant’s brief. At appellate defense counsel’s current pace, this court will face a presumption of unreasonable delay in deciding Appellant’s case.

Accordingly, it is by the court on this 10th day of May, 2024,

**ORDERED:**

Appellant’s Motion for Enlargement of Time (Ninth) is **GRANTED**. Appellant shall file any assignments of error not later than **16 June 2024**.

Appellant’s counsel should not rely on subsequent requests for enlargement of time being granted; each request will be considered on its merits.

Any subsequent motions for enlargement of time shall, in addition to the matters required under this court's Rules of Practice and Procedure, include a statement as to: (1) whether Appellant was advised of Appellant's right to a timely appeal, (2) whether Appellant was 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. Counsel is not required to re-address item (1) in each subsequent motion for enlargement of time.



FOR THE COURT

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

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

|                          |   |                                  |
|--------------------------|---|----------------------------------|
| <b>UNITED STATES,</b>    | ) | <b>MOTION FOR ENLARGEMENT OF</b> |
| <i>Appellee,</i>         | ) | <b>TIME (TENTH)</b>              |
|                          | ) |                                  |
| v.                       | ) | Before Panel No. 2               |
|                          | ) |                                  |
| Senior Airman (E-4),     | ) | No. ACM 23034                    |
| <b>ANDREW V. LAWSON,</b> | ) |                                  |
| United States Air Force, | ) | 4 June 2024                      |
|                          | ) |                                  |
| <i>Appellant.</i>        | ) |                                  |

**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 Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his tenth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **16 July 2024**. The record of trial was docketed with this Court on 22 June 2023. From the date of docketing to the present date, 348 days have elapsed. On the date requested, 390 days will have elapsed.

On 3 February 2023, contrary to his pleas, members sitting at a special court-martial at Little Rock Air Force Base, Arkansas, convicted Appellant of one charge, four specifications of wrongful possession and introduction of Schedule I controlled substances, in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a;<sup>1</sup> one charge, one specification of unlawful entry in violation of Article 129, UCMJ, 10 U.S.C. § 929; and one charge, one specification disorderly conduct in violation of Article 134, UCMJ, 10 U.S.C. § 934.<sup>2</sup> R. at 174,

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<sup>1</sup> Specifications 1 and 2 were “conditionally set aside” and “conditionally dismissed without prejudice” if Specification 4 and 5 of Charge I, respectively, survived “completion of appellate review.” Members acquitted Appellant of Specifications 3 and 6.

<sup>2</sup> Charge III was “conditionally set aside” and “conditionally dismissed without prejudice” if the unlawful entry charge and its specification survived “completion of appellate review.”

204. The members sentenced Appellant to be reduced to the grade of E-1, to forfeit \$200 pay per month for 12 months, and to be confined for two months. R. at 202. The Convening Authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action, dated 23 February 2023.

The ROT consists of three volumes, 13 prosecution exhibits, six defense exhibits, and 45 appellate exhibits. The transcript is 744 pages. Appellant is not confined.

Appellate counsel is currently assigned 20 cases; seven cases are pending initial AOE's before this Court. Counsel has no pending CAAF petitions or supplements. Through no fault of Appellant, undersigned counsel has not finished his review of this case. That is, Counsel's caseload has prevented him from reaching and finishing Appellant's case sooner. Counsel has reviewed all volumes of the record of trial and is a quarter of the way finished with his review of the transcript.

Since his last extension of time, Counsel has:

1. Drafted and filed an eight-issue, 50-page AOE in *United States v. Serjak*, No. ACM 40392
2. Reviewed, drafted, and filed a four-issue, 16-page AOE in *United States v. Van Velson*, No. ACM 40401
3. Reviewed, drafted, and filed a Merits Brief with one *Grostefon* issue in *United States v. Wood*, No. ACM 40429
4. Drafted a two-issue, 30-page CAAF Supplement in *United States v. Aguirre*, No. 24-0146/AF, 2024 CAAF LEXIS 263 (C.A.A.F. May 9, 2024) for submission on 29 May 2024
5. Reviewed the entire record in *United States v. Block*, No. ACM 40466 (except for sealed materials as explained below)
6. Reviewed the entire record in *United States v. Hollenback*, No. ACM 40481
7. Prepared for and participated in two moots as a judge

Two Air Force Court cases have priority over the present case:



1. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The Convening Authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has reviewed the entire case file and attempted to review sealed materials on 3 June 2024. However, the sealed materials were password protected and neither this Court nor JAJM had the password. But for reviewing the sealed materials, Counsel has finished this case.

2. *United States v. Hollenback*, No. ACM 40481 – On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant's request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023. The ROT consists of two volumes, three

prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is not confined. Counsel has reviewed the entire case file, including sealed materials. Counsel is working the AOE.

Given this Court's order on 10 May 2024 stating that Counsel "should not rely on subsequent requests for enlargement of time being grant" counsel states the following: First, as noted above, Counsel has been unable to finish this case earlier because of his prior caseload for the past year. Second, Counsel is actively reviewing this case as both *Block* and *Hollenback* have already been reviewed. Third, Counsel is on leave from 5-8 June 2024. Fourth, Counsel will have finished his review of this case before the next enlargement of time is due; however, Counsel is unable to state when an AOE will be completed until he identifies all issues and discusses them with the Appellant.

Finally, in the above-mentioned Order, this Court stated that any subsequent enlargement requests "shall . . . include a statement as to" four enumerated points. Appellant has provided limited consent to disclose confidential communications with counsel which only include the following: That Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Counsel is in compliance with his ethical obligations as it relates to communications with his client.

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

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 4 June 2024.

Respectfully submitted,

N, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

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

|                         |   |                           |
|-------------------------|---|---------------------------|
| UNITED STATES,          | ) | UNITED STATES' OPPOSITION |
| <i>Appellee,</i>        | ) | TO APPELLANT'S MOTION FOR |
|                         | ) | ENLARGEMENT OF TIME       |
| v.                      | ) |                           |
|                         | ) |                           |
| Senior Airman (E-4)     | ) | ACM 23034                 |
| ANDREW V. LAWSON, USAF, | ) |                           |
| <i>Appellant.</i>       | ) | Panel No. 2               |
|                         | ) |                           |

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

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

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

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

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

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

|                          |   |                     |
|--------------------------|---|---------------------|
| <b>UNITED STATES,</b>    | ) | <b>MERITS BRIEF</b> |
| <i>Appellee,</i>         | ) |                     |
|                          | ) |                     |
| v.                       | ) | Before Panel No. 2  |
|                          | ) |                     |
| Senior Airman (E-4),     | ) | No. ACM 23034       |
| <b>ANDREW V. LAWSON,</b> | ) |                     |
| United States Air Force, | ) | 14 June 2024        |
| <i>Appellant.</i>        | ) |                     |

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

**Submission of Case Without Specific Assignments of Error**

The undersigned appellate defense counsel attests he has, on behalf of Senior Airman Andrew V. Lawson, Appellant, carefully examined the record of trial in this case. Appellant does not admit the findings and sentence are correct in law and fact, but submits the case to this Honorable Court on its merits with no specific assignments of error. Appellant has conformed this merits brief to the format in Appendix B of this Honorable Court’s Rules of Practice and Procedure.

