UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40500**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF PANEL CHANGE**
William M. HILTON	)	
Lieutenant Colonel (O-5)	)	
U.S. Air Force	)	
Appellant	)	

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

ORDERED:

That the Record of Trial in the above-styled matter is withdrawn from Panel 2 and referred to Panel 3 for appellate review.

This panel letter supersedes all previous panel assignments.

FOR THE COURT

[redacted]

TANICA S. BAGMON
Appellate Court Paralegal

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Panel No. 3
Lieutenant Colonel (O-5), **WILLIAM M. HILTON,** United States Air Force, *Appellant.*	)	No. ACM 40500
	)	25 September 2023

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

Pursuant to Rule 23.3(m)(2) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **1 December 2023**. The record of trial was docketed with this Court on 3 August 2023. From the date of docketing to the present date, 53 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

[redacted]

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
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Joint Base Andrews NAF, MD 20762-6604
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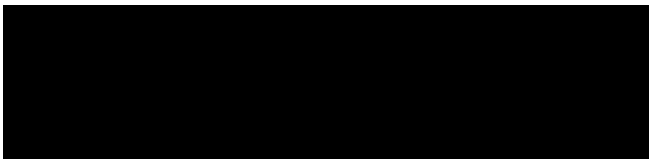
michael.bruzik@us.af.mil

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 25 September 2023.

Respectfully submitted,



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27 September 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Lieutenant Colonel (O-5) WILLIAM M. HILTON, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40500 Panel No. 3

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

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

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

[redacted]
PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

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 27 September 2023.

PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (SECOND) OUT OF TIME**
v.	)	Before Panel No. 3
Lieutenant Colonel (O-5), **WILLIAM M. HILTON,** United States Air Force, *Appellant.*	)	No. ACM 40500
	)	28 November 2023

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 Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **31 December 2023**. Appellant filed for an enlargement of time on 27 November 2023. However, that motion contained an error in that it stated that the number of days between the filing of the record of trial and the date requested was 120 days, whereas it should have been notated as 150. Appellant respectfully withdraws the motion filed on 27 November 2023, and respectfully requests for this Court to consider this motion instead. Good cause exists because undersigned counsel filed the original motion for enlargement of time within the required timeframe set by this Court.[1] The record of trial was docketed with this Court on 3 August 2023. From the date of docketing to the present date, 117 days have elapsed. On the date requested, 150 days will have elapsed.

[1] The filing on 27 November 2023 was made pursuant to this Court's email on 20 November 2023 which extended the filing deadline for matters due on 24 November 2023 to 27 November 2023 on account of the family day.

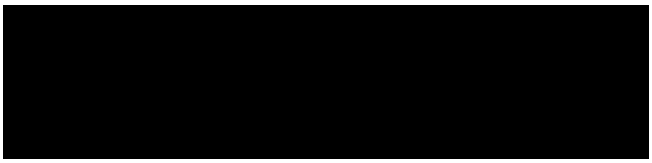
On 15 September 2022; 31 October 2022; 19 January 2023; 13 – 17 March 2023; and 19 – 24 March 2023, Appellant was tried by a general court-martial at Royal Air Force Lakenheath, United Kingdom. Consistent with his pleas, the court-martial convicted Appellant of one charge and one specification of drunk on duty in violation of Article 112, Uniform Code of Military Justice (UCMJ); one charge and one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and three specifications of conduct unbecoming of an officer in violation of Article 133, UCMJ. R. at 278 – 280. Contrary to his pleas, the panel convicted Appellant of one charge and one specification of sexual assault in violation of Article 120, UCMJ. Appellant was acquitted of five specifications of abusive sexual contact in violation of Article 120, UCMJ; one charge and three specifications of assault consummated by battery in violation of Article 128, UCMJ; one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and specification of pandering by enticement in violation of Article 134, UCMJ. R. at 2484 – 2486. The military judge sentenced Appellant to 40 months of confinement, dismissal, and a reprimand. R. at 2744 – 2746. The convening authority took no action on the findings or sentence adjudged by the court-martial. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Lt Col William M. Hilton*, dated 12 April 2023.

The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. Appellant is currently in confinement. Undersigned counsel has not yet completed an initial review of the ROT.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. This is especially so given the large volume of the ROT.

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

Respectfully submitted,



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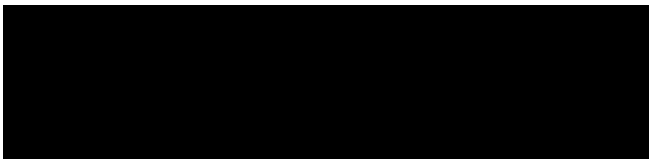
Respectfully submitted,



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28 November 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Lieutenant Colonel (O-5) WILLIAM M. HILTON, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME – OUT OF TIME ACM 40500 Panel No. 3

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

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

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

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

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 28 November 2023.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (THIRD)**
v.	)	Before Panel No. 3
Lieutenant Colonel (O-5), **WILLIAM M. HILTON,** United States Air Force, *Appellant.*	)	No. ACM 40500
	)	22 December 2023

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 Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **30 January 2024**. The record of trial was docketed with this Court on 3 August 2023. From the date of docketing to the present date, 141 days have elapsed. Appellant withdraws the motion for enlargement of time originally submitted on 22 December 2023 and submits this renewed motion in order to correct the time that had elapsed between docketing and the present, which was erroneously described as 140 days. On the date requested, 180 days will have elapsed.

On 15 September 2022; 31 October 2022; 19 January 2023; 13 – 17 March 2023; and 19 – 24 March 2023, Appellant was tried by a general court-martial at Royal Air Force Lakenheath, United Kingdom. Consistent with his pleas, the court-martial convicted Appellant of one charge and one specification of drunk on duty in violation of Article 112, Uniform Code of Military Justice (UCMJ); one charge and one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and three specifications of conduct unbecoming of an officer in violation of Article 133, UCMJ. R. at 278 – 280. Contrary to his pleas, the panel convicted Appellant of one charge and one specification of sexual assault in violation of Article 120, UCMJ. Appellant

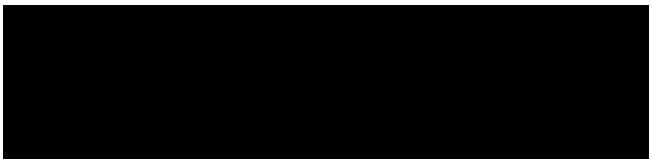
was acquitted of five specifications of abusive sexual contact in violation of Article 120, UCMJ; one charge and three specifications of assault consummated by battery in violation of Article 128, UCMJ; one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and specification of pandering by enticement in violation of Article 134, UCMJ. R. at 2484 – 2486. The military judge sentenced Appellant to 40 months of confinement, dismissal, and a reprimand. R. at 2744 – 2746. The convening authority took no action on the findings or sentence adjudged by the court-martial. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Lt Col William M. Hilton*, dated 12 April 2023.

The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. Appellant is currently in confinement. Undersigned counsel has not yet completed an initial review of the ROT.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. This is especially so given the large volume of the ROT.

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

Respectfully submitted,



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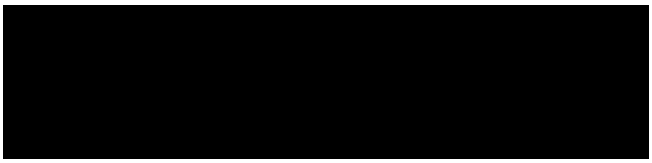
michael.bruzik@us.af.mil

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 22 December 2023.

Respectfully submitted,



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27 December 2023

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Lieutenant Colonel (O-5) WILLIAM M. HILTON, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40500 Panel No. 3

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

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

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

PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

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 27 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
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FOURTH)**
v.	)	Before Panel No. 3
Lieutenant Colonel (O-5), **WILLIAM M. HILTON,** United States Air Force, *Appellant.*	)	No. ACM 40500
	)	23 January 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his fourth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **29 February 2024**. The record of trial was docketed with this Court on 3 August 2023. From the date of docketing to the present date, 173 days have elapsed. On the date requested, 210 days will have elapsed.

On 15 September 2022; 31 October 2022; 19 January 2023; 13 – 17 March 2023; and 19 – 24 March 2023, Appellant was tried by a general court-martial at Royal Air Force Lakenheath, United Kingdom. Consistent with his pleas, the court-martial convicted Appellant of one charge and one specification of drunk on duty in violation of Article 112, Uniform Code of Military Justice (UCMJ); one charge and one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and three specifications of conduct unbecoming of an officer in violation of Article 133, UCMJ. R. at 278 – 280. Contrary to his pleas, the panel convicted Appellant of one charge and one specification of sexual assault in violation of Article 120, UCMJ. Appellant was acquitted of five specifications of abusive sexual contact in violation of Article 120, UCMJ; one charge and three specifications of assault consummated by battery in violation of Article 128,

UCMJ; one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and specification of pandering by enticement in violation of Article 134, UCMJ. R. at 2484 – 2486. The military judge sentenced Appellant to 40 months of confinement, dismissal, and a reprimand. R. at 2744 – 2746. The convening authority took no action on the findings or sentence adjudged by the court-martial. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Lt Col William M. Hilton*, dated 12 April 2023.

The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. Appellant is currently in confinement. Undersigned counsel has not yet completed an initial review of the ROT.

Counsel is currently assigned 14 cases; 9 cases are pending initial AOEs before this Court. Of those, the following three cases have priority over this one:

1) *United States v. Scott*, ACM 40411 – The record of trial is 11 volumes consisting of 14 prosecution exhibits, 14 defense exhibits, one court exhibit, and 55 appellate exhibits; the transcript is 1599 pages. Undersigned counsel has completed review of the ROT and has begun drafting an assignment of error. This case is the undersigned counsel's highest priority.
2) *United States v. Schneider*, ACM 40403 - The record of trial consists of three prosecution exhibits, 26 defense exhibits, and eight appellate exhibits; the transcript is 369 pages. Appellant is not currently confined. Undersigned counsel has completed the initial review of the ROT.
3) *United States v. Cassaberry-Folks*, ACM 40444 - The record of trial consists of seven volumes. The transcript is 375 pages. There are four Prosecution Exhibits, three

Defense Exhibits, one Court Exhibit and 11 Appellate Exhibits. Undersigned counsel has begun, but not yet completed review of the record of trial.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Undersigned counsel's primary focus is on completion of the assignment of error for *United States v. Scott*. Additionally, undersigned counsel has two petitions for review before the Court of Appeals for the Armed Forces which must be submitted with special attention towards the sensitive deadlines set by statute. These two cases are *United States v. Holt*, ACM 40390 and *United States v. Zier*, ACM 21014. 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,

MICHAEL J. BRUZIK, Capt, USAF
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Joint Base Andrews NAF, MD 20762-6604
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michael.bruzik@us.af.mil

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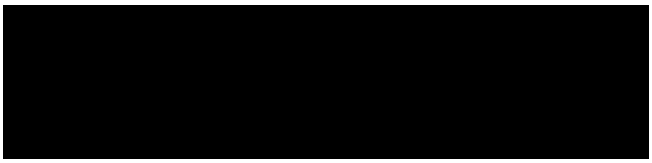
Respectfully submitted,



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25 January 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Lieutenant Colonel (O-5) WILLIAM M. HILTON, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40500 Panel No. 3

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

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

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

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

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 25 January 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**NOTICE OF APPEARANCE - CIVILIAN APPELLATE COUNSEL**
v.	)	Before Panel No. 3
Lieutenant Colonel (O-5) **WILLIAM M. HILTON, M.D.** United States Air Force *Appellant*	)	No. ACM 40500 27 January 2024

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

COMES NOW the undersigned civilian appellate counsel, pursuant this Court's internal rules of practice and procedure, and gives NOTICE OF APPEARANCE AS COUNSEL FOR APPELLANT in the subject appeal. I am admitted to practice before This Honorable Court[1] and have not acted in any manner which might tend to disqualify me from this representation. I accept service at sean@defendyourservice.com. I am in contact with Detailed Appellate Defense Counsel and am obtaining all necessary materials for representation.

I join in the previously filed and currently pending request for enlargement of time, and can provide my obligations and other information[2] should the Court require it for that motion.

[redacted]

SEAN F. MANGAN, LTC(Ret), USA
Civilian Appellate Counsel
10661 Old Frontier Rd NW, Suite 211
Silverdale, WA. 98383
Direct/Mobile: 253-970-4160
sean@defendyourservice.com

[1] I was retained in mid-2023, following my representation of Appellant at trial, and gave notice by memorandum to the Clerk of Court, but could not file this NOA due to the delay in my admission to this court due to some administrative issues with my application. Those were eventually resolved and I was admitted in December 2023.

[2] To supplement his representation by detailed counsel and myself, the Appellant is in the process of retaining another civilian appellate counsel with greater experience before this Honorable Court and with Air Force Appeals.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FIFTH)**
v.	)	Before Panel No. 3
Lieutenant Colonel (O-5), **WILLIAM M. HILTON,** United States Air Force, *Appellant.*	)	No. ACM 40500
	)	20 February 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his fifth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **30 March 2024**. The record of trial was docketed with this Court on 3 August 2023. From the date of docketing to the present date, 201 days have elapsed. On the date requested, 240 days will have elapsed.

On 15 September 2022; 31 October 2022; 19 January 2023; 13 – 17 March 2023; and 19 – 24 March 2023, Appellant was tried by a general court-martial at Royal Air Force Lakenheath, United Kingdom. Consistent with his pleas, the court-martial convicted Appellant of one charge and one specification of drunk on duty in violation of Article 112, Uniform Code of Military Justice (UCMJ); one charge and one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and three specifications of conduct unbecoming of an officer in violation of Article 133, UCMJ. R. at 278 – 280. Contrary to his pleas, the panel convicted Appellant of one charge and one specification of sexual assault in violation of Article 120, UCMJ. Appellant was acquitted of five specifications of abusive sexual contact in violation of Article 120, UCMJ; one charge and three specifications of assault consummated by battery in violation of Article 128,

UCMJ; one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and specification of pandering by enticement in violation of Article 134, UCMJ. R. at 2484 – 2486. The military judge sentenced Appellant to 40 months of confinement, dismissal, and a reprimand. R. at 2744 – 2746. The convening authority took no action on the findings or sentence adjudged by the court-martial. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Lt Col William M. Hilton*, dated 12 April 2023.

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Counsel is currently assigned 14 cases; 9 cases are pending initial AOEs before this Court. Of those, the following three cases have priority over this one:

1) *United States v. Scott*, ACM 40411 – The record of trial is 11 volumes consisting of 14 prosecution exhibits, 14 defense exhibits, one court exhibit, and 55 appellate exhibits; the transcript is 1599 pages. Undersigned counsel has completed review of the ROT and has begun drafting an assignment of error. This case is the undersigned counsel's highest priority.
2) *United States v. Schneider*, ACM 40403 - The record of trial consists of three prosecution exhibits, 26 defense exhibits, and eight appellate exhibits; the transcript is 369 pages. Appellant is not currently confined. Undersigned counsel has completed the initial review of the ROT.
3) *United States v. Cassaberry-Folks*, ACM 40444 - The record of trial consists of seven volumes. The transcript is 375 pages. There are four Prosecution Exhibits, three

Defense Exhibits, one Court Exhibit and 11 Appellate Exhibits. Undersigned counsel has begun, but not yet completed review of the record of trial.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Undersigned counsel's primary focus is on completion of the assignment of error for *United States v. Scott*, which is due to be filed on 2 March 2024. Additionally, undersigned counsel continues to work on a supplement for a petition of review before the Court of Appeals for the Armed Forces in *United States v. Holt*, ACM 40390, which has a filing deadline of 28 February 2024. 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,

MICHAEL J. BRUZIK, Capt, USAF
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Air Force Appellate Defense Division
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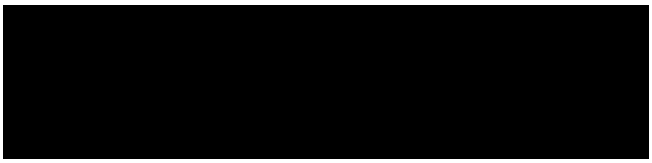
Respectfully submitted,



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22 February 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*, v. Lieutenant Colonel (O-5) WILLIAM M. HILTON, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40500 Panel No. 3

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

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

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

[redacted]
MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

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 22 February 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No.ACM 40500**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
William M. HILTON	)	
Lieutenant Colonel (0-5)	)	
U.S. Air Force	)	
Appellant	)	**Panel3**

On 20 February 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Fifth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 22d day of February, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (Fifth) is **GRANTED.** Appellant shall file any assignments of error not later than **30 March 2024.**

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

F[redacted]
OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (SIXTH)**
v.	)	Before Panel No. 3
Lieutenant Colonel (O-5), **WILLIAM M. HILTON,** United States Air Force, *Appellant.*	)	No. ACM 40500
	)	22 March 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his sixth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **29 April 2024**. The record of trial was docketed with this Court on 3 August 2023. From the date of docketing to the present date, 232 days have elapsed. On the date requested, 270 days will have elapsed.