Through undersigned counsel, Appellant personally raises two issues pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), which are discussed in the attached Appendix A.

mitted,

SPENCER R. NELSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604





## APPENDIX A

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

### I.

**AS APPLIED TO SENIOR AIRMAN LAWSON, THE GOVERNMENT CANNOT PROVE 18 U.S.C. § 922 IS CONSTITUTIONAL BY “DEMONSTRATING THAT IT IS CONSISTENT WITH THE NATION’S HISTORICAL TRADITION OF FIREARM REGULATION”<sup>1</sup> WHEN SENIOR AIRMAN LAWSON WAS NOT CONVICTED OF A VIOLENT OFFENSE OR AN OFFENSE INVOLVING A FIREARM.<sup>2</sup>**

#### Statement of Facts

After his conviction, the Government determined that SrA Lawson’s case met the firearm prohibition under 18 U.S.C. § 922. *Entry of Judgment*. The Government did not specify why, or under which section his case met the requirements of 18 U.S.C. § 922. *Id.* The Government convicted SrA Lawson of possession and introduction of drugs, unlawful entry, and disorderly conduct. *Id.*

#### Standard of Review

This Court reviews questions of jurisdiction, law, and statutory interpretation de novo. *United States v. Lepore*, 81 M.J. 759, 760-61 (A.F. Ct. Crim. App. 2021) (citations omitted).

#### Law and Analysis

One problem with the Statement of Trial Results and Entry of Judgment is that the Government did not indicate which specific subsection of § 922 it relied on to find that

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<sup>1</sup> *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 24 (2022).

<sup>2</sup> SrA Lawson recognizes this Court’s published opinion in *United States v. Vanzant*, \_\_\_ M.J. \_\_\_, No. ACM 22004, slip op. (A.F. Ct. Crim. App. 28 May 2024), but raises this issue anyway as the Court of Appeals for the Armed Forces has granted review on this issue (as *Vanzant* recognized).

SrA Lawson fell under the firearm prohibition. Thus, SrA Lawson is unable to argue which specific subsection of § 922 is unconstitutional in his case, although he knows it could not be the domestic violence provision given the facts of his case. Regardless, it appears that the Government cannot meet its burden of proving a historical analog that barred offenders like SrA Lawson from possessing firearms.

The test for applying the Second Amendment is:

When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command.”

*Bruen*, 597 U.S. 1, 24 (quoting *Konigsberg v. State Bar of California*, 366 U.S. 36, 50 n.10 (1961)).

Last year, the Fifth Circuit assessed an appellant who was “involved in five shootings” and pleaded guilty to “possessing a firearm while under a domestic violence restraining order” in violation of § 922(g)(8). *United States v. Rahimi*, 61 F.4th 443, 448-49 (5th Cir. 2023), *argued*, 143 S. Ct. 2688 (Nov. 7, 2023). Vacating the conviction, the Fifth Circuit held that “§ 922(g)(8)’s ban on possession of firearms is an ‘outlier[] that our ancestors would never have accepted.’” *Id.* at 461 (quoting *Bruen*, 597 U.S. at 30).

In reaching that conclusion, the Fifth Circuit made three broad points. First, “[w]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” 61 F.4th at 450 (quoting *Bruen*, 597 U.S. at 8). Therefore, the Government bears the burden of “justify[ing] its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* (quoting *Bruen*, 597 U.S. at 24).

Second, the Fifth Circuit recognized that *D.C. v. Heller*, 554 U.S. 570 (2008) and *Bruen* both contain language that could limit the Second Amendment’s application to “law-abiding,

responsible citizens.” 61 F.4th at 451 (quoting *Heller*, 554 U.S. at 635). The Fifth Circuit explained that “*Heller*’s reference to ‘law-abiding, responsible’ citizens meant to exclude from the Court’s discussion groups that have historically been stripped of their Second Amendment rights, i.e., groups whose disarmament the Founders ‘presumptively’ tolerated or would have tolerated.” *Id.* at 452. Here the issue is whether the Founders would have “presumptively” tolerated a citizen being stripped of his right to keep and bear arms when he was not convicted of a violent offense. *Id.*

Third, the Fifth Circuit held that “[t]he Government fails to demonstrate that § 922(g)(8)’s restriction of the Second Amendment right fits within our Nation’s historical tradition of firearm regulation.” *Id.* at 460. If the Government failed to prove that our Nation’s historical tradition of firearm regulation did not include a violent offender who pled guilty to possessing a firearm while under a domestic violence restraining order, then it is questionable whether it can meet its burden for SrA Lawson’s conviction when he was not convicted of a violent offense.

An additional argument bolsters SrA Lawson’s position: The Fifth Circuit issued an opinion that held § 922(g)(3) unconstitutional. *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023). In *Daniels*, the appellant was arrested for driving without a license, but the police officers found marijuana butts in his ashtray. 77 F.4th at 340. He was later charged and convicted of a violation of § 922(g)(3). *Id.* at 340-41. In finding § 922(g)(3) unconstitutional, the Fifth Circuit’s bottom line was:

[O]ur history and tradition may support some limits on an intoxicated person’s right to carry a weapon, but it does not justify disarming a sober citizen based exclusively on his past drug usage. Nor do more generalized traditions of disarming dangerous persons support this restriction on nonviolent drug users.

*Id.* at 340. Notably, this case is analogous to SrA Lawson’s.

In *Lepore*, citing to the 2016 edition of the Rules for Courts-Martial, this Court held, “[T]he mere fact that a firearms prohibition annotation, not required by the Rules for Courts-Martial, was recorded on a document that is itself required by the Rules for Courts-Martial is not sufficient to bring the matter within our limited authority under Article 66, UCMJ.” 81 M.J. at 763. Despite the court-martial order erroneously identifying that A1C Lepore fell under the firearms prohibition, this Court did not act because the “correction relates to a collateral matter and is beyond the scope of our authority under Article 66.” *Id.* at 760. But this Court emphasized, “To be clear, we do not hold that this court lacks authority to direct correction of errors in a promulgating order with respect to the findings, sentence, or action of the convening authority.” *Id.* at 763.

Six months after this Court’s decision in *Lepore*, the CAAF decided *United States v. Lemire*. In that decision, the CAAF granted Sergeant Lemire’s petition, affirmed the Army Court of Criminal Appeals’ decision, and “directed that the promulgating order be corrected to delete the requirement that Appellant register as a sex offender.” 82 M.J. 263, at n.\* (C.A.A.F. 2022) (unpub. op.). The CAAF’s direction that the Army Court of Criminal Appeals fix—or order the Government to fix—the promulgating order, is at odds with this Court’s holding in *Lepore*.