On 15 September 2022; 31 October 2022; 19 January 2023; 13 – 17 March 2023; and 19 – 24 March 2023, Appellant was tried by a general court-martial at Royal Air Force Lakenheath, United Kingdom. Consistent with his pleas, the court-martial convicted Appellant of one charge and one specification of drunk on duty in violation of Article 112, Uniform Code of Military Justice (UCMJ); one charge and one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and three specifications of conduct unbecoming of an officer in violation of Article 133, UCMJ. R. at 278 – 280. Contrary to his pleas, the panel convicted Appellant of one charge and one specification of sexual assault in violation of Article 120, UCMJ. Appellant was acquitted of five specifications of abusive sexual contact in violation of Article 120, UCMJ; one charge and three specifications of assault consummated by battery in violation of Article 128,

UCMJ; one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and specification of pandering by enticement in violation of Article 134, UCMJ. R. at 2484 – 2486. The military judge sentenced Appellant to 40 months of confinement, dismissal, and a reprimand. R. at 2744 – 2746. The convening authority took no action on the findings or sentence adjudged by the court-martial. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Lt Col William M. Hilton*, dated 12 April 2023.

The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. Appellant is currently in confinement. Appellant has been advised of his right to a timely appeal, as well as the request for an enlargement of time. Appellant has agreed to the request for an enlargement of time.

Undersigned counsel is currently assigned 14 cases; 12 cases are pending initial AOEs before this Court. Of those, the following three cases have priority over this one:

1) *United States v. Schneider*, ACM 40403 - The record of trial consists of three prosecution exhibits, 26 defense exhibits, and eight appellate exhibits; the transcript is 369 pages. Appellant is not currently confined. Undersigned counsel has completed reviewing the record of trial and is currently drafting an assignment of errors due for submission on 9 April 2024. This case is on its 12th and final enlargement of time.
2) *United States v. Cassaberry-Folks,* ACM 40444 - The record of trial consists of seven volumes. The transcript is 375 pages. There are four Prosecution Exhibits, three Defense Exhibits, one Court Exhibit and 11 Appellate Exhibits. Undersigned counsel has begun, but not yet completed review of the record of trial. This case is on its ninth enlargement of time.
3) *United States v. Bates,* ACM S32752 – The record of trial consists of two volumes. The transcript is 176 pages. There are 11 Prosecution Exhibits, ten Defense Exhibits, and

five Appellate Exhibits. Undersigned counsel has completed an initial review of the record of trial. This case is on its ninth enlargement of time.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Undersigned counsel's primary focus is on completion of the assignment of error for *United States v. Schneider*. This will occupy the majority of counsel's time until completion, after which counsel has two other cases with high numbered enlargements of time which need resolution. 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,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
michael.bruzik@us.af.mil

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 22 March 2024.

Respectfully submitted,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
michael.bruzik@us.af.mil

25 March 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Lieutenant Colonel (O-5) WILLIAM M. HILTON, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40500 Panel No. 3

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

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

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

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

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 25 March 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No.ACM 40500**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF PANEL**
William M. HILTON	)	**CHANGE**
Lieutenant Colonel (0-5)	)	
U.S. Air Force	)	
Appellant	)	

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

ORDERED:

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

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge
RICHARDSON, NATALIE D., Colonel, Senior Appellate Military Judge
MASON, BRIAN C., Lieutenant Colonel, Appellate Military Judge

FOR THE COURT

[redacted]

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (SEVENTH)**
v.	)	Before Panel No. 3
Lieutenant Colonel (O-5), **WILLIAM M. HILTON,** United States Air Force, *Appellant.*	)	No. ACM 40500
	)	19 April 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his seventh enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **29 May 2024**. The record of trial was docketed with this Court on 3 August 2023. From the date of docketing to the present date, 260 days have elapsed. On the date requested, 300 days will have elapsed.

On 15 September 2022; 31 October 2022; 19 January 2023; 13 – 17 March 2023; and 19 – 24 March 2023, Appellant was tried by a general court-martial at Royal Air Force Lakenheath, United Kingdom. Consistent with his pleas, the court-martial convicted Appellant of one charge and one specification of drunk on duty in violation of Article 112, Uniform Code of Military Justice (UCMJ); one charge and one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and three specifications of conduct unbecoming of an officer in violation of Article 133, UCMJ. R. at 278 – 280. Contrary to his pleas, the panel convicted Appellant of one charge and one specification of sexual assault in violation of Article 120, UCMJ. Appellant was acquitted of five specifications of abusive sexual contact in violation of Article 120, UCMJ; one charge and three specifications of assault consummated by battery in violation of Article 128,

UCMJ; one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and specification of pandering by enticement in violation of Article 134, UCMJ. R. at 2484 – 2486. The military judge sentenced Appellant to 40 months of confinement, dismissal, and a reprimand. R. at 2744 – 2746. The convening authority took no action on the findings or sentence adjudged by the court-martial. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Lt Col William M. Hilton*, dated 12 April 2023.

The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. Appellant is currently in confinement. Appellant has been advised of his right to a timely appeal, as well as the request for an enlargement of time. Appellant has agreed to the request for an enlargement of time.

Undersigned counsel is currently assigned 14 cases; 12 cases are pending initial AOEs before this Court. Of those, the following three cases have priority over this one:

1) *United States v. Bates*, ACM S32752 – The record of trial consists of two volumes. The transcript is 176 pages. There are 11 Prosecution Exhibits, ten Defense Exhibits, and five Appellate Exhibits. Undersigned counsel has nearly completed an initial draft of an assignment of errors identifying three issues. This case is on its tenth enlargement of time.
2) *United States v. Cassaberry-Folks*, ACM 40444 – The record of trial consists of seven volumes. The transcript is 375 pages. There are four Prosecution Exhibits, three Defense Exhibits, one Court Exhibit and 11 Appellate Exhibits. Undersigned counsel has completed initial review of the record of trial and identified five issues for an AOE. This case is on its tenth enlargement of time and due for submission on 6 May 2024.
3) *United States v. Hilton* – This is the instant case.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Undersigned counsel's primary focus is on completion of the assignment of error for *United States v. Bates*. This will occupy the majority of counsel's time until completion, after which counsel has another case with high numbered enlargement of time which need resolution. 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.

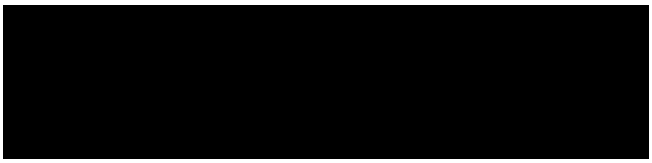
Respectfully submitted,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
michael.bruzik@us.af.mil

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 19 April 2024.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
michael.bruzik@us.af.mil

22 April 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Lieutenant Colonel (O-5) WILLIAM M. HILTON, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40500 Panel No. 3

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion for Enlargement of Time 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 not completed review of the record of trial at this late stage of the appellate process.

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

PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

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 22 April 2024.

PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40500**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
William M. HILTON	)	
Lieutenant Colonel (O-5)	)	
U.S. Air Force	)	
Appellant	)	**Special Panel**

On 21 May 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Eighth) requesting an additional thirty days to submit Appellant's assignments of error. The Government opposes the motion.

This court held a status conference on 28 May 2024 to discuss the progress of Appellant's case. Ms. Mary Ellen Payne represented the Government, and Lieutenant Colonel Alan S. Abrams and Mr. Sean F. Mangan (via telephone) represented Appellant. Appellant's military appellate counsel, Captain Michael J. Bruzik, was unavailable. While Mr. Magnan filed a notice of appearance in Appellant's case, he did not believe he was the only civilian counsel of record. Mr. Mangan clarified those matters relating to his representation of Appellant and relayed that Appellant may have retained another civilian counsel who has yet to file a notice of appearance with the court. Mr. Magnan further relayed that he personally is unlikely to begin Appellant's assignments of error brief before August 2024.

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 29th day of May, 2024,

ORDERED:

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

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

Further, Appellant should ensure that if additional civilian counsel is retained, such counsel complies with Rule 12.1 of this court's Rules of Practice and Procedure, requiring non-federal civilian counsel to file a notice of appearance within 15 business days of retention.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (EIGHTH)**
v.	)	Before a Special Panel
Lieutenant Colonel (O-5), **WILLIAM M. HILTON,** United States Air Force, *Appellant.*	)	No. ACM 40500
	)	21 May 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his eighth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **28 June 2024**. The record of trial was docketed with this Court on 3 August 2023. From the date of docketing to the present date, 292 days have elapsed. On the date requested, 330 days will have elapsed.

On 15 September 2022; 31 October 2022; 19 January 2023; 13 – 17 March 2023; and 19 – 24 March 2023, Appellant was tried by a general court-martial at Royal Air Force Lakenheath, United Kingdom. Consistent with his pleas, the court-martial convicted Appellant of one charge and one specification of drunk on duty in violation of Article 112, Uniform Code of Military Justice (UCMJ); one charge and one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and three specifications of conduct unbecoming of an officer in violation of Article 133, UCMJ. R. at 278 – 280. Contrary to his pleas, the panel convicted Appellant of one charge and one specification of sexual assault in violation of Article 120, UCMJ. Appellant was acquitted of five specifications of abusive sexual contact in violation of Article 120, UCMJ; one charge and three specifications of assault consummated by battery in violation of Article 128,

UCMJ; one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and specification of pandering by enticement in violation of Article 134, UCMJ. R. at 2484 – 2486. The military judge sentenced Appellant to 40 months of confinement, dismissal, and a reprimand. R. at 2744 – 2746. The convening authority took no action on the findings or sentence adjudged by the court-martial. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Lt Col William M. Hilton*, dated 12 April 2023.

The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. Appellant is currently in confinement. Appellant has been advised of his right to a timely appeal, as well as the request for an enlargement of time. Appellant has agreed to the request for an enlargement of time.

Undersigned counsel is currently assigned 20 cases; 14 cases are pending initial AOEs before this Court. Undersigned counsel's top priorities are as follows:

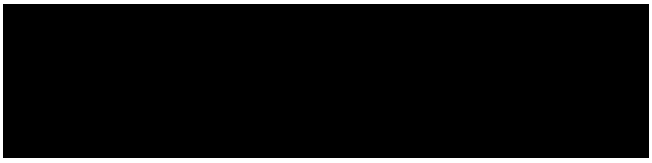
1) *In re A.G.*, Misc. Dkt. 2024-05 – This is a petition for extraordinary relief filed by an individual claiming Article 6b, UCMJ, status. A response from the real party in interest is due to this Court on 28 May 2024.
2) *United States v. Cassaberry-Folks*, ACM 40444 – The record of trial consists of seven volumes. The transcript is 375 pages. There are four Prosecution Exhibits, three Defense Exhibits, one Court Exhibit and 11 Appellate Exhibits. Undersigned counsel is working towards completion of a final drafted assignment of errors. This case is on its eleventh and final enlargement of time and due for submission on 31 May 2024.
3) *United States v. Hilton* – This is the instant case.
4) *United States v. Martinez*, ACM 39903 (reh) – The record of trial from the remanded hearing consists of three volumes. The transcript is 134 pages. There are five prosecution exhibits, one defense exhibit, and 15 appellate exhibits. The record of trial

from the initial trial consists of 11 prosecution exhibits, 24 defense exhibits, 81 appellate exhibits, and includes a 1134 page transcript. This case is on its fifth enlargement of time. Undersigned counsel has not yet completed an initial review of the record of trial.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Undersigned counsel is hard at work completing briefs for both *In re AG* and *United States v. Cassaberry-Folks*, which are both due this Court within days of each other. Additionally, undersigned counsel is taking leave from 22 – 29 May 2024. Upon completion of the two cases references above, undersigned will shift focus towards the instant case in coordination with civilian counsel. 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,



MICHAEL J. BRUZIK, Capt, USAF
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1500 West Perimeter Road, Suite 1100
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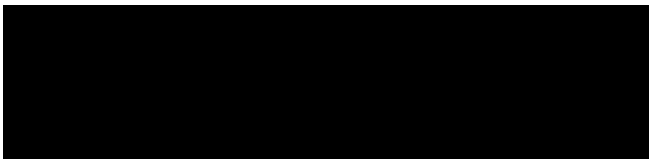
michael.bruzik@us.af.mil

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 21 May 2024.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
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michael.bruzik@us.af.mil

22 May 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Lieutenant Colonel (O-5) WILLIAM M. HILTON, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40500 Special Panel

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 330 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 7 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's military counsel has not completed review of the record of trial at this late stage of the appellate process. Further, the enlargement of time request includes no information about civilian defense counsel's current workload or progress on the case.

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

[redacted]
MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, to Civilian Defense Counsel, and to the Air Force Appellate Defense Division on 22 May 2024.

[redacted]
MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

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

UNITED STATES *Appellee,* *v.* Lieutenant Colonel (0-5) **WILLIAM M. HILTON** United States Air Force, *Appellant.*	**NOTICE OF APPEARANCE** Before Special Panel Case No. ACM 40500 Filed on: 25 June 2024

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

COMES NOW, Frank J. Spinner, pursuant to Rule 12 of this Court's Rules of Practice and Procedure, and hereby files this written notice of appearance. In addition, counsel hereby informs this Court that:

(1) Business mailing address is: 1420 Golden Hills Road, Colorado Springs, CO 80919;

(2) Phone number is: 719-233-7192

(3) Business email is: lawspin@aol.com; and

(4) I am member of this Court's bar.

Respectfully submitted,

[redacted]

FRANK SPINNER
Appellate Defense Counsel
1420 Golden Hills Road
Colorado Springs, CO 80919
(719) 233-7192
E-Mail: lawspin@aol.com

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via electronic mail to the Court and served on the Appellate Government Division on 25 June 2024.

MICHAEL J. BRUZIK, Capt, USAF
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, :MD 20762-6604
Office: (240) 612-4770
E-Mail: michael.bruzik@us.af.mil

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (NINTH)**
v.	)	Before a Special Panel
Lieutenant Colonel (O-5), **WILLIAM M. HILTON,** United States Air Force, *Appellant.*	)	No. ACM 40500
	)	21 June 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his ninth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **28 July 2024**. The record of trial was docketed with this Court on 3 August 2023. From the date of docketing to the present date, 323 days have elapsed. On the date requested, 360 days will have elapsed.

On 15 September 2022; 31 October 2022; 19 January 2023; 13 – 17 March 2023; and 19 – 24 March 2023, Appellant was tried by a general court-martial at Royal Air Force Lakenheath, United Kingdom. Consistent with his pleas, the court-martial convicted Appellant of one charge and one specification of drunk on duty in violation of Article 112, Uniform Code of Military Justice (UCMJ); one charge and one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and three specifications of conduct unbecoming of an officer in violation of Article 133, UCMJ. R. at 278 – 280. Contrary to his pleas, the panel convicted Appellant of one charge and one specification of sexual assault in violation of Article 120, UCMJ. Appellant was acquitted of five specifications of abusive sexual contact in violation of Article 120, UCMJ; one charge and three specifications of assault consummated by battery in violation of Article 128,

UCMJ; one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and specification of pandering by enticement in violation of Article 134, UCMJ. R. at 2484 – 2486. The military judge sentenced Appellant to 40 months of confinement, dismissal, and a reprimand. R. at 2744 – 2746. The convening authority took no action on the findings or sentence adjudged by the court-martial. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Lt Col William M. Hilton*, dated 12 April 2023.

The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. Appellant is currently in confinement. Appellant has been advised of his right to a timely appeal, as well as the request for an enlargement of time. Appellant has agreed to the request for an enlargement of time.

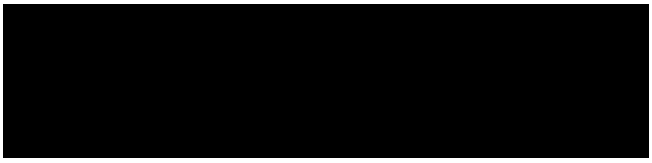
Undersigned counsel is currently assigned 20 cases; 13 cases are pending initial AOEs before this Court. Undersigned counsel's top priorities are as follows:

1) *United States v. Hilton* – This is the instant case.
2) *United States v. Martinez*, ACM 39903 (reh) – The record of trial from the remanded hearing consists of three volumes. The transcript is 134 pages. There are five prosecution exhibits, one defense exhibit, and 15 appellate exhibits. The record of trial from the initial trial consists of 11 prosecution exhibits, 24 defense exhibits, 81 appellate exhibits, and includes a 134 page transcript. This case is on its sixth enlargement of time. Counsel has completed an initial review of the record of trial from the remanded hearing.
3) *United States v. Johnson*, ACM 40537 – The record of trial is 7 volumes consisting of 19 prosecution exhibits, 4 defense exhibits, 27 appellate exhibits, and 2 court exhibits. The transcript is 605 pages. This case is on its fifth enlargement of time. Counsel has completed an initial review of the record of trial.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Since the previous enlargement of time, counsel was primarily focused on completing briefs for *In re AG*, Misc. Dkt. 2024-05, and *United States v. Cassaberry-Folks*, ACM 40444. Both of these were submitted at the end of May 2024. Additionally, counsel submitted a reply brief in *United States v. Bates*, ACM S32752 on 14 June 2024. In spite of this, counsel has been hard at work reviewing the record of trial for this case which is currently counsel's top priority. However, the sheer volume of the record has made this task time-consuming. Undersigned counsel will continue to work with civilian counsel to expedite this review process and begin work on an assignment of errors. 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,



MICHAEL J. BRUZIK, Capt, USAF
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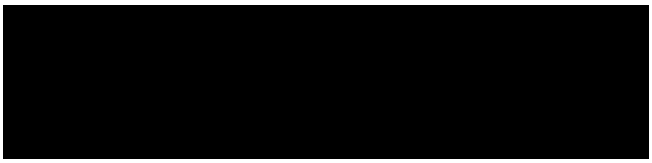
michael.bruzik@us.af.mil

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 21 June 2024.