The CAAF’s decision in *Lemire* reveals three things. First, the CAAF has the power to order the correction of administrative errors in promulgating orders—even via unpublished decisions regardless of whether the initial requirement was a collateral consequence. Second, the CAAF believes that Courts of Criminal Appeals have the power to address collateral consequences under Article 66 since it “directed” the Army Court of Criminal Appeals to fix—or have fixed—the erroneous requirement that Sergeant Lemire register as a sex offender. Third, if the CAAF and the Courts of Criminal Appeals have the power to fix administrative errors under Article 66 as they relate to collateral consequences, then perforce, they also have the power to address

constitutional errors in promulgating orders even if the Court deems them to be a collateral consequence.

Additionally, *Lepore* is distinguishable from this case. In *Lepore*, this Court made clear that “[a]ll references in this opinion to the UCMJ and Rules for Courts-Martial (R.C.M.) are to the *Manual for Courts-Martial, United States* (2016 ed.)” 81 M.J. at 760 n.1. This Court then emphasized, “[T]he mere fact that a firearms prohibition annotation, *not required by the Rules for Courts-Martial*, was recorded on a document that is itself required by the Rules for Courts-Martial is not sufficient to bring the matter within our limited authority under Article 66, UCMJ.” *Id.* at 763 (emphasis added). The new 2019 rules that apply in this case, however, direct that both the Statement of Trial Results and the Entry of Judgment contain “[a]ny additional information . . . required under regulations prescribed by the Secretary concerned.” R.C.M. 1101 (a)(6); 1111(b)(3)(F). Department of the Air Force Instruction 51-201, *Administration of Military Justice*, dated 8 April 2022, para 13.3 required the Statement of Trial Results to include “whether the following criteria are met . . . firearm prohibitions.” As such, this Court’s analysis in *Lepore* is no longer controlling since the R.C.M. now requires—by incorporation—a determination on whether the firearm prohibition is triggered. Even if this Court does not find this argument persuasive, it still should consider the issue under *Lepore* since this issue is not an administrative fixing of paperwork, but an issue of constitutional magnitude.

**WHEREFORE**, SrA Lawson requests this Court order the Government to correct the Statement of Trial Results by removing the unconstitutional firearms possession prohibition.

## II.

### WHETHER THE OFFICE OF SPECIAL INVESTIGATIONS COMMITTED PREJUDICIAL MISCONDUCT IN ITS INVESTIGATION OF SRA LAWSON.

#### Facts, Law, and Argument

During its investigation into SrA Lawson, agents from the Air Force Office of Special Investigations (OSI) committed misconduct. This Court should find that said misconduct was prejudicial and grant SrA Lawson appropriate relief. The following are examples: First, the Government never disclosed, and OSI did not release, a confidential informant's dossier to the Defense Counsel. R. at 45. This was discovered when Defense Counsel reviewed the original case file. R. at 60. OSI requested that the dossier not be released unless the Military Judge perform an in camera review. R. at 53. Although the Defense Counsel ultimately received the dossier, this Court should not tolerate OSI's withholding of discoverable evidence. R. at 101. Defense Counsel did not seek additional relief at trial.

Appellant asserts this constituted a discovery violation. Discovery is governed by R.C.M. 701. Trial Counsel and OSI were under an obligation to disclose evidence "as soon as practicable" to the Defense that negates the guilt of the accused and affects the credibility "of any prosecution witness". R.C.M. 701(6)(A)-(D). Disclosing an informant's dossier on the first day of trial is not "as soon as practicable" and this Court should grant relief.

Second, during its seizure of relevant evidence, OSI did not preserve relevant evidence. When it seized the drugs in SrA Lawson's car, it did not collect the lock it cut off the box where the drugs were placed. R. at 239, 243. This lock would have been relevant because it could have been used to show that SrA Lawson never touched the box or drugs. R. at 319.

Appellant alleges this is a failure to preserve relevant evidence, which is governed by R.C.M. 703(e)(2). This failure to preserve evidence was not raised at trial and is therefore evaluated for plain error. *United States v. Avery*, 52 M.J. 496 (C.A.A.F. 2000). The Defense is owed equal opportunity to obtain evidence and must be provided with relevant and necessary evidence. *See* Article 46(a); R.C.M. 703(e)(1). R.C.M. 703(e)(2) provides that, when there is no substitute for lost evidence, and the evidence is of such central importance to the trial, and the military judge is unable to grant a continuance or other relief in order to attempt to produce the evidence, the Military Judge must abate the proceedings. *See also United States v. Simmermacher*, 74 M.J. 196, 201-02 (C.A.A.F. 2015). Here, there was no adequate substitute for the never-preserved lock and no relief could have led to its production. The lock was of central importance to the trial since it could have had SrA Lawson's fingerprints on it. This Court should find that the Military Judge erred by not *sua sponte* granting an abatement of the trial.

Third, OSI did not appropriately document the chain of custody when it collected the drugs that resulted in SrA Lawson's conviction. Despite taking control of the evidence, OSI agents never documented themselves doing so on the chain of custody. R. at 301. It was not just one agent who failed to do so, but three agents. R. at 318. This evidence was admitted at trial without objection from the Defense (R. at 334, 336, 338) and this Court evaluates that admission for plain error. *United States v. Eslinger*, 70 M.J. 193 (C.A.A.F. 2011). Evidence must be authenticated as a prerequisite to admissibility. R.C.M. 901(a). Fungible substances like drugs "require a 'chain of custody on which to predicate admission of the laboratory analysis into evidence,'" though "[t]he fact of a 'missing link does not prevent the admission of real evidence, so long as there is sufficient proof that the evidence is what it purports to be.'" *United States v. Maxwell*, 38 M.J. 148, 150 (C.M.A. 1993) (citations omitted). This Court should find that OSI's failures cause the evidence

to lack reliability and the Military Judge plainly erred in allowing the drugs to come into evidence when multiple individuals were missing on the chain of custody log.

Fourth, and finally, OSI agents encouraged the confidential informant to delete relevant and exculpatory material. *See Brady v. Maryland*, 373 U.S. 83 (1963). Specifically, in Prosecution Exhibit One, the OSI agent asked the confidential informant to delete the text messages between himself (the agent) and the confidential informant. It is extremely troubling that an OSI agent would ask a witness not only to delete evidence, but to delete evidence that is *Brady* material. The text messages showed evidence of possible entrapment and OSI involvement in coercing SrA Lawson to commit a crime.

“The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Brady*, 373 U.S. at 83. Although the evidence was not deleted, and ultimately given to the Defense, this Court should still consider granting relief because the OSI agent attempted to suppress evidence that was favorable to SrA Lawson. By allowing Prosecution Exhibit One into evidence, the Military Judge plainly erred because “[s]ociety wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly.” *Brady*, 373 U.S. at 87. Attempted destruction of relevant evidence is not fair and should not be tolerated.

**WHEREFORE**, SrA Lawson requests this Court set aside his conviction and sentence.



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

|                          |   |                              |
|--------------------------|---|------------------------------|
| <b>UNITED STATES,</b>    | ) | <b>UNITED STATES’</b>        |
| <i>Appellee,</i>         | ) | <b>ANSWER TO ASSIGNMENTS</b> |
|                          | ) | <b>OF ERROR</b>              |
| v.                       | ) |                              |
|                          | ) | No. ACM 23034                |
| Senior Airman (E-4)      | ) |                              |
| <b>ANDREW V. LAWSON,</b> | ) | Before Panel No. 2           |
| United States Air Force  | ) |                              |
| <i>Appellant.</i>        | ) | 15 July 2024                 |

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

**ISSUES PRESENTED**

**I.<sup>1</sup>**

**AS APPLIED TO SENIOR AIRMAN LAWSON, THE GOVERNMENT CANNOT PROVE 18 U.S.C. § 922 IS CONSTITUTIONAL BY “DEMONSTRATING THAT IT IS CONSISTENT WITH THE NATION’S HISTORICAL TRADITION OF FIREARM REGULATION”<sup>2</sup> WHEN SENIOR AIRMAN LAWSON WAS NOT CONVICTED OF A VIOLENT OFFENSE OR AN OFFENSE INVOLVING A FIREARM.**

**II.<sup>3</sup>**

**WHETHER THE OFFICE OF SPECIAL INVESTIGATIONS COMMITTED PREJUDICIAL MISCONDUCT IN ITS INVESTIGATION OF SRA LAWSON.**

---

<sup>1</sup> This issue is raised in the appendix pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

<sup>2</sup>*N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 24 (2022).

<sup>3</sup> This issue is raised in the appendix pursuant to *Grostefon*.

## **STATEMENT OF THE CASE**

On 3 February 2023, a Special Court-Martial convened at Little Rock AFB, Arkansas. Appellant elected to be tried by a mixed panel of officer and enlisted members and entered pleas of not guilty. (R. at 7, 11.) Contrary to his pleas, the panel found Appellant guilty of one charge and two specifications of wrongful possession of a controlled substance and two specifications of wrongful introduction of a controlled substance, in violation of Article 112a, UCMJ; one charge and one specification of unlawful entry, in violation of Article 129, UCMJ; and one charge and one specification of disorderly conduct, in violation of Article 134, UCMJ. (*Entry of Judgment*, dated 3 March 2023, ROT, Vol. 1.; R. at 174.) Appellant was acquitted of one specification of wrongful possession of a controlled substance and one specification of wrongful introduction of a controlled substance. (R. at 174.) The members sentenced Appellant to a reduction to the grade of E-1, two months confinement, and forfeiture of \$200 of pay per month for 12 months. (R. at 202.) The convening authority took no action on the findings or sentence. (*Convening Authority Decision on Action*, dated 23 February 2023, ROT, Vol. 1.)

## **STATEMENT OF FACTS**

The maximum punishment for wrongful possession and wrongful introduction of a Schedule I controlled substance is a dishonorable discharge, forfeiture of all pay and allowances, and confinement for five years. Manual for Courts-Martial (MCM), pt. IV, ¶ 50.d.(2). Appellant was also convicted of one specification of unlawful entry, in violation of Article 129, UCMJ, and one specification of disorderly conduct, in violation of Article 134, UCMJ. (*Entry of Judgment*, dated 3 March 2023, ROT, Vol. 1.) The maximum punishment for unlawful entry is a bad-conduct discharge, forfeiture of all pay and allowances, and confinement for six months. MCM,

pt. IV, ¶ 80.d.(3). The maximum punishment for disorderly conduct is forfeiture of pay of two-thirds pay per month for four months and four months confinement. MCM, pt. IV, ¶ 98.d.(1)(a).

The Staff Judge Advocate’s first indorsement to the Entry of Judgment and Statement of Trial Results in Appellant’s case contains the following statement: “Firearm Prohibition Triggered Under 18 U.S.C. § 922: Yes.” (*Statement of Trial Results*, dated 10 February 2023, and *Entry of Judgment*, dated 3 March 2023, ROT, Vol. 1.)

## ARGUMENT

### I.<sup>4</sup>

**THIS COURT DOES NOT HAVE JURISDICTION TO DECIDE WHETHER THE FIREARM PROHIBITION IN THE GUN CONTROL ACT OF 1968, 18 U.S.C. § 922, IS CONSTITUTIONAL BECAUSE IT IS A COLLATERAL ISSUE NOT SUBJECT TO REVIEW UNDER ARTICLE 66, UCMJ. EVEN IF THIS COURT DID POSSESS JURISDICTION TO REVIEW THIS ISSUE, THE STATEMENT OF TRIAL RESULTS AND ENTRY OF JUDGMENT CORRECTLY ANNOTATED THAT APPELLANT’S CONVICTION REQUIRED THAT HE BE CRIMINALLY INDEXED PER THE FIREARM PROHIBITION UNDER 18 U.S.C. § 922..**

### *Law and Analysis*

Appellant asserts that 18 U.S.C. § 922 is unconstitutional because the government cannot prove that barring his possession of firearms is “consistent with the nation’s historical tradition of firearm regulation.” (App. Br. at 2.) Appellant asserts that any prohibitions on the possession of firearms runs afoul of the Second Amendment, U.S. CONST. amend. II, and the Supreme Court’s interpretation of that amendment in N.Y. State Rifle & Pistol Ass’n v. Bruen, 142 S. Ct. 2111 (2022) (analyzing New York’s concealed carry regime). Appellant’s constitutional

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<sup>4</sup> This issue is raised in the appendix pursuant to Grostefon.

argument is without merit. *See, e.g., United States v. Denney*, No. ACM 40360, 2024 CCA LEXIS 101 (A.F. Ct. Crim. App. 8 March 2024) (finding no discussion or relief merited for similar arguments by appellant convicted of child pornography distribution) (unpub. op.) (internal citations omitted).<sup>5</sup>

The Gun Control Act of 1968, 18 U.S.C. § 922, makes it unlawful for any person, *inter alia*, “who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year.” *Id.* at § 922(g)(1). Appellant was convicted of one charge and two specifications of wrongful possession of a Schedule I controlled substance and two specifications of wrongful introduction of a Schedule I controlled substance, in violation of Article 112a, UCMJ, each a crime punishable by imprisonment for a term exceeding one year.<sup>6</sup> (*See MCM*, pt. IV, ¶ 50.d.(2).)