Respectfully submitted,



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24 June 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Lieutenant Colonel (O-5) WILLIAM M. HILTON, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40500 Special Panel

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

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

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

J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, to Civilian Defense Counsel, and to the Air Force Appellate Defense Division on 24 June 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
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME, OUT OF TIME (TENTH)**
v.	)	Before a Special Panel
Lieutenant Colonel (O-5), **WILLIAM M. HILTON,** United States Air Force, *Appellant.*	)	No. ACM 40500
	)	22 July 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his tenth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **27 August 2024**. The record of trial was docketed with this Court on 3 August 2023. From the date of docketing to the present date, 354 days have elapsed. On the date requested, 390 days will have elapsed. Good cause exists to file this motion out of time because undersigned counsel's use of his normal work computer was disrupted due to technical problems that required it to be serviced by the local communications squadron. During that time, undersigned counsel's ability to coordinate with civilian counsel to provide updates for this motion was strained. Undersigned counsel recognizes that in the midst of that, he miscalculated the deadline to submit this motion. Accordingly, counsel respectfully requests that this Court accept this motion out of time.

On 15 September 2022; 31 October 2022; 19 January 2023; 13 – 17 March 2023; and 19 – 24 March 2023, Appellant was tried by a general court-martial at Royal Air Force Lakenheath, United Kingdom. Consistent with his pleas, the court-martial convicted Appellant of one charge and one specification of drunk on duty in violation of Article 112, Uniform Code of Military Justice (UCMJ); one charge and one specification of unlawful entry in violation of Article 129,

UCMJ; and one charge and three specifications of conduct unbecoming of an officer in violation of Article 133, UCMJ. R. at 278 – 280. Contrary to his pleas, the panel convicted Appellant of one charge and one specification of sexual assault in violation of Article 120, UCMJ. Appellant was acquitted of five specifications of abusive sexual contact in violation of Article 120, UCMJ; one charge and three specifications of assault consummated by battery in violation of Article 128, UCMJ; one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and specification of pandering by enticement in violation of Article 134, UCMJ. R. at 2484 – 2486. The military judge sentenced Appellant to 40 months of confinement, dismissal, and a reprimand. R. at 2744 – 2746. The convening authority took no action on the findings or sentence adjudged by the court-martial. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Lt Col William M. Hilton*, dated 12 April 2023.

The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. Appellant is currently in confinement. Appellant has been advised of his right to a timely appeal, as well as the request for an enlargement of time. Appellant has agreed to the request for an enlargement of time. Appellant is also represented by Mr. Sean Magnan and Mr. Frank Spinner.

Undersigned counsel is currently assigned 20 cases; 13 cases are pending initial AOEs before this Court. Undersigned counsel's top priorities are as follows:

1) *United States v. Hilton* – This is the instant case.
2) *United States v. Martinez*, ACM 39903 (reh) – The record of trial from the remanded hearing consists of three volumes. The transcript is 134 pages. There are five prosecution exhibits, one defense exhibit, and 15 appellate exhibits. The record of trial from the initial trial consists of 11 prosecution exhibits, 24 defense exhibits, 81 appellate exhibits, and

includes a 134 page transcript. This case is on its sixth enlargement of time. Undersigned counsel has completed

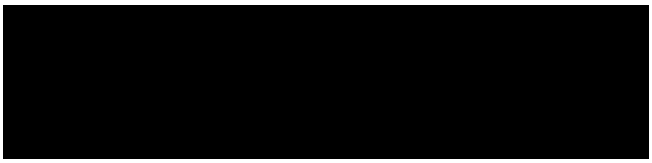
3) *United States v. Johnson*, ACM 40537 – The record of trial is 7 volumes consisting of 19 prosecution exhibits, 4 defense exhibits, 27 appellate exhibits, and 2 court exhibits. The transcript is 605 pages. This case is on its fifth enlargement of time. Counsel has completed an initial review of the record of trial.

Through no fault of Appellant, his retained counsel has been working on other assigned matters and have been unable to complete work on Appellant's case. Mr. Spinner has been completing an assignment of errors in the matter of *United States v. Martell*, ACM 40501 which he anticipates submitting to this Court next week. Additionally, Mr. Spinner is working on an assignment of errors for *United States v. Amos*, NMCCA No. 202400099, which he anticipates submitting to the Navy-Marine Corps., Court of Criminal Appeals next week, as well.

This case currently occupies undersigned counsel's top priority. Counsel has completed his review of the unsealed portions of the record of trial, identified issues, and is coordinating with civilian counsel to begin work on an assignment of errors once Mr. Spinner completes his other obligations. The review process for the record of trial was particularly time consuming given its sheer volume. However, undersigned counsel will be dedicating his full resources to completing work on this case. However, an enlargement of time will be necessary to accomplish this, and to review the sealed portions of the record of trial.

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

Respectfully submitted,



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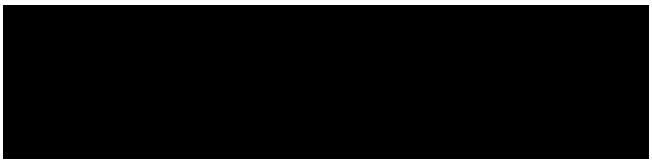
michael.bruzik@us.af.mil

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 22 July 2024.

Respectfully submitted,



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23 July 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Lieutenant Colonel (O-5) WILLIAM M. HILTON, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME - OUT OF TIME ACM 40500 Special Panel

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 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 neither of Appellant's counsel have completed their review of the record of trial in this case; it also appears Appellant's military defense counsel has yet to even begun drafting an assignment of errors relating to the portions of the record of trial they have reviewed. It is apparent that this Enlargement of Time will not be the last requested in this case.

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

J. PETE FERRELL, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, to Civilian Defense Counsel, and to the Air Force Appellate Defense Division on 23 July 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
(240) 612-4800

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40500**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
William M. HILTON	)	
Lieutenant Colonel (O-5)	)	
U.S. Air Force	)	
Appellant	)	**Special Panel**

On 23 July 2024, counsel for Appellant submitted a Motion to Examine Sealed Materials, requesting his counsel be allowed to examine Appellate Exhibits XIX, XX, XXI, XXIX, XXXIII, LXXVII, LXXVIII, XC as well as transcript pages 208-271 and 2100-2130. All requested items were viewed by trial and defense counsel at trial.

On 24 July 2024, the Government informed the court that it does not oppose the motion "so long as the United States can also review the sealed portions of the record as necessary to respond to the assignment of error that refers to the sealed materials."

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

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

Accordingly, it is by the court on this 25th day of July 2024,

ORDERED:

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

Appellate defense counsel and appellate government counsel may view **Appellate Exhibits XIX, XX, XXI, XXIX, XXXIII, LXXVII, LXXVIII, XC as well as transcript pages 208-271 and 2100-2130**, subject to the following conditions:

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

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

FOR THE COURT

[redacted]

OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,*	)	**APPELLANT'S MOTION TO EXAMINE SEALED MATERIALS**
v.	)	
	)	Before a Special Panel
Lieutenant Colonel (O-5) **WILLIAM M. HILTON,** United States Air Force	)	No. ACM 40500
Appellant	)	23 July 2024

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

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and Rule 23.3(f)(1) of this Honorable Court's Rules of Practice and Procedure, undersigned counsel hereby moves to examine the following items:

- Appellate Exhibit XIX – "Defense Notice and Motion to Admit Evidence Pursuant to MRE 412, dated 28 December 2022."
- Appellate Exhibit XX – "Government Response to Defense Notice and Motion to Admit Evidence Pursuant to MRE 412, dated 6 January 2023."
- Appellate Exhibit XXI – "VC Response to Defense Notice and Motion to Admit Evidence Pursuant to MRE 412, dated 6 January 2023."
- Appellate Exhibit XXIX – "Ruling: MRE 412, dated 31 January 2023."
- Appellate Exhibit XXXIII – "Ruling: MRE 413, dated 14 March 2023."
- Appellate Exhibit LXXVII – "Agent Notes, SA Tattianna Olvera, dated 20 December 2021."

- Appellate Exhibit LXXVIII – "Administrative Information & Agent Notes, dated 21 April 2021."
- Appellate Exhibit XC – "Affidavit/Declaration of Mrs. Donna Mele, dated 21 December 2021."
- Pages 208 – 271 and 2100 – 2130 of the trial transcript which address MRE 412 matters.

In accordance with R.C.M. 1113(b)(3)(B)(i), which requires a colorable showing that examining these materials is reasonably necessary to fulfill appellate counsel's responsibilities, undersigned counsel asserts that viewing the referenced materials is reasonably necessary to assess whether the ROT is complete and whether the military judge properly ruled on motions and the admissibility of evidence. The sealed portions raise the potential for appellate issues.

To determine whether the record of trial yields grounds for this Court to grant relief under Article 66(d), UCMJ, 10 U.S.C. § 866(d), appellate defense counsel must examine "the entire record."

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

United States v. May, 47 M.J. 478, 481 (C.A.A.F. 1998). Undersigned counsel must review the sealed materials to provide "competent appellate representation." *See id.* Accordingly, good cause exists in this case since undersigned counsel cannot fulfill his

duty of representation under Article 70, UCMJ, 10 U.S.C. § 870, without first reviewing these exhibits.

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

Respectfully submitted,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 23 July 2024.

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770

24 July 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Lieutenant Colonel (O-5) WILLIAM M. HILTON, USAF *Appellant.*	)))))))))	UNITED STATES' RESPONSE TO APPELLANT'S MOTION TO EXAMINE SEALED MATERIALS ACM 40500 Special Panel

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 responds to Appellant's Motion to Examine Sealed Materials. The United States does not object to Appellant's counsel reviewing any materials listed in Appellant's motion which were viewed by all parties at trial, so long as the United States can also review the sealed portions of the record as necessary to respond to any assignment of error that refers to the sealed materials. The United States respectfully requests that any order issued by this Court also allow counsel for the United States to view the sealed materials.

The United States would not consent to Appellant's counsel viewing any exhibits that were reviewed in camera but not released to the parties unless this Court has first determined there is good cause for Appellant's counsel to do so under R.C.M. 1113.

WHEREFORE, the United States respectfully responds to Appellant's motion.

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 24 July 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (ELEVENTH)**
v.	)	Before a Special Panel
Lieutenant Colonel (O-5), **WILLIAM M. HILTON,** United States Air Force, *Appellant.*	)	No. ACM 40500
	)	20 August 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his eleventh enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **26 September 2024**. The record of trial was docketed with this Court on 3 August 2023. From the date of docketing to the present date, 383 days have elapsed. On the date requested, 420 days will have elapsed.

On 15 September 2022; 31 October 2022; 19 January 2023; 13 – 17 March 2023; and 19 – 24 March 2023, Appellant was tried by a general court-martial at Royal Air Force Lakenheath, United Kingdom. Consistent with his pleas, the court-martial convicted Appellant of one charge and one specification of drunk on duty in violation of Article 112, Uniform Code of Military Justice (UCMJ); one charge and one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and three specifications of conduct unbecoming of an officer in violation of Article 133, UCMJ. R. at 278 – 280. Contrary to his pleas, the panel convicted Appellant of one charge and one specification of sexual assault in violation of Article 120, UCMJ. Appellant was acquitted of five specifications of abusive sexual contact in violation of Article 120, UCMJ; one charge and three specifications of assault consummated by battery in violation of Article 128,

UCMJ; one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and specification of pandering by enticement in violation of Article 134, UCMJ. R. at 2484 – 2486. The military judge sentenced Appellant to 40 months of confinement, dismissal, and a reprimand. R. at 2744 – 2746. The convening authority took no action on the findings or sentence adjudged by the court-martial. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Lt Col William M. Hilton*, dated 12 April 2023.

The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. Appellant is not currently in confinement. Appellant has been advised of his right to a timely appeal, as well as the request for an enlargement of time. Appellant has agreed to the request for an enlargement of time. Appellant is also represented by Mr. Sean Mangan and Mr. Frank Spinner.

Undersigned counsel is currently assigned 20 cases; 13 cases are pending initial AOEs before this Court. Undersigned counsel's top priorities are as follows:

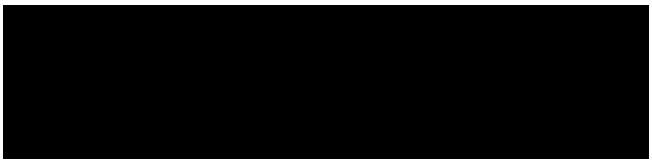
1) *United States v. Hilton* – This is the instant case.
2) *United States v. Martinez*, ACM 39903 (reh) – The record of trial from the remanded hearing consists of three volumes. The transcript is 134 pages. There are five prosecution exhibits, one defense exhibit, and 15 appellate exhibits. The record of trial from the initial trial consists of 11 prosecution exhibits, 24 defense exhibits, 81 appellate exhibits, and includes a 134 page transcript. This case is on its eigth enlargement of time. Undersigned counsel has completed an initial review of the remanded record of trial.
3) *United States v. Jenkins*, ACM S32765 – The record of trial consists of three volumes stored in electronic format. The transcript is 138 pages. There are four prosecution exhibits, one defense exhibit, four appellate exhibits, and one court exhibit. This case in its sixth enlargement of time.

Through no fault of Appellant, his retained counsel has been working on other assigned matters and have been unable to complete work on Appellant's case. Mr. Spinner's activities over the past enlargement of time have included the following. On 19 August 2024, Mr. Spinner submitted an assignment of errors to the Navy-Marine Corps. Court of Criminal Appeals for *United States v. Amos*, NMCCA No. 202400099. Additionally, Mr. Spinner filed an assignment of errors to this court for *United States v. Martell*, ACM 40501, on 29 July 2024. Mr. Spinner is currently working on a reply brief for *United States v. Baumgartner*, ACM 40413, which is due to be filed on 22 August 2024. He is also at work on *United States v. Sherman*, ACM 40486. Additionally, he will be participating in a clemency and parole hearing on 22 August 2024 with the United States Army. This tempo of work has created exceptional circumstances warranting an enlargement of time in order that Appellant can secure the services of his retained attorney. Meanwhile, Mr. Mangan litigated two courts-martial during the previous enlargement of time, while balancing family medical issues.

Undersigned counsel has completed review of the record of trial, including sealed materials. Counsel has identified issues and begun preliminarily drafting an assignment of errors. Counsel has done so while also balancing submission of an assignment of errors to this court in *United States v. Johnson*, ACM 40537, and submission of a reply grant brief to the Court of Appeals for the Armed Forces for *United States v. Saul*, ACM 40341. However, the heavy workload faced by all three counsel has created difficulty completing an assignment of errors in this case. Accordingly, an enlargement of time is necessary.

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

Respectfully submitted,



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CERTIFICATE OF FILING AND SERVICE

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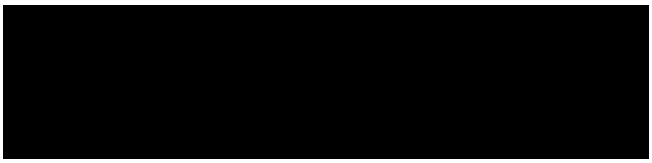
Respectfully submitted,



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Appellate Defense Counsel
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22 August 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Lieutenant Colonel (O-5) WILLIAM M. HILTON, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME - ACM 40500 Special Panel

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 420 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 4 months combined for the United States and this Court to perform their separate statutory responsibilities.

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

[redacted]
JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, to Civilian Defense Counsel, and to the Air Force Appellate Defense Division on 22 August 2024.

[redacted]
JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (TWELFTH)**
v.	)	Before a Special Panel
Lieutenant Colonel (O-5), **WILLIAM M. HILTON,** United States Air Force, *Appellant.*	)	No. ACM 40500
	)	19 September 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his twelfth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **26 October 2024**. The record of trial was docketed with this Court on 3 August 2023. From the date of docketing to the present date, 413 days have elapsed. On the date requested, 450 days will have elapsed.

On 15 September 2022; 31 October 2022; 19 January 2023; 13 – 17 March 2023; and 19 – 24 March 2023, Appellant was tried by a general court-martial at Royal Air Force Lakenheath, United Kingdom. Consistent with his pleas, the court-martial convicted Appellant of one charge and one specification of drunk on duty in violation of Article 112, Uniform Code of Military Justice (UCMJ); one charge and one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and three specifications of conduct unbecoming of an officer in violation of Article 133, UCMJ. R. at 278 – 280. Contrary to his pleas, the panel convicted Appellant of one charge and one specification of sexual assault in violation of Article 120, UCMJ. Appellant was acquitted of five specifications of abusive sexual contact in violation of Article 120, UCMJ; one charge and three specifications of assault consummated by battery in violation of Article 128,

UCMJ; one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and specification of pandering by enticement in violation of Article 134, UCMJ. R. at 2484 – 2486. The military judge sentenced Appellant to 40 months of confinement, dismissal, and a reprimand. R. at 2744 – 2746. The convening authority took no action on the findings or sentence adjudged by the court-martial. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Lt Col William M. Hilton*, dated 12 April 2023.

The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. Appellant is not currently in confinement. Appellant has been advised of his right to a timely appeal, as well as the request for an enlargement of time. Appellant has agreed to the request for an enlargement of time. Appellant is also represented by Mr. Frank Spinner and Mr. Sean Mangan.

Undersigned counsel is currently assigned 20 cases; 13 cases are pending initial AOEs before this Court. Undersigned counsel's top priorities are as follows:

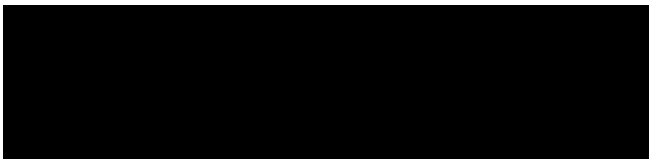
1) *United States v. Hilton* – This is the instant case.
2) *United States v. Martinez*, ACM 39903 (reh) – The record of trial from the remanded hearing consists of three volumes. The transcript is 134 pages. There are five prosecution exhibits, one defense exhibit, and 15 appellate exhibits. The record of trial from the initial trial consists of 11 prosecution exhibits, 24 defense exhibits, 81 appellate exhibits, and includes a 134 page transcript. This case is on its ninth enlargement of time. Undersigned counsel has been at work on an assignment of errors.
3) *United States v. Jenkins*, ACM S32765 – The record of trial consists of three volumes stored in electronic format. The transcript is 138 pages. There are four prosecution exhibits, one defense exhibit, four appellate exhibits, and one court exhibit. This case in its seventh enlargement of time.

Through no fault of Appellant, his retained counsel has been working on other assigned matters and have been unable to complete work on Appellant's case. Over the previous enlargement of time, Mr. Spinner was at work on a reply brief before this Court in *United States v. Martell*. Additionally, he prepared for and appeared at a clemency/parole board with the United States Army. Mr. Spinner also prepared and submitted a package to the Secretary of the Air Force in a disenrollment case from the Air Force Academy. Mr. Spinner's current top priority is the case bar, which he begun working through. Mr. Spinner is working through this case while also preparing a reply brief before this Court in *United States v. Sherman*.

Undersigned counsel continues to provide support, having reviewed the record of trial in its entirety and put together draft portions for the assignment of errors. Counsel continues to support work on the assignment of errors, while also working on an assignment errors for *United States v. Martinez*, which counsel hopes to submit to this Court without asking for any additional enlargements of time. Counsel's other activities include work on a supplement to a petition for review before the Court of Appeals for the Armed in *United States v. Schneider* which is due to that court by 29 September 2024. Accordingly, an enlargement of time is necessary for appellant's retained counsel to complete work on an assignment of errors to submit to this court.

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

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
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1500 West Perimeter Road, Suite 1100
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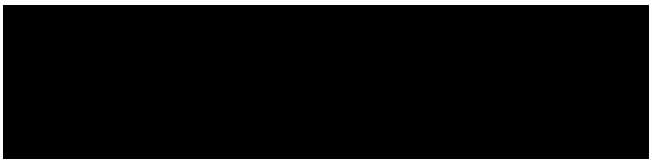
michael.bruzik@us.af.mil

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 19 September 2024.

Respectfully submitted,



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23 September 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Lieutenant Colonel (O-5) WILLIAM M. HILTON, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME - ACM 40500 Special Panel

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 450 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 3 months combined for the United States and this Court to perform their separate statutory responsibilities.

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

[redacted]
JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, to Civilian Defense Counsel, and to the Air Force Appellate Defense Division on 23 September 2024.

[redacted]
JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40500**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
William M. HILTON	)	
Lieutenant Colonel (O-5)	)	
U.S. Air Force	)	
Appellant	)	**Special Panel**

On 18 October 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Thirteenth) requesting an additional thirty days to submit Appellant's assignments of error. The Government opposed the motion.

On 25 July 2024, this court granted Appellant's motion to view the following sealed materials: Appellate Exhibits XIX, XX, XXI, XXIX, XXXIII, LXXVII, LXXVIII, LXXVIII, and XC, and transcript pages 208–271 and 2100–2130. On 21 October 2024, counsel for Appellant submitted a motion to reproduce and transmit these same sealed materials to Appellant's civilian appellate counsel, Mr. Frank Spinner and Mr. Sean F. Mangan. The Government does not oppose this motion.

This court held a status conference on 24 October 2024 to discuss the progress of Appellant's case and the transmission of the sealed materials. Ms. Mary Ellen Payne represented the Government. Lieutenant Colonel Alan S. Abrams and Captain Michael J. Bruzik represented Appellant in person, and Mr. Frank Spinner and Mr. Sean F. Mangan represented Appellant via telephone. Mr. Spinner indicated that he was the lead counsel for Appellant and anticipated that he would likely have a draft brief completed by the end of the requested timeframe. To do that, he needs to review the sealed materials. The Government indicated that they agreed that it was impracticable for Mr. Spinner to travel to the court to conduct this review. Therefore, they repeated their position that they do not object to the transmission of the sealed materials.

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

Accordingly, it is by the court on this 24th day of October, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (Thirteenth) is **GRANTED**. Appellant shall file any assignments of error not later than **25 November 2024**.

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

It is further ordered:

Appellant's Motion to Reproduce and Transmit Sealed Materials is **GRANTED**.

Appellate military appellate defense counsel may transmit **Appellate Exhibits XIX, XX, XXI, XXIX, XXXIII, LXXVII, LXXVIII, LXXVIII, and XC**, and **transcript pages 208–271 and 2100–2130** to Appellant's civilian appellate counsel, Mr. Frank Spinner and Mr. Sean F. Mangan.

Appellant's military appellate counsel is permitted to scan a hard copy of the printed sealed materials and to transmit encrypted files containing the printed sealed materials to Appellant's civilian appellate counsel, Mr. Frank Spinner and Mr. Sean F. Mangan, via DoD SAFE.

Except as specified in this order, no counsel will photocopy, photograph, or otherwise reproduce the sealed material, nor disclose nor make available its contents to any other individual, without this court's prior written authorization.

Once all pleadings in this case are filed with the court, Appellant's appellate defense counsel shall destroy all copies of the sealed materials created and transmitted. Appellate defense counsel will provide confirmation to this court and to appellate government counsel that all such copies have been destroyed.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (THIRTEENTH)**
v.	)	Before a Special Panel
Lieutenant Colonel (O-5), **WILLIAM M. HILTON,** United States Air Force, *Appellant.*	)	No. ACM 40500
	)	18 October 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his thirteenth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **25 November 2024**. The record of trial was docketed with this Court on 3 August 2023. From the date of docketing to the present date, 442 days have elapsed. On the date requested, 480 days will have elapsed.

On 15 September 2022; 31 October 2022; 19 January 2023; 13 – 17 March 2023; and 19 – 24 March 2023, Appellant was tried by a general court-martial at Royal Air Force Lakenheath, United Kingdom. Consistent with his pleas, the court-martial convicted Appellant of one charge and one specification of drunk on duty in violation of Article 112, Uniform Code of Military Justice (UCMJ); one charge and one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and three specifications of conduct unbecoming of an officer in violation of Article 133, UCMJ. R. at 278 – 280. Contrary to his pleas, the panel convicted Appellant of one charge and one specification of sexual assault in violation of Article 120, UCMJ. Appellant was acquitted of five specifications of abusive sexual contact in violation of Article 120, UCMJ; one charge and three specifications of assault consummated by battery in violation of Article 128,

UCMJ; one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and specification of pandering by enticement in violation of Article 134, UCMJ. R. at 2484 – 2486. The military judge sentenced Appellant to 40 months of confinement, dismissal, and a reprimand. R. at 2744 – 2746. The convening authority took no action on the findings or sentence adjudged by the court-martial. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Lt Col William M. Hilton*, dated 12 April 2023.

The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. Appellant is not currently in confinement. Appellant has been advised of his right to a timely appeal, as well as the request for an enlargement of time. Appellant has agreed to the request for an enlargement of time. Appellant is also represented by Mr. Frank Spinner and Mr. Sean Mangan.

Undersigned counsel is currently assigned 20 cases; 13 cases are pending initial AOEs before this Court. Undersigned counsel's top priorities are as follows:

1) *United States v. Hilton* – This is the instant case.
2) *United States v. Martinez*, ACM 39903 (reh) – The record of trial from the remanded hearing consists of three volumes. The transcript is 134 pages. There are five prosecution exhibits, one defense exhibit, and 15 appellate exhibits. The record of trial from the initial trial consists of 11 prosecution exhibits, 24 defense exhibits, 81 appellate exhibits, and includes a 134 page transcript. This case is on its tenth and final enlargement of time.
3) *United States v. Jenkins*, ACM S32765 – The record of trial consists of three volumes stored in electronic format. The transcript is 138 pages. There are four prosecution exhibits, one defense exhibit, four appellate exhibits, and one court exhibit. This case in its eighth enlargement of time.

Through no fault of Appellant, his retained counsel has been working on other assigned matters and have been unable to complete work on Appellant's case. In the last thirty days, Mr. Spinner prepared and filed a reply brief with this Court in *United States v. Sherman*. Mr. Spinner also completed 12 hour of continuing legal education. Mr. Spinner has reviewed most of the record of trial and identified multiple issues to be raised as assignments of error which he has begun drafting. Mr. Spinner requires personal access to the sealed materials to resolve whether there are any issues in them that need to be raised. He is willing to participate in a status conference if one is needed.

Undersigned counsel has been balancing several priorities over the last thirty days. This includes preparing for oral arguments before the Court of Appeals for the Armed Forces (C.A.A.F.) in *United States v. Saul* which is taking place on 22 October 2024. Counsel also submitted a supplement for petition for review to the C.A.A.F. in *United States v. Schneider*. Additionally, counsel completed drafting an assignment of errors for *United States v. Martinez* which is due for submission to this Court on 21 October 2024. Counsel has also completed an assignment of errors with civilian counsel in *United States v. Cepeda* which is due to this Court on 30 October 2024, and will be submitted upon completion of internal review. These time-consuming priorities have prevented undersigned counsel from dedicating more time to the case at bar. Accordingly, an enlargement of time is necessary for appellant's retained counsel to complete work on an assignment of errors to submit to this court.

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

Respectfully submitted,

[redacted]

MICHAEL J. BRUZIK, Capt, USAF
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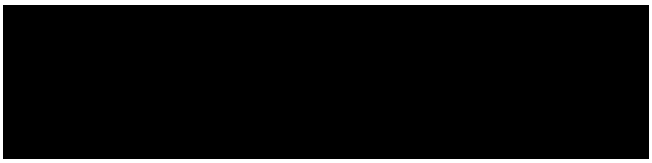
michael.bruzik@us.af.mil

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 18 October 2024.

Respectfully submitted,



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22 October 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

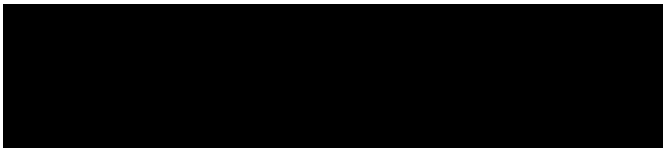
UNITED STATES, *Appellee,* v. Lieutenant Colonel (O-5) WILLIAM M. HILTON, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40500 Special Panel

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 480 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 2 months combined for the United States and this Court to perform their separate statutory responsibilities. Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

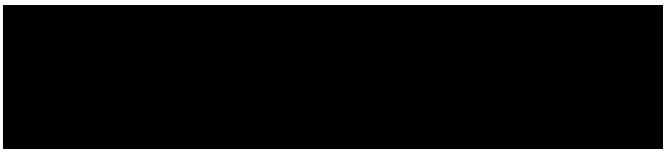
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, to Civilian Defense Counsel, and to the Air Force Appellate Defense Division on 22 October 2024.



JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee,* v. Lieutenant Colonel (O-5) **WILLIAM M. HILTON,** United States Air Force *Appellant*	)))))))))	**APPELLANT'S MOTION TO REPRODUCE AND TRANSMIT SEALED MATERIALS** Before a Special Panel No. ACM 40500 21 October 2024

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

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and Rule 23.3(f)(1) of this Honorable Court's Rules of Practice and Procedure, undersigned counsel hereby moves for permission to reproduce and transmit to civilian counsel, Mr. Frank Spinner and Mr. Sean Mangan, the following sealed items that this Court previously granted for appellate defense counsel to examine:

- Appellate Exhibit XIX – "Defense Notice and Motion to Admit Evidence Pursuant to MRE 412, dated 28 December 2022."
- Appellate Exhibit XX – "Government Response to Defense Notice and Motion to Admit Evidence Pursuant to MRE 412, dated 6 January 2023."
- Appellate Exhibit XXI – "VC Response to Defense Notice and Motion to Admit Evidence Pursuant to MRE 412, dated 6 January 2023."
- Appellate Exhibit XXIX – "Ruling: MRE 412, dated 31 January 2023."
- Appellate Exhibit XXXIII – "Ruling: MRE 413, dated 14 March 2023."

- Appellate Exhibit LXXVII – "Agent Notes, SA Tattianna Olvera, dated 20 December 2021."
- Appellate Exhibit LXXVIII – "Administrative Information & Agent Notes, dated 21 April 2021."
- Appellate Exhibit XC – "Affidavit/Declaration of Mrs. Donna Mele, dated 21 December 2021."
- Pages 208 – 271 and 2100 – 2130 of the trial transcript which address MRE 412 matters.

In accordance with R.C.M. 1113(b)(3)(B)(i), which requires a colorable showing that examining these materials is reasonably necessary to fulfill appellate counsel's responsibilities, undersigned counsel asserts that reproducing and transmitting the referenced materials is reasonably necessary for civilian counsel whether the military judge properly ruled on motions and the admissibility of evidence. The sealed portions raise the potential for appellate issues.

To determine whether the record of trial yields grounds for this Court to grant relief under Article 66(d), UCMJ, 10 U.S.C. § 866(d), appellate defense counsel must examine "the entire record."

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

United States v. May, 47 M.J. 478, 481 (C.A.A.F. 1998). Civilian counsel must review the sealed materials to provide "competent appellate representation." *See id.*

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

Appellant is represented by undersigned counsel as well as Mr. Frank Spinner and Mr. Sean Mangan. Mr. Spinner is located in Colorado, while Mr. Mangan is located in Washington state. Neither counsel has the ability to come to the Court in person to review the sealed materials within a reasonable time frame. Appellant therefore requests this Court's permission for undersigned counsel to create and transmit digital copies of the sealed materials that this Court has previously granted permission for appellate defense counsel to view.

If this Court grants Appellant's request to transmit the sealed materials to civilian counsel, undersigned counsel proposes the following procedure for effecting the Court's order, subject to any directive by this Court. Undersigned counsel will scan and create an electronic file containing the sealed material. Undersigned counsel will then electronically transmit that file to undersigned counsel's official, encrypted email account. Undersigned counsel will retain a copy of that electronic file—with clear markings to indicate it contains sealed material—exclusively on the Air Force Appellate Defense Division's secure electronic drive. Undersigned counsel will securely transmit a copy of the electronic file to civilian counsel via DoD SAFE, who will securely store the file with clear markings to indicate it contains sealed materials.

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

Respectfully submitted,

[redacted]

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 21 October 2024.

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770

22 October 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*, v. Lieutenant Colonel (0-5) WILLIAM M. HILTON, USAF, *Appellant.*	)))))))))	UNITED STATES' RESPONSE TO APPELLANT'S MOTION TO REPRODUCE AND TRANSMIT SEALED MATERIAL ACM40500 Special Panel

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

Pursuant to Rule 23.2 of this Comt's Rules of Practice and Procedure, the United States responds to Appellant's Motion to Reproduce and Transmit Sealed Materials. The United States does not object to Appellant's milita1y appellate defense counsel reproducing and transmitting the materials to civilian appellate defense counsel given that this Comt previously authorized counsel to examine the listed materials, which were reviewed by all pa1ties at trial. (Order, 25 Jul 2024). The United States respectfully requests that any order issued by this Comt require Appellant's milita1y and civilian defense counsel to take appropriate precautionaiy measures to ensure there is no unauthorized access to the sealed materials.

The United States would not consent to Appellant's counsel viewing or reproducing any exhibits that were reviewed in camera but not released to the paities unless this Comt has detennined there is good cause for Appellant's counsel to do so under R.C.M. 1113.

WHEREFORE, the United States respectfully responds to Appellant's motion.

[redacted]
KATE E. LEE
Appellate Government Counsel
Government Trial & Appellate Operations
United States Air Force
(240) 612-4800

[redacted]
MARY ELLEN PAYNE
Appellate Government Counsel
Government Trial & Appellate Operations
United States Air Force
(240) 612-4800

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 22 October 2024.