***A. This Court lacks jurisdiction to determine whether Appellant should be indexed in accordance with 18 U.S.C. § 922, because that requirement is not part of the findings or sentence.***

This Court lacks jurisdiction under Article 66, UCMJ, to order the correction of the Statement of Trial Results or Entry of Judgment on the grounds requested by Appellant. This Court recently reaffirmed this principle in *United States v. Vanzant*. No. ACM 22004, 2024 CCA LEXIS 215, (A.F. Ct. Crim. App. 28 May 2024). In *Vanzant*, this Court reasoned “[t]he firearms prohibition remains a collateral consequence of the conviction, rather than an element of

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<sup>5</sup> CAAF has granted review in this case. *United States v. Denney*, 2024 CAAF LEXIS 197 (C.A.A.F., Mar. 29, 2024).

<sup>6</sup> Persons *accused* of any offense punishable by imprisonment for a term exceeding one year, which has been referred to a general court-martial, also may not possess a firearm. *See* Department of the Air Force Instruction (DAFI) 51-201, dated 14 April 2022, para. 29.30.8 (citing 18 U.S.C. § 922(n)).

findings or sentence, and is therefore beyond this Court’s authority to review.” Id. at \*24. This Court should adhere to Vanzant and deny Appellant’s assignment of error.

***B. The Firearm Possession Prohibitions in the Gun Control Act of 1968 are Constitutional.***

Even if this Court did have jurisdiction over this matter, Appellant would not be entitled to relief. In Bruen, the Supreme Court held the standard for applying the Second Amendment is:

When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command.

142 S. Ct, at 2129-2130. In his concurrence, Justice Kavanaugh noted the Supreme Court established in both District of Columbia v. Heller, 554 U.S. 570 (2008) (finding that the Second Amendment is an individual, not collective, right), and McDonald v. City of Chicago, 561 U.S. 742 (2010) (applying that right to the states), that the Second Amendment “is neither a regulatory straight jacket nor a regulatory blank check.” Id. at 2162 (Kavanaugh, J., concurring) (citations omitted). Accordingly, the proper interpretation of the Second Amendment allows for a “variety” of gun regulations. Id. (citing Heller, 554 U.S. at 636).

The majority opinions in Heller and McDonald also stand for the principle that the right secured by the Second Amendment is not unlimited:

Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose .... *[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.*

Heller, 554 U.S. at 573 (emphasis added).

Appellant acknowledges that both Bruen and Heller limit the application of the Second Amendment to “law abiding, responsible citizens.” (App. Br. at 3). Even so, Appellant nonetheless cites to United States v. Rahimi, 61 F.4th 443 (5th Cir. 2023), for the proposition that the Government cannot prove that Appellant’s firearm prohibition is in keeping with the United States’ historical tradition of firearm regulation. *Id.* But Appellant did not have the benefit of the recent Supreme Court decision in that case when he filed his brief. *See United States v. Rahimi*, No. 22-915, 2024 U.S. LEXIS 2714, (June 21, 2024). In Rahimi the Court overturned the Fifth Circuit’s decision, reasoning that the prohibition on firearms possession under 18 U.S.C. § 922(g)(8) was consistent with the Nation’s history of surety and “going armed” laws and was thus constitutional. Rahimi, 2024 U.S. LEXIS 2714, at \*26. In doing so, the Court reiterated an essential premise from their earlier decision in Heller: “[i]n fact, our opinion stated that many such prohibitions, like those on the possession of firearms by ‘felons and the mentally ill,’ are ‘presumptively lawful.’” Rahimi, 2024 U.S. LEXIS 2714, at \*27 (citing Heller, 554 U.S. at 626, 627, n. 26). In this case, Appellant has been convicted of multiple offenses punishable by well over a year of confinement (*i.e.*, a felony). He is thus prohibited from owning a firearm under 18 U.S.C. § 922(g)(1). Both the Supreme Court and the Fifth Circuit acknowledge that felony convictions are part of the United States’ longstanding tradition on firearm prohibitions. Moreover, these cases do not distinguish between violent and non-violent felonies—prior to Bruen, the Fifth Circuit opined, “[i]rrespective of whether [an] offense was violent in nature, a felon has shown manifest disregard for the rights of others. He may not justly complain of the limitation on his liberty when his possession of firearms would otherwise threaten the security of his fellow citizens.” United States v. Everist, 368 F.3d 517, 519 (5th Cir. 2004). The Court

found that limiting a felon’s ability to keep and possess firearms was not inconsistent with the “right of Americans generally to individually keep and bear their private arms as historically understood” in the United States. *Id.*; accord Folajtar v. Attorney General of the United States, 980 F.3d 897 (3rd Cir. 2020) (upholding the constitutionality of 18 U.S.C. § 922(g)(1) as applied to felons—including non-violent felons—based upon the Second Amendment’s history and tradition). Thus, Appellant’s conviction for multiple felony offenses places him squarely within the United States’ longstanding tradition of firearm prohibitions.

Appellant also cites to the Fifth Circuit’s decision in United States v. Daniels, 77 F.4th 337 (5th Cir. 2023) as support for his assertion that his firearms prohibition is unconstitutional. (App. Br. at 3.) In Daniels, the Fifth Circuit held the firearms prohibition pertaining to “unlawful users” of a controlled substance under 18 U.S.C. § 922(g)(3) was unconstitutional. *Id.* at 355. But Appellant’s claim that the Daniels case is analogous to his is erroneous. (App. Br. at 3.) Appellant was not charged with drug use, nor was his firearms prohibition premised only upon 18 U.S.C. § 922(g)(3). Appellant’s prohibition stems from his multiple felony convictions under 18 U.S.C. § 922(g)(1). The appellant in Daniels was not a felon, and therefore under the Fifth Circuit’s reasoning, he did not fall into the category of individuals, namely felons, who were historically “stripped of their Second Amendment rights.” 77 F.4th at 343. Conversely, Appellant’s convictions for wrongful possession and introduction of a Schedule I controlled substance prove that he falls squarely into the category of individuals that should be prohibited from possessing a firearm. Thus, the Indorsements in the Entry of Judgment and Statement of Trial Results correctly annotated that Appellant is subject to 18 U.S.C. § 922’s prohibitions. Appellant is not entitled to relief.

## II.<sup>7</sup>

### THE OFFICE OF SPECIAL INVESTIGATIONS DID NOT COMMIT PREJUDICIAL MISCONDUCT.

#### *Additional Facts*

##### *Confidential Informant Dossier*

During the investigation into Appellant's misconduct, the Air Force Office of Special Investigations (OSI) used a confidential informant. (R. at 297, 301.) In accordance with their standard procedures, OSI created and maintained a confidential source file or "dossier" for the confidential informant in this case. (R. at 301.) The dossier included information explaining the motivation for the confidential informant's cooperation with OSI. (Id.) The day before trial commenced, defense counsel notified the military judge that they had just learned of the dossier after inspecting the OSI case file. (R. at 60.) Defense counsel requested the dossier from the government, but indicated they did not intend to seek a continuance. (R. at 60.)

Prior to trial on the merits commencing, the military judge requested a status update on any outstanding discovery issues. (R. at 45.) Trial counsel informed the military judge that the base legal office had only received portions of the dossier, but the OSI detachment commander was seeking guidance from OSI/JA to determine whether to turn over the remainder of the dossier to the base legal office. (Id.) The military judge explained to both parties that trial would not commence until the discovery issue was resolved, and if it could not be resolved, he would consider appropriate remedies, such as a continuance. (R. at 45, 47.)

Immediately following Appellant's arraignment, the military judge requested an additional update on the status of discovery. (R. at 52.) The government informed him that they

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<sup>7</sup> This issue is raised in the appendix pursuant to Grostefon.



had received the full dossier, but the OSI detachment commander had requested the military judge conduct an in-camera review, prior to the dossier being released to trial defense counsel. (R. at 53.) After further discussion with the military judge, government trial counsel requested the military judge issue a protective order, in lieu of an in-camera review. (R. at 52-55.) Appellant's case was part of a larger "drug ring" investigation, and trial counsel expressed there were concerns that a later docketed court-martial might be impacted by the uncontrolled release of the dossier. (R. at 58.) Defense counsel affirmatively stated they did not have an objection to the protective order. (R. at 57.) The military judge issued a verbal protective order without objection or request from modification from either side. (R. at 61.) Trial counsel then provided a copy of the 25-page dossier to the defense counsel. (R. at 53, 63.) The military judge then instructed the parties:

I'm the measure of discovery, involving both the confidential informant dossier...This is no longer on my screen. If I hear nothing else back, you are making it clear to the record, Defense Counsel, that discovery is complete and you're seeking no relief from the court. You are all bound to bring my attention to any relief that you're seeking. I'm not going to necessarily do another status check along the way. As a for instance, before opening statements are delivered. If I hear nothing, that tells me, especially since we've had this conversation, that you are prepared to move forward, and this is no longer an issue of concern. Do you understand that, Defense Counsel?

(R. at 101.) Trial defense counsel responded, "[y]es, Your Honor, crystal clear." (Id.)

#### *Failure to Preserve Lock as Evidence*

OSI's investigation into Appellant began when a confidential informant notified them that Appellant and a third-party intended to engage in a drug-fueled party. (R. at 207.) The confidential informant was friends with Appellant and used his friendship to obtain additional information regarding Appellant's plans at OSI's behest. (R. at 253-255.) On 2 December 2021,

OSI learned from their confidential informant that Appellant intended to obtain illegal drugs and transport them onto Little Rock Air Force Base in his personal vehicle. (R. at 211.) That evening, the confidential informant rode with Appellant to an off-base meeting with a third-party. (R. at 255, 257.) The third-party placed a small pelican case with a padlock on it in the trunk of Appellant's car. (R. at 257.) Appellant then drove back to Little Rock Air Force Base and passed through the gate. (Id.) During this time, the confidential informant was providing real-time updates to OSI. (R. at 256-257.)

Once Appellant and the confidential informant made their way on to base, OSI and Security Forces conducted a traffic stop of Appellant's vehicle. (R. at 237-238.) Pursuant to lawful search authority, military law enforcement conducted a search of Appellant's vehicle. During the search, law enforcement located the pelican case with a padlock on it. (R. at 239.) Agents used bolt cutters to cut the lock and gain access to the case. (R. at 239, 293.) Inside the case, agents located a clear plastic bag containing psilocybin mushrooms, LSD, and pill bottles labeled as THC. (R. at 239, 367.) OSI agents collected the drugs and entered them into evidence. (R. at 296.) The lock that had been cut from the box was not collected because OSI did not deem it pertinent evidence. (R. at 300, 319.)

#### *Chain of Custody Issues*

During the search of Appellant's car, three law enforcement members handled the pelican case that contained the drug evidence. (R. at 318.) None of these law enforcement members' names were reflected on the chain of custody documentation. (Id.) After the initial discovery of the case during the search, Special Agent CA, OSI's evidence custodian, retrieved the case from the scene and logged it and its contents into evidence. (R. at 300-301, 319.) OSI's standard practice for documenting the chain of custody is for the evidence custodian who

retrieved the evidence and placed it into evidence to fill out DD Form 2817 indicating that they are the initial link in the chain of custody. (R. at 322.) It is not standard practice for the chain of custody form to reflect every individual who handled the evidence prior to it being taken into custody and logged into evidence. (Id.)

At trial, the pill bottles labeled as THC, the LSD, and the psilocybin mushrooms were admitted into evidence. (R. at 334, 336, 338, Pros. Ex. 6, Pros. Ex. 7, Pros. Ex. 8.) The subsequent laboratory testing of those items seized from the case was also admitted as Prosecution Exhibit 9. (R. at 366.) For each exhibit, the defense counsel affirmatively stated they had “no objection” to the admission of the evidence. (R. at 334, 336, 338, 366.)

*OSI Agents Encouraged the CI to Delete Relevant and Exculpatory Material*

During the operation conducted by OSI on 2 December 2021, the confidential informant provided real-time updates and received instructions from OSI via text messages. (R. at 211, 256.) After providing the confidential informant with instructions, the agents instructed the confidential informant to delete the text messages. (R. at 265, Pros. Ex. 2.) However, there is no evidence the confidential informant followed those instructions. The text messages between the confidential informant and OSI were used by trial defense counsel to refresh the confidential informant’s recollection during cross-examination. (R. at 263-264, App. Ex. XX.) During government redirect examination, the confidential informant was provided a copy of the text messages from the evening of 2 December 2021 and testified that they were a fair and accurate representation of the text messages he had exchanged with OSI and that they had not been changed or modified in any way. (R. at 281.) Government trial counsel offered the text messages as Prosecution Exhibit 2 and the defense stated they had “no objections.” (R. at 282.) The text messages were admitted as Prosecution Exhibit 2. (Id.)

### *Standard of Review*

Whether an appellant has waived an issue is a legal question that this Court reviews de novo. United States v. Davis, 79 M.J. 329, 331 (C.A.A.F. 2020). Waiver is the intentional relinquishment or abandonment of a known right. United States v. Gladue, 67 M.J. 311, 313 (C.A.A.F. 2009) (quoting United States v. Olano, 507 U.S. 725, 733 (1993)). Consequently, while this Court reviews forfeited issues for plain error, this Court cannot review waived issues at all because a valid waiver leaves no error for the Court to correct on appeal. United States v. Campos, 67 M.J. 330, 332 (C.A.A.F. 2009). “Plain error” requires showing (1) error, (2) the error was clear or obvious, [and] (3) the error prejudiced the accused’s substantial rights.” United States v. Easterly, 79 M.J. 325, 327 (C.A.A.F. 2020) (citing United States v. Grier, 53 M.J. 30, 34 (C.A.A.F. 2000)).