KATE E. LEE
Appellate Government Counsel
Government Trial & Appellate Operations
United States Air Force
(240) 612-4800

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40500**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
William M. HILTON	)	
Lieutenant Colonel (O-5)	)	
U.S. Air Force	)	
Appellant	)	**Special Panel**

On 18 November 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Fourteenth) requesting an additional thirty days to submit Appellant's assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 22d day of November, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (Fourteenth) is **GRANTED**. Appellant shall file any assignments of error not later than **25 December 2024**.

Appellant's counsel are advised that no further enlargements will be granted absent compelling justification arising from exceptional circumstances.

FOR THE COURT

[redacted]

SEAN J. SULLIVAN, Maj, USAF
Deputy Clerk of Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FOURTEENTH)**
v.	)	Before a Special Panel
Lieutenant Colonel (O-5), **WILLIAM M. HILTON,** United States Air Force, *Appellant.*	)	No. ACM 40500
	)	18 November 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his fourteenth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **25 December 2024**. The record of trial was docketed with this Court on 3 August 2023. From the date of docketing to the present date, 473 days have elapsed. On the date requested, 510 days will have elapsed.

On 15 September 2022; 31 October 2022; 19 January 2023; 13 – 17 March 2023; and 19 – 24 March 2023, Appellant was tried by a general court-martial at Royal Air Force Lakenheath, United Kingdom. Consistent with his pleas, the court-martial convicted Appellant of one charge and one specification of drunk on duty in violation of Article 112, Uniform Code of Military Justice (UCMJ); one charge and one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and three specifications of conduct unbecoming of an officer in violation of Article 133, UCMJ. R. at 278 – 280. Contrary to his pleas, the panel convicted Appellant of one charge and one specification of sexual assault in violation of Article 120, UCMJ. Appellant was acquitted of five specifications of abusive sexual contact in violation of Article 120, UCMJ; one charge and three specifications of assault consummated by battery in violation of Article 128,

UCMJ; one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and specification of pandering by enticement in violation of Article 134, UCMJ. R. at 2484 – 2486. The military judge sentenced Appellant to 40 months of confinement, dismissal, and a reprimand. R. at 2744 – 2746. The convening authority took no action on the findings or sentence adjudged by the court-martial. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Lt Col William M. Hilton*, dated 12 April 2023.

The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. Appellant is not currently in confinement. Appellant has been advised of his right to a timely appeal, as well as the request for an enlargement of time. Appellant has agreed to the request for an enlargement of time. Mr. Frank Spinner is lead counsel.

Undersigned counsel is currently assigned 20 cases; 13 cases are pending initial AOEs before this Court. Undersigned counsel's top priorities are as follows:

1) *United States v. Hilton* – This is the instant case.
2) *United States v. Jenkins*, ACM S32765 – The record of trial consists of three volumes stored in electronic format. The transcript is 138 pages. There are four prosecution exhibits, one defense exhibit, four appellate exhibits, and one court exhibit. This case is on its ninth enlargement of time.
3) *United States v. Titus*, ACM 40557 - The record of trial consists of four volumes. The transcript is 142 pages. There are five prosecution exhibits, five defense exhibits, 31 appellate exhibits, and five court exhibits. This case is on its eighth enlargement of time.

Through no fault of Appellant, his retained counsel has been working on other assigned matters and have been unable to complete work on Appellant's case. In the last thirty days, Mr. Spinner been

conducting research and drafting the assignment of errors for this case. In doing so, Mr. Spinner has encounter additional issues in need of assessment and write up. Mr. Spinner is in receipt of the sealed materials and has begun reviewing them. Additionally, he was out of state for an eight day personal trip that was arranged prior to his being retained as counsel on this case. Mr. Spinner has also been at work on four Air Force parole cases which require preparation and filing. These cases must be completed by the set dates due to the lack of flexibility with the boards and the unavailability of enlargements of time. Mr. Spinner has been retained as appellate counsel on those case as well, while also working on a petition for reconsideration before the Court of Appeals for the Armed Forces (CAAF) in *United States v. Adams*. Mr. Spinner continues to work on drafting an assignment of error in this case and intents to work diligently on it over the next two weeks. He expects that it will be completed with any additional enlargements of time.

During the previous 30-days, undersigned counsel submitted a motion to transmit the sealed materials to Mr. Spinner. After this was granted, counsel coordinated with this Court and with JAJM to deliver the materials to Mr. Spinner. Counsel has also sent draft materials for the assignment of errors to Mr. Spinner. Counsel has been balancing this case along with his attempts to complete and assignment of errors in *United States v. Jenkins*. Additionally, counsel submitted a supplement to the CAAF in *United States v. Bates*, and is at work on another to be submitted in *United States v. Vargo* on 20 November 2024. Counsel is also at work on a reply brief in *United States v. Martinez*.

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

Respectfully submitted,

[redacted]

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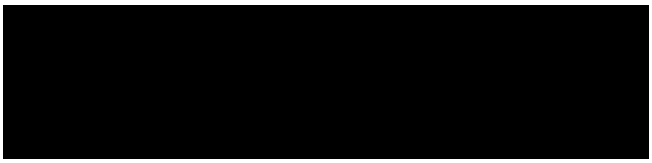
CERTIFICATE OF FILING AND SERVICE

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 18 November 2024.

Respectfully submitted,



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20 November 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Lieutenant Colonel (O-5) WILLIAM M. HILTON, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40500 Special Panel

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 510 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 1 month combined for the United States and this Court to perform their separate statutory responsibilities.

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

[redacted]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, to Civilian Defense Counsel, and to the Air Force Appellate Defense Division on 20 November 2024.

[redacted]

JENNY A. LIABENOW, Lt Col, USAF
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**BRIEF ON BEHALF OF**
Appellee	)	**APPELLANT**
	)	
v.	)	Before A Special Panel
	)	
Lieutenant Colonel (O-5)	)	No. ACM 40500
WILLIAM M. HILTON	)	
United States Air Force	)	27 December 2024
Appellant	)	

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

Assignments of Error

I.

WHETHER THE FINDINGS OF GUILTY OF SPECIFICATION 6 OF CHARGE II AND THE EXCEPTED LANGUAGE FOUND IN SPECIFICATION 3 OF CHARGE V, TO WHICH APPELLANT PLEAD NOT GUILTY, ARE LEGALLY AND FACTUALLY INSUFFICIENT.

II.

WHETHER THE MILITARY JUDGE ERRED BY FAILING TO GRANT APPELLANT RELLIEF UNDER ARTICLE 10, UNIFORM CODE OF MILITARY JUSTICE, AFTER THE GOVERNMENT DELAYED PROCEEDINGS AGAINST HIM TO COMPLETE ROUTINE INVESTIGATIVE STEPS THAT THE GOVERNMENT HAD NEGLECTED TO CARRY OUT DURING AN EARLIER INVESTIGATION BEFORE LT COL HILTON WAS PLACED IN PRETRIAL CONFINEMENT.

III.

WHETHER THE MILITARY JUDGE ERRED BY FAILING TO GRANT APPELLANT RELLIEF UNDER R.C.M.707 BY APPLYING UNLAWFUL EXCLUSIONS OF TIME GRANTED BY THE CONVENING AUTHORITY.

IV.[1]

WHETHER THE MILITARY JUDGE ERRED BY DENYING THE DEFENSE OBJECTION UNDER MIL. R. EVID. 615 TO ALLOWING J.R. TO REMAIN IN THE COURTROOM DURING THE TESTIMONY OF M.H. BECAUSE J.R. WOULD BE TESTIFYING AS A WITNESS TO THE OFFENSES INVOLVING M.H. AS A VICTIM.

V.[2]

WHETHER THE INSTRUCTION ON HOW TO CONSIDER EVIDENCE ADMITTED UNDER M.R.E. 413 OVER DEFENSE OBJECTION WAS CONTRARY TO ESTABLISHED LAW.

Statement of the Case

On 15 September 2022, 31 October 2022, 19 January 2023, 13-17 March 2023 and 19-24 March 2023, at a general court-martial consisting of officer members convened at Royal Air Force Lakenheath, United Kingdom, and Ramstein Air Base, Germany, Lt Col William M. Hilton was found guilty, consistent with his pleas, of one charge and one specification of Article 112, Uniform Code of Military Justice (UCMJ) [3], 10 U.S.C. § 912, one charge and one specification of Article 129, UCMJ, 10 U.S.C. § 929, one charge and three specifications (two of which were by excepting certain language) of Article 133, UCMJ, 10 U.S.C. § 933; and was found guilty, contrary to his pleas, of one specification of Article 120, UCMJ, 10 U.S.C. § 920, and of the excepted language of one specification of Article 133, UCMJ, 10 U.S.C. § 933. (R. at Entry of Judgment [EOJ].) The military judge sentenced Lt Col Hilton to a reprimand, confinement for 40 months, and a dishonorable discharge. (R. at 2742-2746.) On 31 March 2023, the convening authority denied Lt Col Hilton's request for waiver of all automatic forfeitures while he was in confinement. (R. at

[1] Issue IV is raised in accordance with *United States v. Grostefon*, 12 M.J. 431 (1982). Appendix.
[2] Issue V is raised in accordance with *United States v. Grostefon*, 12 M.J. 431 (1982). Appendix.
[3] Unless otherwise noted, all references to the UCMJ, the Rules for Courts-Martial (R.C.M.), and the Military Rules of Evidence (Mil. R. Evid.) are to the *Manual for Courts-Martial, United States* (2019 ed.) [2019 *MCM*].

EOJ.)

Statement of the Facts

Lt Col Hilton was stationed at Royal Air Force Lakenheath, United Kingdom, where he served as a doctor with the 48th Surgical Squadron. (Charge Sheet). After his pleas of guilty (some by exception and substitution) were accepted by the military judge, the trial began on the remaining offenses. Subsequently, he was convicted of committing a sexual assault upon M.H., a twenty-year old female who was dog sitting at his residence in Elveden, United Kingdom, on or about 29 August 2021. He claimed the act was consensual and he also raised an affirmative defense, mistake of fact. He was also convicted of the excepted words found in his plea of not guilty to Specification 3 of Charge V, words and acts connected to the alleged sexual assault of M.H. appearing in Specification 6 of Charge II.

Argument

I

THE FINDINGS OF GUILTY OF SPECIFICATION 6 OF CHARGE II AND THE EXCEPTED LANGUAGE FOUND IN SPECIFICATION 3 OF CHARGE V, TO WHICH APPELLANT PLEAD NOT GUILTY, ARE LEGALLY AND FACTUALLY INSUFFICIENT.

Additional Facts

M.H. alleged that Lt Col Hilton touched her buttocks during a goodbye hug at a party on 5 June 2021. (R. at 1559-60.) M.H. claimed that he kept his hand cupped on her buttocks for roughly three seconds "like a good chunk of a hug time." (R. at 1561.) M.H. testified that this made her uncomfortable. (R. at 1652.) Despite this, M.H. later agreed to dog-sit overnight for Lt Col Hilton at this residence. (R. at 1563.) Additionally, M.H. agreed to dog-sit for him long-term. (R. at 1567.) When faced with the question of whether to stay overnight at Lt Col Hilton's residence,

M.H.'s mother, J.R., opined that M.H. "was an adult" and should make her own decision. (R. at 1767.)

Lt Col Hilton picked up M.H. and brought her over to their house on 28 August 2021. (R. at 1565.) After doing so, D.M. and Lt Col Hilton went to London, while M.H. planned to stay in their guest room. (R. at 1566.) Lt Col Hilton and D.M. returned from London around 0300 the following morning. (R. at 1567.) M.H. retired to sleep in the guest room. (R. at 1567.) She woke up around 0930 and went to the living room. (R. at 1568.) Lt Col Hilton joined her shortly after and offered to setup an Apple TV account on the television so that she could use it during future dog-sitting. (R. at 1568.) Lt Col Hilton appeared groggy to her. (R. at 1570.)

Lt Col Hilton asked M.H. if she was still seeing her boyfriend. (R. at 1579.) After M.H. replied in the negative, Lt Col Hilton expressed his sexual attraction towards her. (*Id.*) Following this, M.H. scooted forward on the couch and the two hugged while Lt Col Hilton began kissing her neck. (R. at 1581.) M.H. testified that she responded to this by entering a state of "crippling fear where it felt like [she] couldn't move." (R. at 1582.) She also testified that Lt Col Hilton had somehow pinned her down with his body. (R. at 1583.) However, M.H. got up moments later from the couch and began taking off her clothes without saying a word. (R. at 1584, 1642.) After removing all of her clothing, M.H. sat back down on the couch and held open her labia. (R. at 1585-86, 1642.) Lt Col Hilton removed his clothing while she held herself open and then began performing oral sex on her. (R. at 1585, 1642.) Lt Col Hilton never placed his hands on her vaginal area. (R. at 1649.)

After around 15 minutes, M.H. heard D.M. coming down the stairs and the Lt Col Hilton got up and gave M.H. her clothing to put back on. (R. at 1591.) D.M. observed M.H. and Lt Col Hilton unclothed on opposite sides of the couch. (R. at 2162.) M.H. appeared to D.M. like

someone "who got caught with her hand and in the candy jar." (R. at 2162.) D.M. asked what was going on, and Lt Col Hilton admitted that they were having a sexual encounter. (R. at 1591.) D.M. became enraged and then began yelling at Lt Col Hilton. (*Id.*) M.H. discretely put her clothes back on while D.M. told her to get her stuff so that D.M. could drive her home. (R. at 1595.)

D.M. testified that during the drive home, M.H. apologized profusely to D.M. by repeatedly saying, "I'm so, so sorry." (R. at 2146.) M.H. cried very heavily and expressed concern that she did not want her mother to find out about the encounter with Lt Col Hilton. (R. at 2147.) However, M.H. expressed confidence that she could keep it a secret, based on a past life experience that she was able to keep from her mother. (*Id.*) M.H. believed that her mother, J.R., was very strict and ruled the house "with an iron fist." (R. at 1651.) Although M.H. was an adult at the time, she lived with her parents. (R. at 1650.) "It [was] a strict household." (R. at 1651.) J.R. believed that her daughter was socially immature. (R. at 1830.) M.H. denied having this discussion with D.M. during the car ride, including whether she shared a specific past experience that she was able to keep hidden. (R. at 1632-33.) However, D.M. testified that M.H. expressed an ability to keep the encounter with Lt Col Hilton a secret based on the specific past experience. (R. at 2147.)

Throughout the car ride, M.H. gave no indication that the encounter with Lt Col Hilton was anything other than consensual. (R. at 2148.) Contrary to M.H.'s testimony, D.M. denied being told by M.H. that Lt Col Hilton had come on to her, forced her down, or that she told him "no." (need cite). D.M. suggested that she had been upstairs if M.H. had declined Lt Col Hilton's advances. (R. at 1596.) After M.H. returned home "the day went like it was a normal day." (*Id.*)

When asked by J.R. if there was anything wrong, she simply replied that "she was just tired." (R. at 1767.)

The following day, Lt Col Hilton let himself into M.H.'s house uninvited and simply said "hey, I just wanted to come in and apologize." (R. at 1597.) M.H. did not call law enforcement to report Lt Col Hilton's presence in her home or the alleged assault. (R. at 1631.) M.H. did not report any alleged criminal activity against Lt Col Hilton until the following November, roughly five months later. (R. at 1624.)

M.H.'s first disclosure about this sexual encounter was made during the Thanksgiving holiday in 2021, some months after the event. She shared some details to S.M. S.M. observed M.H. acting weird and asked if everything was alright. (R. at 1624.) Before speaking with S.M., M.H. testified she did not think anyone would believe her encounter with Lt Col Hilton was a sexual assault. However, S.M. persuaded her to report the alleged assault to her mother. (R. at 1603.) The version of the encounter that S.M. heard from M.H. was that Lt Col Hilton had forced himself on her and did not tell S.M. that she had voluntarily taken her clothes off. (R. at 1626.)

M.H. did not decide to tell her mother until S.M. reminded M.H. that S.M. was a mandatory reporter, saying, "I do have to say something." (R. at 1603.) It was only after this that M.H. decided to talk to J.R. about it. (*Id.*) M.H. remarked on this when she testified, "I knew that she was a mandated reporter, so I knew that I had to tell my parents." (R. at 1627.)

After being pressured by S.M., M.H. told J.R. that Lt Col Hilton had forcefully pulled her to himself and pinned her down on the couch. (R. at 1790, 1796*, 1829.) M.H. also described attempting in vain to "scooch away" from him. (R. at 1829.) M.H. explained that she took off her clothes because she was scared of Lt Col Hilton. (R. at 1829.)

Standard of Review

This Court reviews issues of factual and legal sufficiency de novo. Article 66(d), U.C.M.J., 10 U.S.C. § 866(d); *United States v. McAlhaney*, 83 M.J. 164, 399 (C.A.A.F. 2023).