### *Law and Analysis*

Appellant alleges four different errors by the Office of Special Investigations (OSI) that he asserts constitute prejudicial misconduct: 1) failure to turn over the confidential informant dossier until the eve of trial; 2) failure to preserve relevant evidence, namely a lock from the container that held the controlled substances for which Appellant was convicted; 3) that there was not a proper chain of custody for the controlled substances that were introduced at trial; and 4) OSI agents instructed the confidential informant to delete their communications regarding the sting operation against Appellant. (App. Br. at 6-8.) Appellant affirmatively waived issues 1, 3, and 4 and forfeited issue 2. The military judge’s alleged failure to sua sponte grant an abatement of the trial (App. Br. at 7.) was not plain error. Therefore, Appellant is not entitled to relief.

An affirmative statement that an accused at trial has “no objection” generally “constitutes an affirmative waiver of the right or admission at issue.” United States v. Swift, 76 M.J. 210,

217 (C.A.A.F. 2017) (citation omitted). Waiver is different than forfeiture. Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the intentional relinquishment or abandonment of a known right. United States v. Davis, 79 M.J. 329, 331 (C.A.A.F. 2020).

"[U]nder the ordinary rules of waiver, [an a]ppellant's affirmative statements that he had no objection to [the] admission of evidence . . . operate[s] to extinguish his right to complain about [the] admission [of evidence] on appeal." United States v. Ahern, 76 M.J. 194, 198 (C.A.A.F. 2017) (citing United States v. Campos, 67 M.J. 330, 332-33 (C.A.A.F. 2009)).

This Court recently acknowledged that due to the 2021 amendment to Article 66(d), UCMJ, it no longer has the authority to pierce waiver. United States v. George, No. ACM 40397, 2024 CCA LEXIS 224, \*2-3 (A.F. Ct. Crim. App. June 7, 2024) (unpub. op.); *see also* United States v. Coley, ARMY 20220231, 2024 CCA LEXIS 127, at \*8-9 (A.Ct. Crim. App. 13 Mar. 2024) (unpub. op.). Even if it did, piercing waiver in this case would disincentivize trial defense counsel from raising perceived issues at the trial level. The military justice system has an interest in ensuring that perceived errors are addressed and corrected at the trial level, rather than much later on appeal.

***A. Appellant affirmatively waived the issue of the delayed disclosure of the confidential informant's dossier.***

Appellant asserts that the failure of the government to provide the confidential informant's OSI dossier until the morning of trial constitutes a discovery violation under R.C.M. 701. (App. Br. at 6.) Appellant concedes he was provided with the dossier prior to the commencement of trial on the merits. (Id.) However, Appellant fails to acknowledge that he affirmatively waived this issue.

After learning of its existence, defense counsel requested the government produce the dossier. (R. at 60.) Government trial counsel explained to the military judge that OSI had

concerns about the impact releasing the dossier would have on another pending court-martial. (R. at 53-58.) In order to balance the concerns of law enforcement with the discovery rights of the accused, the military judge issued a protective order and ordered the government to provide the dossier to the defense. (R. 57-58.) After the military judge explained his order, he asked defense counsel if they had any objections to the protective order regarding the dossier, to which defense counsel affirmatively replied that they had no objection. (R. at 58.) Government trial counsel then provided the 25-page dossier to defense counsel. (R. at 53, 63.) Trial defense counsel never requested a continuance or any other form of relief available under R.C.M. 701.

During the trial, defense counsel repeatedly used the information contained in the dossier to elicit the confidential informant's self-interested motivations for working with OSI. (R. at 301, 310.) Appellant's use of the dossier to elicit the confidential informant's inherent bias and motivation for assisting OSI demonstrated a strategic reasoning behind the defense's decision to not object to the evidence. Moreover, it demonstrated Appellant was not prejudiced by the late production of the dossier, since his defense counsel were able to use it effectively during their cross-examinations of multiple government witnesses.

Appellant waived his objection to this issue and was his ability to present his case was not impacted by the delayed production of the OSI dossier. Therefore, this Court should find that this assertion of error does not entitle Appellant to relief.

***B. Appellant forfeited the alleged failure to preserve the lock as relevant evidence and the military judge's decision to not sua sponte abate the proceedings was not plain error.***

During the search and seizure of illicit drugs from the trunk of Appellant's car, OSI did not collect the lock that was cut from the case containing the drugs. (R. at 300, 319.) At the time of the search, OSI did not deem the lock to be pertinent to their investigation. (R. at 319.) Appellant now asserts the failure to preserve the lock as evidence constitutes a violation of

R.C.M. 703(e)(2). (App. Br. at 7.) The record is devoid of any discovery request or motion to compel requesting production of the lock. Appellant never raised the alleged violation of R.C.M. 703 during the trial, therefore this issue was forfeited. This Court reviews for plain error.

Campos, 67 M.J. at 332.

R.C.M. 703(e)(2) governs the standard for failure to preserve evidence:

“Notwithstanding subsection (f)(1) of this rule, a party is not entitled to the production of evidence which is destroyed, lost, or otherwise not subject to compulsory process. However, if such evidence is of such central importance to an issue that it is essential to a fair trial, and if there is no adequate substitute for such evidence, the military judge shall grant a continuance or other relief in order to attempt to produce the evidence or shall abate the proceedings, unless the unavailability of the evidence is the fault of or could have been prevented by the requesting party.”

R.C.M. 703(e)(2).

The burden of demonstrating that the evidence is of such central importance to an issue that it is essential to a fair trial rests on Appellant. R.C.M. 905(c)(1). Appellant made no such assertion at trial and only now claims the lock was of central importance because “it could have had [Appellant’s] fingerprints on it.” (App. Br. at 7.) But to be of “such central importance to an issue that it is essential to a fair trial,” the Appellant must show more than some “conceivable benefit” from the missing evidence. United States v. Valenzuela-Bernal, 458 U.S. 858, 866-67 (1982). There must be some showing that the missing evidence is material and favorable to the defense. Id. at 873. The Supreme Court considers sanctions for the loss of material evidence to be unwarranted unless “there is a reasonable likelihood that the [evidence] could have affected the judgment of the trier of fact. Id. at 873-74. *See also* Manual for Courts-Martial, United

States (1984 ed.) (MCM), Drafters' Analysis, A21-32 (citing Valenzuela-Bernal).<sup>8</sup> Speculation about the "possibility" of evidence is insufficient to meet this standard and conclude that evidence was of central importance and essential to a fair trial. United States v. Terry, 66 M.J. 515, 518 (A.F. Ct. Crim. App. 2008); *see also* United States v. Sales, 247 Fed. Appx. 730, 734 (6th Cir. 2007) (disclosure is not "essential to a fair trial" when the claim is "based on mere conjecture or supposition") (internal quotations omitted).

Here, Appellant's assertion that the lock "could" have had his fingerprint on it is nothing more than pure speculation. (App. Br. at 7.) Further, it is unclear how the presence of Appellant's fingerprint on the lock would have been exculpatory rather than inculpatory. Logically, the discovery of Appellant's fingerprint on the lock would have provided further evidence of his possession of the case, and thereby his possession of the drugs contained therein. Appellant's argument further deteriorates when one considers the evidence presented at trial. The confidential informant testified that the third-party individual was the one who placed the case containing the illicit drugs in Appellant's trunk. (R. at 257.) There was no evidence that Appellant had ever touched the case or the lock after receiving the case and immediately heading onto Little Rock Air Force Base. The government theory presented to the fact finder was not that Appellant had personally loaded the case with drugs and then locked it; it was that Appellant received a case he knew to contain drugs from a third-party who placed the case in the back of Appellant's car. (R. at 612-614.) Appellant then, knowing the case contained illicit drugs and was in his car, drove onto Little Rock Air Force Base. (Id.) Whether or not Appellant

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<sup>8</sup> The portion of the Drafters Analysis that cites Valenzuela-Bernal refers to R.C.M. 703(b) *Right to Witnesses*, which contains the same "of such central importance to an issue that it is essential to a fair trial" language as is now found in R.C.M. 703(e)(e). *See also* Drafters' Analysis, A21-34 (the production of evidence "parallels the procedures for production of witnesses").



ever touched the lock on the case, does not negate that he knowingly exercised dominion and control over the illicit drugs in his trunk, and therefore possessed them. Thus, Appellant has failed to establish that the lock would have been favorable to his defense, much less that it was of such central importance to an issue to be essential to a fair trial.

Appellant has failed to establish error, let alone one that is clear or obvious. His claim that the military judge's alleged failure to sua sponte order and abatement of the proceedings should fail.

***C. Appellant affirmatively waived the issue of alleged errors in the chain of custody.***

The chain of custody documentation does not reflect the names of the individuals who initially located the pelican case containing the illegal drugs in this case. (R. at 318.) Appellant alleges this constitutes a lack of reliability that should have rendered the evidence derived from the case inadmissible. (App. Br. at 7.) But as Appellant points out, “[t]he fact of a ‘missing link does not prevent the admission of real evidence, so long as there is sufficient proof that the evidence is what it purports to be.” (App. Br. at 7 citing United States v. Maxwell, 38 M.J. 148, 150 (C.M.A. 1993)). Standard practice for OSI begins the chain of custody with the evidence custodian who secured the evidence and logged it. (R. at 322.) OSI complied with those standards in this case. (R. at 300-301, 319.) Here, there were no gaps in the chain of custody and even if there were, gaps in the chain of custody go to the weight afforded the evidence, not its admissibility. *See Maxwell*, 38 M.J. at 152. There was no evidence presented at trial that the evidence introduced at trial was not the evidence obtained from the case found in Appellant's trunk, therefore, there was no error in the chain of custody that would have rendered the evidence inadmissible.

Decisive to this issue, the government introduced four exhibits derived from the search of the case: (1) the psilocybin mushrooms, (2) the LSD, (3) the pill bottles labeled as THC, and (4) the laboratory testing report for those substances. (Pros. Ex. 6, Pros. Ex. 7, Pros. Ex. 8, Pros. Ex. 9.) For each exhibit, the defense counsel affirmatively stated they had “no objection” to the admission of the evidence. (R. at 334, 336, 338, 366.) Appellant never objected to the chain of custody, nor did he file a motion to suppress any of the evidence during pretrial proceedings or the trial on the merits. Through repeated and affirmative declinations to object pretrial and during trial, Appellant “expressly and unequivocally acquiesce[d]” to the admission of the evidence now challenged. Davis, 79 M.J. at 331.

Appellant concedes this issue was not raised at trial. (App. Br. 7.) But Appellant did not merely “fail to object” to the admission of the evidence now challenged. To the contrary, when defense counsel repeatedly affirmatively told the military judge that he had no objections, that was a “deliberate decision” not to challenge what Appellant is now claiming was “plainly erroneous” evidence. Appellant waived this issue, and this Court should decline to review it.

***D. Appellant affirmatively waived the issue of an alleged Brady violation stemming from OSI instructing the confidential informant to delete their text messages.***

Appellant asserts that OSI’s instructions to the confidential informant to delete the text messages between himself and OSI constitutes a violation of the rule established in Brady v. Maryland. (App. Br. at 8; see 373 U.S. 83 (1963). Brady states “[t]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” 373 U.S. at 83. But Appellant’s argument is self-defeating. As Appellant himself acknowledges, the text messages were not deleted and were provided to the defense. (App. Br. at 8.) Therefore, there was no suppression of the evidence, and no Brady violation

occurred.

Moreover, Appellant affirmatively waived this issue. Appellant's counsel affirmatively stated "no objection" when the government offered the text messages into evidence as Prosecution Exhibit 2. (R. at 282.) An affirmative statement that an accused at trial has "no objection" generally "constitutes an affirmative waiver of the right or admission at issue." Swift, 76 M.J. at 217. Not only did Appellant not object to the text messages at trial, but rather he used them as a sword. At trial, Appellant used the text messages to refresh the confidential informant's recollection during cross-examination. (R. at 263-264, App. Ex. XX.) During closing arguments, defense counsel argued the text messages supported the defense of entrapment because they allegedly proved that it was OSI's plan to bring the illegal drugs on to base, not Appellant's. (R. at 623.) Appellant should not be permitted to use the evidence he now complains of as a sword at trial and then turn around on appeal and argue the evidence he used to his advantage entitles him to relief. Appellant "cannot withhold an important card...and then hope to play it as trump on appeal if and when he loses at his trial." United States v. Clark, 35 M.J. 98, 107 (C.M.A. 1992). That is precisely what he seeks to do here. Appellant's use of the evidence at trial demonstrates that his failure to object to the evidence was a strategic choice and should be deemed to constitute waiver. *See* United States v. Yu-Leung, 51 F.3d 1116, 1122 (2d Cir. 1995) (finding waiver where it was apparent from the record that a failure to object to evidence was a strategic choice).

Appellant did not just fail to object and thereby merely forfeit his claim. He affirmatively declined to object to the evidence and then used that evidence to his advantage. Since Appellant has affirmatively waived any objection to the evidence, there is nothing left for this Court to review.

Since Appellant has not shown he is entitled to relief for any of his claimed errors, this Court should deny this assignment of error.

**CONCLUSION**

**WHEREFORE**, this Court should affirm the findings and sentence.

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**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 15 July 2024 via electronic filing.

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