Law and Analysis

Because this case includes findings of guilty for offenses that occurred prior to the enactment of Pub. L. No. 116-283, factual sufficiency review in this case is driven by the prior iteration of Article 66, UCMJ. Pub. L. No. 116-283, § 542 (c)(2), 134 Stat. 3611 ("The amendments made by subsections (b) and (c) shall take effect on the date of the enactment of this Act, and shall apply with respect to any case in which every finding of guilty entered into the record under section 860c of title 10, United States Code (article 60c of the Uniform Code of Military Justice), is for an offense that occurred on or after that date.")

The test for factual sufficiency is "whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, [the Court is] convinced of [the Appellant's] guilt beyond a reasonable doubt." *United States v. Wheeler*, 76 M.J. 564, 568 (A.F. Ct. Crim. App. 2017) (quotation omitted). This Court takes "a fresh, impartial look at the evidence," applying "neither a presumption of innocence nor a presumption of guilt" to "make [its] own independent determination as to whether the evidence constitutes proof of each required element beyond a reasonable doubt." *Wheeler*, 76 M.J. at 568 (quotation omitted).

For legal sufficiency, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, at 319 (1979). Despite this deferential standard, the Supreme Court in *Jackson* repeatedly explained that the legal sufficiency test is not "simply a trial ritual." 443 U.S. at 316-17. For example:

- "A doctrine establishing so fundamental a substantive constitutional standard must also require that the factfinder will *rationally* apply that standard to the facts in evidence." *Id.* at 317 (emphasis added).

- "[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could *reasonably* support a finding of guilt beyond a reasonable doubt." *Id.* at 318 (emphasis added).

- "This familiar standard gives full play to the responsibility of the trier of fact *fairly* to resolve conflicts in the testimony, to weigh the evidence, and to draw *reasonable* inferences from basic facts to ultimate facts." *Id.* at 319 (emphases added).

In his concurrence, Justice Stevens was concerned that this new test could not only do constitutional harm, but that it could also just become a "meaningless shibboleth." *Id.* at 328.

The evidence presented at trial substantially established consent, or at the very least mistake of fact as to consent, for the the sexual encounter between Lt Col Hilton and M.H. For the following reasons, Specification 6 of Charge II and the finding of guilty of the excepted language to which Lt Col Hilton pleaded not guilty but was found guilty are not legally and factually sufficient.

1. ***Specification 6 of Charge II is legally and factually insufficient due to the contradictions of and inconsistent statements made by M.H.***

The most glaring contradictions can be found in M.H.'s statements made to D.M. on the ride home that morning. These statements were made contemporaneous with the event and before M.H. had time to reflect on what happened. As a result, all her inconsistent subsequent statements made months later are suspect. Her failure to tell S.M. and her mother facts favorable to Lt Col Hilton's defense displays a consciousness that she consented, not that she was assaulted.

2. ***Specification 6 Charge II is legally and factually insufficient due to M.H.'s motive to misrepresent.***

It can be reasonably inferred that M.H.'s disclosures to S.M. originated in the context that she was sharing confidences with S.M. that would not lead to an official investigation. Once it

became clear to M.H. that she was caught up in something she could not control, she felt compelled to stick to and embellish her story. Her recollection was altered, and there was no way to go back to what really happened.

3. ***The excepted language found in Specification 3 of Charge V, to which Lt Col Hilton was found guilty is legally and factually insufficient due to M.H.'s motive to misrepresent.***

As argued above, the motive to misrepresent applies equally to the allegations made in Specification 3 of Charge V.

WHEREFORE, Lt Col Hilton respectfully requests that this Honorable Court set aside the contested findings of guilty, set them aside and set aside the sentence.

II.

THE MILITARY JUDGE ERRED BY FAILING TO GRANT APPELLANT RELLIEF UNDER ARTICLE 10, UNIFORM CODE OF MILITARY JUSTICE, AFTER THE GOVERNMENT DELAYED PROCEEDINGS AGAINST HIM TO COMPLETE ROUTINE INVESTIGATIVE STEPS THAT THE GOVERNMENT HAD NEGLECTED TO CARRY OUT DURING AN EARLIER INVESTIGATION BEFORE LT COL HILTON WAS PLACED IN PRETRIAL CONFINEMENT.

Additional Facts

On 9 September 2021, the Government preferred charges against Lt Col Hilton that included one specification of abusive sexual contact against E.L. in violation of Article 120, UCMJ; one specification of assault consummated by battery against E.L in violation of Article 18, UCMJ; unlawful entry in violation of Article 129, UCMJ; and conduct unbecoming of an officer in violation of Article 133, UCMJ. (App. Ex. III at 20-21.) These charges originated from an investigation carried out by the Air Force Office of Special Investigations (AFOSI) that principally revolved around E.L. as the complaining witness and that closed out before preferral. (R. at 59.) Investigator (Inv.) H.O. was the lead agent (R. at 115.) Inv. H.O. testified that sexual assault

investigations included a standard practice called "canvassing" in which AFOSI would interview the subject's past sexual partners, co-workers, and supervisors. (R. at 116.) This practice was not followed during the investigation with E.L. (R. at 117.) When asked why, Inv. H.O. replied "I don't really know how to answer your question other than it was missed." (*Id.*) The preferred charges were scheduled for arraignment on 4 April 2022 and for trial on 23 May 2022. (App. Ex. IV at 6.) The parties agreed to exclude time between 3 January 2022 and 4 April 2022 in anticipation of arraignment. (App. Ex. VIII.)

1. ***Lt Col Hilton's entry into pretrial confinement following M.H.'s initial allegations.***

On 15 December 2021, AFOSI conducted an interview of M.H. in which she disclosed the allegations of Lt Col Hilton having performed oral sex on her without consent and later entering her home without permission. (R. at 36; App. Ex. III at 24-25.) Following this, Lt Col Hilton's squadron commander ordered for him to be placed in pretrial confinement, ostensibly in response to the allegations of M.H. (App. Ex. IX at 14.) The probable cause memorandum also included an allegation of Lt Col Hilton being intoxicated while on duty. (*Id*.)

On 22 December 2022, a pretrial confinement review officer (P.C.R.O.) reviewed the decision to place Lt Col Hilton into confinement. (App. IX at 70.) The P.C.R.O. included a copy of the charge sheet with his report and noted that Lt Col Hilton had "pending court-martial charges preferred on 9 September 2021" in the part the P.C.R.O. memorandum labeled "OFFENSES ALLEGED." (*Id.* at 70.) The P.C.R.O. referred to the court-martial charges again when considering lesser forms of restraint by remarking that "Lt Col Hilton was aware of an ongoing investigation into his sexual misconduct and the existence of pending court-martial charges " (*Id.* at 72.) Lt Col Hilton remained in pretrial confinement until sentencing. As the investigation

into these new allegations continued, Lt Col Hilton demanded speedy trial on 13 January 2022. (App. Ex. IV at 16.)

2. ***AFOSI's investigation of M.H.'s allegations.***

While Lt Col Hilton was in pretrial confinement, AFOSI continued to perform investigative steps into M.H.'s allegations. This was initially led by Special Agent (S.A.) T.O., but was later taken over by Inv. H.O. after S.A. T.O. was sent by the Government to a five-month temporary duty location. (R. at 100.) On 20 December 2021, AFOSI interviewed M.H.'s mother, J.R as an outcry witness. (App. Ex. III at 51.) AFOSI next attempted to interview Lt Col Hilton's wife, D.M., by reaching out to her on 28 December 2021. (*Id.* at 51.) On 20 January 2022, D.M. relayed to AFOSI that she had retained counsel and would not submit to an in-person interview. (*Id.* at 52.) On 25 January 2022, AFOSI contacted defense counsel to request a subject-interview with Lt Col Hilton which defense counsel declined. (*Id.* at 52.) This accounted for all eyewitnesses which may have been present during the alleged sexual assault of M.H. (R. at 60.) On 31 January 2022, AFOSI criminally booked Lt Col Hilton. (R. at 52.) No further eyewitnesses were identified, but AFOSI did find one additional outcry witness, S.M., with information that overlapped with J.R. (*Id.*)

Despite this, AFOSI kept the investigation of M.H.'s allegations open in order to look into "behavioral character witnesses" which was the equivalent of "canvassing." (R. at 71.) S.A. T.O. testified that this portion of the investigation was redundant with the "canvas" interviewing that was overlooked during the earlier investigation with E.L. (R. at 67-68.) Had this step been completed during the earlier investigation it would have obviated the need to do it while Lt Col Hilton was in pretrial confinement. (*Id.*) Inv. H.O. noted this "missed" step once she took over as

lead agent. (R. at 117.) AFOSI did not complete the investigation relating to M.H. allegations that were disclosed to them on 15 December 2021 until 7 June 2022. (App. Ex IV at 35.)

3. ***Investigation of additional allegations.***

During the interview that AFOSI conducted with J.R. on 20 December 2021, she disclosed an allegation that Lt Col Hilton had touched her buttocks without her consent. (App. Ex. IV at 51.) This led AFOSI to pursue an investigation separate from the one being carried out with M.H. (R. at 81.) J.R. initially declined to participate as a victim until she had an opportunity to consult with a victim's counsel appointed by the Government. (App. Ex. IV at 53.) Due to delays in the appointment process, AFOSI did not re-interview J.R. until 27 January 2022. (App. Ex. III at 24-25; R. at 43-44.) During that interview, J.R. added allegations including that Lt Col Hilton solicited sexual acts from one of his enlisted member's wives for money and that he had engaged in inappropriate behavior with enlisted members. (R. at 44.) Following this AFOSI interviewed Lt Col Hilton's first wife, S.S., who alleged that he had sexually abused their son, S.H. (R. at 48; 52; App. Ex. IV at 54.) AFOSI tried to locate the son for an interview. (R. at 53.)

On 12 March 2022, after S.A. T.O. was sent to a temporary duty location, Inv. H.O. took over the investigation of these newer allegations, in addition to the ones made by M.H. (R. at 53, 103-104. She made contact with Lt Col Hilton's second wife, T.H. (R. at 105.) After being subpoenaed, T.H. accused Lt Col Hilton of physically abusing her two children from a previous relation as well as their son, W.H. (R. at 106.) Concerning the latter, T.H. alleged that Lt Col Hilton had sexually assaulted W.H. (R. at 108.) Inv. H.O. did not expect that these interviews, would produce any factual knowledge of the allegations made by M.H. (R. at 119.)

M.H. subsequently contacted AFOSI and disclosed another allegation of abusive sexual contact through her victim's counsel. (R. at 109.) However, AFOSI did not conduct additional

canvassing interviews because the new allegations seemed to overlap with the timeframe for M.H.'s previous allegations. (R. at 122.) The allegations that were uncovered apart from the ones made by M.H. were captured in a separate report of investigation, published on 9 June 2022. (R. at 83, 88, App. Ex. IV at 27.)

4. ***The Government's withdrawal and dismissal of the original charges.***

On 15 March 2022, the convening authority withdrew and dismissed the charges preferred against Lt Col Hilton on 9 September 2021 for purposes of continuing the Government's investigative activities. (App. Ex. IV at 41.) This removed the originally agreed date for trial on 23 May 2022 from the docket. The charges were preferred anew on 15 June 2022, along with the newer charges resulting from the allegations of M.H., J.R., S.S. and T.H. (App. Ex. III at 114-117.)

5. ***The Preliminary Hearing.***

On 30 June 2022, convening authority appointed a preliminary hearing officer (P.H.O.) to conduct an Article 32 hearing. (App. Ex. XI at 5.) Due to defense availability, the hearing was not held until 21 July 2022, which was 28 days from the Government ready date. (App. Ex. III at 152.) The hearing took place on 22 July 2022. (*Id.*) The P.H.O. did not deliver the hearing report until 29 August 2022. (*Id.*)

6. ***Docketing.***

On 8 September 2022, the convening authority referred the case to a general court-martial. (Charge sheet.) Lt Col Hilton was finally arraigned on 15 September 2022. (App. Ex. IX at 6.) Trial was scheduled to take place on 13 March 2023. (App. Ex. III at 181.) The docketing memo recognized a Government ready date of 13 March 2023 and a defense ready date of 20 Feb 2023.

(*Id.*) Following this, the case was docketed for trial on 13 March 2023 owing to the Government's first available ready date. (App. Ex. III at 181.)

g. Motion to dismiss for speedy trial.

The defense raised a motion to dismiss for speedy trial under R.C.M. 707; Article 10, UCMJ; and the Sixth Amendment. (App. Ex. II.) The military judge denied relief on all bases. (App. Ex. XVI at 18.) For purposes of Article 10, the military judge calculated that 451 days had elapsed between Lt Col Hilton's entry into pretrial confinement and the commencement of trial on the merits. (*Id.* at 15.) However, the military judge found that the delay was caused by the Government's continued investigation and that the Government exercised reasonable diligence in carrying it out. (*Id.* at 16.) While the military judge acknowledged Lt Col Hilton's demand for speedy trial, he gave it less weight due the defense's request for delay in the P.H.O. hearing, and their ready date for the new trial on 20 February 2023. (*Id.* at 14.) Moreover, the military judge determined that there was no prejudice against Lt Col Hilton. (*Id.* at 14-15.)

Standard of Review

Speedy trial claims are reviewed de novo. *United States v. Wilder*, 75 M.J. 135, 138 (C.A.A.F. 2016). The military judge's decision to grant a delay and exclude time is reviewed for an abuse of discretion. *United States v. Lazauskas*, 62 M.J. 39, 41-42 (C.A.A.F. 2005).

Law & Analysis

Article 10, UCMJ, mandates that "[w]hen a person subject to this chapter is ordered into arrest or confinement before trial, immediate steps shall be taken . . . to try the person or to dismiss the charges and release the person." 10 U.S.C. § 810. Article 10, UCMJ, is a "fundamental substantial, personal right" that imposes on the government "the standard of reasonable diligence in bringing the charges to trial." *United States v. Cooley*, 75 M.J. 247, 259 (C.A.A.F. 2016).

Whether the prosecution was reasonably diligent is measured using the four-factor test outlined in *Barker v. Wingo*, 407 U.S. 514 (1972). This includes (1) the length of the delay; (2) the reasons for the delay; (3) whether the appellant made a demand for a speedy trial; and (4) prejudice to the appellant. *Cooley*, 75 M.J. at 259. No single factor is controlling or necessary to establish a speedy trial violation. *Barker*, 407 U.S. at 533.

1. ***Length of Delay.***

The length of delay while Lt Col Hilton was in pretrial confinement before he was brought to trial was 451 days. *See United States v. Wilder*, 75 M.J. 135, 138 (C.A.A.F. 2016) (holding that the Article 10 speedy trial calculation tolls upon commencement of trial on the merits). This encompassed the period between 16 December 2021 and 15 September 2022 and was sufficient to weigh this factor in favor of Lt Col Hilton. *United States v. Reyes*, 80 M.J. 218, 226 (C.A.A.F. 2020) (finding that 451-day delay sufficient to trigger full *Barker* analysis); *Cooley*, 75 M.J. at 260 (holding that a 289-day delay in case with complex investigation was unreasonable). The military judge agreed. (App. Ex. XVI at 15.)

However, the military judge erred by excluding the offenses preferred on 9 September 2021 from Article 10's application. (App. Ex. XVI at 15.) "For Article 10, UCMJ, to apply, confinement must be related to specific charges." *Cooley* 75 M.J. at 257 *citing United States v. Mladjen*, 19 C.M.A. 159 (C.M.A. 1969). To determine whether offenses are "in connection with confinement" under Article 10, the military judge must look at the confinement order and related documents. *Id.* at 258. Here the confinement order and its accompanying documents made frequent reference to the original charges. In fact, the preferred charges were included in the P.C.R.O. report under a heading labeled "OFFENSES ALLEGED." (App. Ex. XI at 70.) The P.C.R.O. also attached a copy of the charge sheet to his report and noted that Lt Col Hilton had

pending court-martial charges before going into pretrial confinement. (*Id.*) Contrary to the military judge's findings, this placed those charges within the purview of Article 10 because they were used to justify the confinement.

Paradoxically, the military judge did find that the 9 September 2022 offenses were covered under the R.C.M. 707 speedy trial clock as a function of Lt Col Hilton's placement in pretrial confinement. This is evident because the military judge found that the R.C.M. 707 clock for the original charges had reset and began to run again on 16 March 2022, the day after the Government withdrew and dismissed the charges. The military judge could only make this finding by concluding that Lt Col Hilton's confinement related to those offenses. *See* R.C.M. 707(b)(3)(A)(i) ("[f]or an accused under pretrial restraint under R.C.M. 304(a)(2)-(4) at the time of the dismissal or mistrial, a new 120-day period begins on the date of the dismissal or mistrial.") Yet, the military judge made a contradictory finding as to Article 10 by stating that "[t]he defense contends the earlier charges reflected on the original charge sheet . . . afforded . . . Article 10 protection, this Court is unpersuaded." (App. Ex. IX at 15.) Similarly, the military judge regarded all offenses aside from the original charges to have triggered the R.C.M. 707 clock once Lt Col Hilton entered confinement. (*Id.* at 17.) Given this, the rule articulated in *Cooley*, and the military judge's factual findings as to R.C.M. 707 required for the original charges to be covered under Article 10. Accordingly, the facially unreasonable 451-day delay applied to all of the offenses that Lt Col Hilton faced and warranted relief under Article 10.

2. ***Reason for the delay.***

The delay in the processing of Lt Col Hilton's case was unreasonable. The Government bears the burden of moving a case forward with reasonable diligence. *United States v. Mizgala*, 61 M.J. 122, 125 (C.A.A.F. 2005). Whether a case moves with reasonable diligence is a function

of the complexities that the case presents. *United States v. Hatfield*, 44 M.J. 22, 23 (C.A.A.F. 1996). While a complex offense may constitute extraordinary circumstances warranting delay, this must be demonstrated in the record. *United States v. Perry*, 2 M.J. 113, 115 (C.M.A. 1977). Importantly, delays in case processing are not an invitation for the Government to "take a second bite at perfecting a case" especially when the information being utilized was previously available. *Cooley*, 75 M.J. at 253; *United States v. Mason*, 21 C.M.A. 389, 394 (C.M.A. 1972).

The Government's delay to perfect its investigation of M.H.'s allegations through "canvas" interviewing which should have been completed during the investigation with E.L. demonstrated a lack of reasonable diligence. While the Government was entitled to investigate these offenses, the protections of Article 10 required forward movement. None of the newly discovered offenses were of a complex nature so as to justify the excessive delay. *Cf. United States v. Cossio*, 64 M.J. 254 (C.A.A.F. 2007) (finding 117-day delay was reasonable where offense required investigation into digital forensics), *but see United States v. Pyburn*, 23 C.M.A. 179 (C.M.A. 1974) (holding that delay to conduct laboratory analysis unreasonable where Government already possessed strong evidence of guilt sufficient to permit completion of pretrial investigation). Rather, the new offenses only required investigation of eyewitnesses and "canvas" interviewing. (R. at 80-81.)

For the offenses report by M.H. on 15 December 2021, all eyewitness interviews had been accounted for by 25 January 2022, after Lt Col Hilton and D.M. declined to participate in interviews. (R. at 60; 67.) This left the "canvas" interviews of Lt Col Hilton's past sexual partners and social contacts as the only remaining investigative step. However, this step should have been completed months earlier during the investigation of E.L. (R. at 67-68.) Owing to the redundant nature of canvas interviewing in a sex assault investigation, had this step been completed with E.L. there would have been no delay to complete it during the one with M.H. The Government's failure

to complete this step during the investigation of E.L. was the result of neglect which affords no justification for the delay after Lt Col Hilton was placed in confinement. This is evidenced by Inv. H.O.'s testimony in which she explained "I don't really know how to answer your question other than it was missed" when she was asked why the canvas interviews were not completed when she was in charge of the E.L. investigation. (R. at 117.)

In *Cooley*, the C.A.A.F. found that the Government had unreasonably delayed proceedings to perfect its evidence, despite having had access to the information justifying the delay at an earlier point in time. 75 M.J. at 261. Similarly, the Government's failure to complete the investigative steps justifying the delay in the processing of M.H.'s allegations demonstrated a lack of reasonable diligence. This mistake on the Government's part is a "matter of neglect which cannot be countenanced." *Mason*, 21 C.M.A. at 394-395 (holding that delay due to erroneous appointment of accused's commanding officer to conduct Article 32 hearing was a matter of neglect rendering the delay unreasonable). Had the Government exercised due diligence in the earlier investigation, the investigation of M.H. could have been wrapped up as early as 25 January 2021.

Even without the canvas interviews, the Government possessed sufficient information to press forward with the prosecution of M.H.'s allegations as early as 25 January 2022. On that date, the Government was in possession of M.H.'s victim interview and had run down their attempts to interview the only other two eyewitnesses to her allegations. The delays beyond this point were unreasonable. *Cooley*, 75 M.J. at 261 (finding impermissible delay after point where Government possessed information necessary to prosecute offense). Although the Government may have preferred receiving the completed investigative report on M.H.'s allegations before proceeding to trial, this preference did not justify the delay. *See United States v. Reitz*, 22 C.M.A.

584, 585 (C.M.A. 1974) (holding that the Government's preference for completion of investigative report insufficient to warrant delay). The need for canvas interviewing extended to the other offenses later reported by J.R. and Lt Col Hilton's previous wives, creating unreasonable delay for those separate investigations as well.

Finally, the delay could not be justified based on the Government's preference to try all allegations in a single court-martial. *Cooley*, 75 M.J. at 261 (acknowledging that the preference for joinder does not warrant "endless delay" to run down investigative leads). The Government is not excused from the requirement for reasonable diligence when attempting to process additional charges. *Ward*, 23 C.M.A. at 394 ("[T]he intercession of a new charge does not automatically authorize deferment of the trial of the original charges for which the accused has been confined.") Here, the Government committed to extended delays based on the discovery of new offenses to investigate, despite Lt Col Hilton's status in pretrial confinement for other offenses that should have been fully investigated by 25 January 2022. The military judge did not give these considerations appropriate weight. This Court should find that the delays were unreasonable by weighing this factor in Lt Col Hilton's favor.

3. ***Speedy trial demand.***

Lt Col Hilton demanded speedy trial on 13 January 2022, rendering this factor in his favor. The military judge found that the factor was diminished in light of the defense's request to delay the Article 32 hearing for the new charges until 28 days after the Government ready date and the lack of defense availability for trial until 20 February 2022. (App. Ex. XVI at 14.) However, the military judge gave no consideration for the fact that these delays were necessitated by the Government's decision to withdrawal and dismiss the original charges on 15 March 2022. This

meant that all the defense requests were a consequence of the Government's own delay in the proceedings, and its decision not to proceed to trial on 23 May 2022.

The Government "bears responsibility of moving a criminal case to a stage of prosecution readiness for trial." *United States v. Cole*, 3 M.J. 220, 225(C.M.A. 1977). "[A]t least until the Government has reached that stage of readiness, all passages of time normally are its responsibility alone." *Id.* Where the Government is not ready to proceed with the prosecution of the case, it is not adversely affected by the delay, regardless of the defense status. *United States v. Henderson*, 1 M.J. 421, 425 (C.M.A. 1976); *United States v. McClain*, 23 C.M.A. 453 (C.M.A. 1975) ("[A]ccused and his counsel need not do anything to speed his case to trial; obligation to proceed with dispatch is solely that of government and obligation is especially heavy when accused is in pretrial confinement. *United States v. McClain*, 23 C.M.A. 453 (C.M.A. June 27, 1975). Given this, the military judge should not have penalized Lt Col Hilton for defense delays that were ultimately driven in response the Government's decision to prolong the court-martial for all offenses being investigated, for no reason other than to join them under a single court-martial. This factor weighs strongly for Lt Col Hilton.

4. ***Prejudice.***

The Supreme Court has held that an affirmative demonstration of prejudice is not required to prove a denial of speedy trial. *United States v. Shouey*, No. ACM 39684, 2020 CCA LEXIS 379, at *10 (A.F. Ct. Crim. App. Oct. 21, 2020) *citing Moore v. Arizona*, 414 U.S. 25, 26, 94 S. Ct. 188, 38 L. Ed. 2d 183 (1973) (per curiam). An Article 10 violation may be shown even where an accused has suffered no obvious prejudice. *United States v. Hatfield*, 44 M.J. 22 (C.A.A.F. 1996) (affirming the military judge's dismissal of charges for denial of speedy trial despite no allegation of prejudice. *Id.* at *10 *citing United States v. Miller*, 66 M.J. 571, 577 (N.M. Ct. Crim.

App. 2008). Nonetheless, the C.A.A.F. has recognized three interests of prejudice as "(1) preventing oppressive pretrial incarceration; (2) minimizing anxiety and concern of the accused; and (3) limiting the possibility that the defense will be impaired. *United States v. Cooley*, 75 M.J. 247, 262 (C.A.A.F. 2016).

Lt Col Hilton suffered from particularized anxiety while in pretrial confinement. This form of prejudice is shown where there is "some degree of particularized anxiety and concern greater than the normal anxiety and concern associated with pretrial confinement." *United States v. Reyes*, 80 M.J. 218, 229 (C.A.A.F. 2020). Although he was placed in confinement on the basis of the original charges and the allegations of M.H., he waited for months without being informed of the wider the allegations that were being investigated. While this was taking place, Lt Col Hilton was deprived of his day in Court for trial, which should have taken place on 23 May 2022. This created a type of anxiety that exceeded the kind typically experienced simply by being in confinement.

Additionally, the long delay in confinement thwarted Lt Col Hilton's ability to prepare for his defense, especially given that Lt Col Hilton was not fully appraised of the charges that he faced until 15 June 2022. This long gap of time hindered the opportunity to examine witnesses and develop evidence in his favor. *See generally United States v. Streeter*, 2023 CCA LEXIS 43, at *19 (A. Ct. Crim. App. Jan. 26, 2023) (finding that year long delay before the Government captured *any* testimony of witnesses prejudicial to the accused). Both the particularized anxiety suffered by Lt Col Hilton and the impairment of defense preparations are sufficient to push this factor in Lt Col Hilton's favor. Yet, even if the prejudice did not rise to this level, the other factors presented, namely the Government's neglect in carrying out its investigation, are sufficient to warrant relief under Article 10. Accordingly, Lt Col Hilton respectfully request that this Court grant relief under Article 10 by dismissing all charges and specifications with prejudice.

III.

THE MILITARY JUDGE ERRED BY DENYING LT COL HILTON RELIEF UNDER R.C.M.707 BY APPLYING UNLAWFUL EXCLUSIONS OF TIME GRANTED BY THE CONVENING AUTHORITY.

Additional Facts

After the Government withdrew and dismissed the original charges, Lt Col Hilton remained in confinement in connection with those charges and the allegations of M.H. On 8 April 2022, Trial Counsel retroactively requested for 81 days to be excluded from the R.C.M. speedy trial clock. (App. Ex. III at 93.) This exclusion covered three separate time periods, and each was justified based on the need to coordinate interviews for J.R., S.S., and T.H. based on the allegations that had been raised separate from those raised by M.H. and E.L. (*Id.* at 95.) The exclusion was granted ex parte by the convening authority.

On 13 May 2022, Trial Counsel made a second retroactive request to exclude time to cover 32 days. (*Id.* at 102.) This request was justified based on the need to coordinate an interview with T.H. (*Id.*) Trial Counsel's memorandum recognized that the need to interview T.H. was based on misconduct unrelated to M.H.'s allegations, and were apparently unrelated to the allegations of E.L. (*Id.* at 104.) The convening authority granted this request ex parte. (*Id.* at 107.) On 30 June 2022, Trial Counsel made a third request for exclude time for 12 days. (*Id.* at 130.) This exclusion was based on the need to re-interview M.H. based on the new allegations that she made on 12 April 2022. (*Id.* at 131.) The convening authority granted this exclusion ex parte. (*Id.* at 134.) On 30 August 2022, Trial Counsel made a fourth retroactive request to the convening authority to exclude time for 66 days. (App. Ex. III at 150.) This request encompassed a 28-day period in which Trial Counsel alleged that defense counsel had requested a delay. (*Id.* at 152.) It also

covered the 38 days between the date of the hearing and the publication of the P.H.O. report. (*Id.*) The convening authority granted this exclusion ex parte. (*Id.* at 153.)

From 15 March 2022 through 15 June 2022, Trial Defense Counsel spoke with Trial Counsel by phone. (App. Ex. IV at 43.) During these conversations, Trial Defense Counsel requested for status updates on the progress of the case. (*Id.*) Trial Defense Counsel also reiterated Lt Col Hilton's desire for the case to be resolved quickly while he was in pretrial confinement. (*Id.*) Trial Counsel provided no substantive update on the case's progress. (*Id.*) None of the Government's requests for exclusions of time made any reference to the defense position on the delays, or any of the communications that were had with Trial Defense Counsel.

As part of the motion to dismiss for speedy trial, Lt Col Hilton asserted that his rights under R.C.M. 707 were violated. The military judge denied this. In doing so, the military judge identified two sets of specifications with different timelines for purposes of R.C.M. 707. (App. Ex. XVI at 16.) The first of these related to the charges originally preferred on 9 September 2021. (*Id.*) The military judge found that the speedy trial clock for these offenses was reset on 16 March 2022, the day after the charges were withdrawn and dismissed while Lt Col Hilton was still in pretrial confinement. (*Id.*) The military judge found that 184 days had elapsed between this reset and arraignment on 15 September 2022. However, the military judge deducted each of the Government's requested delays from this calculation, along with eight of the days that P.H.O. spent working on his report, to arrive at only 75 days of accountable time. (*Id.* at 17.)

Regarding all other offenses that Lt Col Hilton was charged with, the military judge found that the R.C.M. 707 clock begun to run on 15 December 2021, when Lt Col Hilton entered pretrial confinement. (*Id.* at 17.) This clock was tolled when arraignment occurred on 15 September 2022. The time between was 273 days. The military judge deducted 184 days from this calculation based

on the convening authority's exclusions of time, arriving at only 89 days of accountable time. (*Id.*)

Standard of Review

This Court reviews speedy trial claims de novo. *United States v. Guyton*, 82 M.J. 146, 151 (C.A.A.F. 2022). The decision to grant a pretrial delay is reviewed for an abuse of discretion. *United States v. Lazauskas*, 62 M.J. 39, 41-42 (C.A.A.F. 2005).

Law & Argument

The military judge erred by concluding that Lt Col Hilton had not been denied his right to speedy trial under R.C.M. 707. The military judge did so by validating the convening authority's impermissible exclusions of time from the Government's accountability. (App. Ex. XVI at 17.) The military committed this error both with regard to the original charges preferred on 9 September 2021 and the additional offenses that emerged following Lt Col Hilton's entry into pretrial confinement. In each instance, the military judge correctly calculated the duration of chronological time that had passed since the clock began to run. However, the military judge found that no speedy trial violation had occurred because of a series of exclusions. (*Id.*)

R.C.M. 707(a) mandates that an "accused shall be brought to trial within 120 days after the earlier of: (1) Preferral of charges; (2) The imposition of restraint under R.C.M. 304(a)(2)-(4); or (3) Entry on active duty under R.C.M. 204." Being brought to trial within the meaning of R.C.M. 707 occurs through the arraignment of the accused. R.C.M. 707(b)(1). Where an accused is under pretrial restraint and preferred charges are dismissed, "a new 120-day period begins on the date of the dismissal." R.C.M. 707(b)(3).

Pretrial delays may be excluded from the speedy trial computation when approved by a military judge or convening authority. R.C.M. 707(c). However, a request for an exclusion of

time must be a true delay to a specific event rather than a blanket exclusion of time. *United States v. Rowe*, No. ACM 34578, 2003 CCA LEXIS 61, at *5 n.2 (A.F. Ct. Crim. App. Feb. 28, 2003) *citing United States v. Bray*, 52 M.J. 659, 662 (A.F. Ct. Crim. App. 2000). A request that does not address an interval between events is an impermissible blanket exclusion of time that exceeds the granted authority under R.C.M. 707, thus creating an abuse of discretion. *United States v. Proctor*, 58 M.J. 792, 795 (A.F. Ct. Crim. App. 2003). Moreover, "a *post hoc* request likely will be viewed with considerable skepticism if it appears to be a rationalization for neglect or willful delay." *United States v. Thompson*, 46 M.J. 472, 475 (C.A.A.F. 1997).

Ex parte exclusions of time granted to Government for pretrial delays without an opportunity for the accused to be heard are disfavored. R.C.M. 707, discussion; *United States v. Streeter*, 2023 CCA LEXIS 43, at *11 (A. Ct. Crim. App. Jan. 26, 2023) (affirming military judge's finding that ex parte exclusion of time was an abuse of the convening authority's discretion.) Where the Government seeks an exclusion of time from the convening authority, it is incumbent upon the Government to seek out the defense's position to accurately relay it to the convening authority. *United States v. Richards*, No. ACM 38346, 2016 CCA LEXIS 285, at *94 (A.F. Ct. Crim. App. May 2, 2016); *Cooley*, 75 M.J. at 261 (holding Government's failure to respond to accused's request for speedy trial as a negative factor in assessing validity of delay).

The three pretrial delays granted to the Government by the convening authority were impermissible after-the-fact blanket exclusions. The military judge erred by failing to recognize these as such, thereby denying Lt Col Hilton of right to speedy trial under R.C.M. 707. In each instance, the Government request for delay after the supposed events triggering the request had already taken place. Moreover, the rationale provided the Government amounted to nothing more than normal case processing as the Government continued with its investigation into offenses of a

non-complex nature. *United States v. Perry*, 2 M.J. 113 (C.M.A. 1977) (holding that record must demonstrate that complicated nature of offenses necessitate more than normal period to process case). Moreover, the post hoc nature of the requests was dubious where the delays were in large part influenced by the Government's failure to complete its canvasing of Lt Col Hilton when he was originally investigated for the allegations of E.L.. This is symptomatic of neglect on the part of the Government which should warrant skepticism towards the propriety of the request. *Thompson*, 46 M.J. at 475. Rather, the circumstances of the requests show them to be impermissible post hoc blanket exclusions.

Moreover, the military judge did not address the nature of the requests as they related to the individual offenses that Lt Col Hilton faced. When an accused raises challenge to speedy trial involving multiple specifications, proceedings as to each specification are to be considered separately. *United States v. Talavera*, 8 M.J. 14 (C.M.A. Nov. 5, 1979); *United States v. Bray*, 52 M.J. 659, 662 (A.F. Ct. Crim. App. 2000) (rejecting notion that delay granted for one specification can be extended to all offenses charged). The Government is not excused from the requirement to exercise due diligence in the prosecution of individual offenses in order to try them in a single court-martial. *Ward*, 50 C.M.R. at 275 (C.M.A. 1975). This means that any exclusions granted by the convening authority needed to be tailored to the specific offenses that warranted the delay. However, each of the blanket exclusions that the Government requested only referred to investigative steps for newly discovered offenses that had nothing to with the allegations made by E.L. or M.H. Yet, the military judge applied the exclusions to cover all offenses, even though the specifications on the original charge sheet and later raised by M.H. before pretrial confinement began did not entail any of the investigative activities that the Government sought the delays for.

Additionally, Trial Counsel failed to explain to the convening authority of the defense position on the delays, despite the defense having engaged in repeated communications to ensure that Trial Counsel was aware of it. The request for exclusion of time make no mention of Lt Col Hilton's demand for speedy trial on 13 January 2022. Nor do they mention Trial Defense Counsel's multiple phone conversations with Trial Counsel in which Trial Defense Counsel continually explained that Lt Col Hilton wanted to have the case resolved quickly on account of his confinement status. (App. Ex. IV at 43.) The military judge's failure to recognize the error in the Government's blanket, ex parte, after-the-fact exclusions ultimately constitutes an abuse of discretion. Without the exclusions, the speedy trial clock exceeded 120 days for all offenses. Accordingly, dismissal of the charges and specifications was required by R.C.M. 707(d). Likewise, this Court should grant Lt Col Hilton the same relief with prejudice based on the aggravating circumstances described *supra*.

Respectfully submitted,

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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 27 December 2024.

Respectfully submitted,

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APPENDIX

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

IV.

WHETHER THE MILITARY JUDGE ERRED BY DENYING THE DEFENSE OBJECTION UNDER MIL. R. EVID. 615 TO ALLOWING J.R. TO REMAIN IN THE COURTROOM DURING THE TESTIMONY OF M.H. BECAUSE J.R. WOULD BE TESTIFYING AS A WITNESS TO THE OFFENSES INVOLVING M.H. AS A VICTIM.

Additional Facts

The defense invoked Mil..R. Evid. 615 by objecting to the presence in the courtroom of J.R., M.H.'s mother, only during M.H.'s testimony with the understanding that M.H would be testifying as a victim before J.R., who was also an alleged victim of some of the specifications being tried. (R. at 482, 930, App. Ex. XXXVII.) The defense argued that J.R. would be testifying in part as a government witness regarding her interactions with M.H. and the disclousres M.H. made describing the alleged sexual assault committed upon her by Lt Col Hilton.

The government did not file a written response, however victim's counsel did. (R. at 908, App. Ex. XL.) The court received arguments from all counsel before ruling against the defense. (R. at 903-930, Ruling at 933-934.)

Standard of Review

A military judge's ruling under Mil. R. Evid. 615 is tested for an abuse of discretion." *United States v. Langston*, 53 M.J. 335, 337 (C.A.A.F. 2000).

Law & Analysis

Mil. R. Evid. 615 states, in pertinent part:

> At a party's request, the mililtary judge *must* order witnesses excluded

so that they cannot hear other witnesses‘ testimony.

(emphasis added). The rule also provides that it “does not authorize excluding”:

> (d) a person authorized by statute to be present, or
>
> (e) a victim of an offense from the trial of an accused for that offense, unless the military judge, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at their hearing or proceeding.

Article 6b(a)(3), UCMJ, is the statutory underpinning of exception (e), above. At trial, the defense argued that this exeption does not apply in the context of this case because J.R. would be testifying in part as a witness, not a victim, emphasizing the language found in the first sentence in exception (e) “a victim of an offense from the trial of an accused *for that offense*.” (App. Ex. XXXVII, at 4.) The defense also argued in the alternative, that if the military judge did not agree with the defense and applied exception (e), he should nonetheless find by clear and convincing evidence “ testimony by the victim would be materially altered if the victim [here J.R.] heard other testimony at their hearing or proceeding.” (*Id*.)

The defense did not cite any case law on point. In making his ruling denying relief, the military judge informed the defense he would “allow liberal cross-examination on the issue.” (R. at 934.) Lt Col Hilton maintains that the judge’s ruling was an abuse of discretion and that allowing liberal cross-examination was insufficient relief.

In this case, a central evidentiary point was the content of M.H.‘s initial outcry account of what happened between her and Appellant. By denying the defense motion to exlude J.R. from the courtroom during the limited time period of M.H.’s testimony, the military judge allowed for J.R. to hear and align her account with that of M.H.. Unsurprisingly, J.R.‘s testimony, which came after M.H.’s testiomony, provided a near-duplicate account of what M.H. claimed she initially reported, providing strong corroboration on this key point. This unquestionably influence the outcome for

M.H.'s allegations, the conviction for which stands in stark contrast to the many other specifications that resulted in acquittal.

The application of Mil. R. Evid. 615 by the military judge here was erroneous because it granted victim-rights status to J.R. for a portion of testimony that had nothing to do with the offense for which she was a named victim. Instead, J.R. was a witness to the alleged crime experience by another victim (M.H.). In such capacity, given the circumstances of the case, she should have been excluded.

V.

WHETHER THE INSTRUCTION ON HOW TO CONSIDER EVIDENCE ADMITTED UNDER MIL. R. EVID. 413 OVER DEFENSE OBJECTION WAS CONTRARY TO ESTABLISHED LAW.

Additional Facts

"The burden is on the prosecution to prove each and every element of each offense beyond a reasonable doubt. Proof of one offense carries with it no inference that the accused is guilty of any other offense." (R. at 2312.)

Paradoxically, the military judge gave the following instruction:

> Uncharged Sexual Offense. You heard evidence that the accused may have committed another offense of abusive sexual contact upon [H.C.]. The accused is not charged with this offense. You may consider the evidence of this offense for its bearing on any matter to which it is relevant, to include its tendency, if any, to show the accused's propensity to engage in sexual offenses.
>
> However, evidence of another sexual offense, on its own, is not sufficient to prove the accused guilty of a charged offense. You may not convict the accused solely because you believe he committed another sexual offense or offenses or solely because you believe the accused has a propensity to engage in sexual offenses. Bear in mind that the government has the burden to prove that the accused committed each of the elements of each charged offense.

(R. at 2312.)

The defense did not object to this instruction or offer an amendment to the instruction requiring the court members to first determine whether the government factually proved the uncharged misconduct involving H.C. by a preponderance of the evidence.

Standard of Review

"The question of whether a jury was properly instructed [is] a question of law, and thus, our review is de novo." *United States v. Maxwell*, 45 M.J. 406, 424 (C.A.A.F. 1996). A military judge's instructions are evaluated "in the context of the overall message conveyed" to the members. *United States v. Hills*, 75 M.J. 350, 357 (C.A.A.F. 2016) (*quoting United States v. Hills*, 69 M.J. 338, 344 (C.A.A.F. 2011).

Law & Analysis

An instruction is unconstitutional where it "relieves the government of its burden of proof, subvert[s] the presumption of innocence accorded to accused persons[,] and also invade[s] the truth-finding task assigned solely to juries in criminal cases." *United States v. Norman*, 74 M.J. 144, 150 (C.A.A.F. 2015) (*quoting Carella v. California*, 491 U.S. 263, 265 (1989)). "[T]here is a presumption against the waiver of constitutional rights, and for a waiver to be effective it must be clearly established that there was an intentional relinquishment of a known right or privilege." *United States v. Harcrow*, 66 M.J. 154, 157 (C.A.A.F. 2008); *United States v. Santos*, No. ACM 39019, 2017 CCA LEXIS 575, at *21 (A.F. Ct. Crim. App. 23 Aug. 2017) (declining to apply waiver in context of propensity evidence given the constitutional presumption of evidence.) Where constitutional elements are at play, the claim "must be tested for prejudice under the standard of harmless beyond a reasonable doubt." *United States v. Wolford*, 62 M.J. 418, 420 (C.A.A.F. 2006).

"Criminal defendants have a constitutional right to the presumption of innocence and to have the government prove guilty beyond a reasonable doubt." *Estelle v. Williams*, 425 U.S. 501, 503, 96 S. Ct. 1691, 48 L. Ed. 2d 126 (1976); R.C.M. 918(c).

Mil. R. Evid. 413(a) permits the introduction of evidence "that the accused may have committed any other sexual offense . . ." for "consideration on any matter which is relevant." However, this rule "would be fundamentally unfair if it undermines the presumption of innocence and the requirement that the prosecution prove guilt beyond a reasonable doubt." *United States v. Wright*, 53 M.J. 476, 481 (2000). "It is antithetical to the presumption of innocence to suggest that conduct of which an accused is presumed innocent may be used to show a propensity to have committed other conduct of which he is presumed innocent." *United States v. Hills*, 75 M.J. 350, 356 (C.A.A.F. 2016).

A court-martial must exercise caution when delivering instructions on the use of Mil. R. Evid. 413 evidence to avoid violating an accused's presumption of innocence. *Id.* (finding error in "using charged misconduct as M.R.E. 413 evidence, which permeated the military judge's instructions to the members and violated Appellant's presumption of innocence and right to have all findings made clearly beyond a reasonable doubt, resulting in constitutional error.") This may occur where the instruction invites "members to bootstrap their ultimate determination of the accused's guilt" by use of another unresolved offense. *Id.* at 357.

Crucially, uncharged offenses presented under Mil. R. Evid. 413 must be found by the panel members by a preponderance of the evidence to have actually occurred to have any relevancy in their findings for the charged offenses. *United States v. Solomon*, 72 M.J. 176, 179 (C.A.A.F. 2013). Before admitting this type of evidence, the military judge makes a preliminary determination whether the proffered evidence could reasonably support this determination.

Huddleston v. United States, 485 U.S. 681, 689 (1988). However, the military judge "neither weighs credibility nor makes a finding that the Government has proved the conditional fact by a preponderance of the evidence . . .," matters which remains the panel's sole province of the factfinder. *Id.* at 690.

The use of Mil. R. Evid. 413 typically presents less controversy when dealing with "an offense to which an accused has pleaded guilty or been found guilty" of. *United States v. Hills,* 75 M.J. 350, 354 (C.A.A.F. 2016). How this type of evidence has the potential to disturb the presumption of innocence when it involves conduct that has never resulted in a conviction. *Id.* at 356. Such circumstances warrant a tailored instruction to ameliorate prejudice. *See United States v. Solomon*, 72 M.J. 176, 182 (C.A.A.F. 2013) (Finding that the result of admitting evidence Mil. R. Evid. 413 that the accused had been acquitted of resulted in "a great deal of time was spent in a distracting mini-trial on a collateral matter of low probative value, without the ameliorative effect of judicial recognition of the acquittal via limiting instruction or judicial notice.")

This distinction necessitates an instruction that informs the panel that Mil. R. Evid. 413 evidence can only be used if proven by a preponderance of the evidence. *United States v. Abundiz*, 93 F.4th 825, 839-40 (5th Cir. 2024) ("the district court appropriately informed the jury that evidence admitted under [Fed. R. Evid.] 413 and 414 may be used for any relevant purpose *only* if it was proven by a preponderance of the evidence." (emphasis added.)) Lt Col Hilton believes this instruction should have been given to the court members in his case. Failure to do so constituted prejudicial error.

IN THE UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	ANSWER TO ASSIGNMENTS OF ERROR
v.	)	Before a Special Panel
Lieutenant Colonel (O-5) **WILLIAM M. HILTON** United States Air Force *Appellant.*	)	No. ACM 40500
	)	27 January 2025

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

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	ANSWER TO ASSIGNMENTS OF ERROR
v.	)	Before Panel No. 1
Lieutenant Colonel (O-5) **WILLIAM M. HILTON** United States Air Force *Appellant.*	)	No. ACM 40500 27 January 2025

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

ISSUES PRESENTED

I.

WHETHER THE FINDINGS OF GUILTY OF SPECIFICATION 6 OF CHARGE II AND THE EXCEPTED LANGUAGE FOUND IN SPECIFICATION 3 OF CHARGE V, TO WHICH APPELLANT PLEAD NOT GUILTY, ARE LEGALLY AND FACTUALLY INSUFFICIENT.

II.

WHETHER THE MILITARY JUDGE ERRED BY FAILING TO GRANT APPELLANT [RELIEF] UNDER ARTICLE 10, UNIFORM CODE OF MILITARY JUSTICE, AFTER THE GOVERNMENT DELAYED PROCEEDINGS AGAINST HIM TO COMPLETE ROUTINE INVESTIGATIVE STEPS THAT THE GOVERNMENT HAD NEGLECTED TO CARRY OUT DURING AN EARLIER INVESTIGATION BEFORE LT COL HILTON WAS PLACED IN PRETRIAL CONFINEMENT.

III.

WHETHER THE MILITARY JUDGE ERRED BY FAILING TO GRANT APPELLANT [RELIEF] UNDER R.C.M.707 BY APPLYING UNLAWFUL EXCLUSIONS OF TIME GRANTED BY THE CONVENING AUTHORITY.

IV.[1]

WHETHER THE MILITARY JUDGE ERRED BY DENYING THE DEFENSE OBJECTION UNDER MIL. R. EVID. 615 TO ALLOWING JR TO REMAIN IN THE COURTROOM DURING THE TESTIMONY OF MH BECAUSE JR WOULD BE TESTIFYING AS A WITNESS TO THE OFFENSES INVOLVING MH AS A VICTIM.

V.[2]

WHETHER THE INSTRUCTION ON HOW TO CONSIDER EVIDENCE ADMITTED UNDER M.R.E. 413 OVER DEFENSE OBJECTION WAS CONTRARY TO ESTABLISHED LAW.

STATEMENT OF CASE

In accordance with his pleas, the military judge found Appellant guilty of one charge and one specification of being drunk on duty (in violation of Article 112, UCMJ), one charge and one specification of unlawful entry (in violation of Article 129, UCMJ), and one charge and two specifications of conduct unbecoming an officer and a gentleman (in violation of Article 133, UCMJ). (*Entry of Judgment*, dated 13 July 2023, ROT, Vol. 1). Contrary to his pleas, a panel of officer members sitting as a general court-martial found Appellant guilty of one charge and one specification of sexual assault (in violation of Article 120). (Id.).

Charge V, Specification 3[3] has a unique procedural posture. Appellant pleaded guilty by exceptions to Specification 3 of Charge V conduct unbecoming an officer and a gentleman (a violation of Article 133, UCMJ). (Id.). Appellant pleaded not guilty to the excepted words: "demanding her to remove her clothing, pushing her onto a couch, repeatedly demanding her to

[1] Issue IV is raised in accordance with United States v. Grostefon, 12 M.J. 431 (1982).
[2] Issue V is raised in accordance with United States v. Grostefon, 12 M.J. 431 (1982).
[3] Charge V, Specification 3 was originally listed on the charge sheet as Specification 5 but was renumbered when two specifications were withdrawn and dismissed. (*Entry of Judgment*, ROT, Vol. 1 at 4).

hold open her labia, climbing on top of her, and pinning down her arms and legs with his arms." The government moved forward into contested findings and litigated the excepted language. (Id.). The panel found Appellant guilty of the excepted words; thus, Appellant was found guilty as charged of Charge V, Specification 3. (Id.).

The military judge sentenced Appellant to a dismissal, 40 months confinement, and a reprimand. (Id.). The military judge awarded Appellant 464 days of pretrial confinement time. (Id.).

STATEMENT OF FACTS

Relevant facts are provided for each issue below.

ARGUMENT

I.

APPELLANT'S CONVICTIONS FOR SEXUAL ASSAULT (CHARGE II, SPECIFICATION 6) AND CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN (CHARGE V, SPECIFICATION 3) ARE LEGALLY AND FACTUALLY SUFFICIENT.

Additional Facts

MH arrived at RAF Lakenheath, England, with her mother (JR), her stepfather (TR), and her siblings in 2018. (R. at 1550-1551). She was 16 years-old at the time. (Id.). MH's mother, JR, worked as a nurse at the hospital, and Appellant was her boss. (R. at 1551-1552). Eventually, he became a family friend, and the families spent time together at barbeques and neighborhood parties. (R. at 1554-1555). When asked what her impressions of Appellant were, MH responded, "Initially off the bat, I did get this uncomfortable feeling around him. I couldn't pinpoint what it was at the time, but it was just uncomfortable." (R. at 1555).

JR bred French bulldogs. (R. at 1554-1555). Throughout 2020, Appellant came over to MH's house to interact with the dogs JR bred, and Appellant and his wife, DM, bought puppies. (R. at 1554-1555). MH would go over to Appellant's house with her family and train his dogs. (R. at 1556). MH began dog sitting for Appellant and DM when they took day trips to London. (R. at 1563). On five occasions, MH watched the dogs at her house. (R. at 1563). But on one occasion on 28 August 2021, she watched the dog at Appellant's house while Appellant and DM were in London. (R. at 1563-1564). Appellant and DM were supposed to be gone for the evening, and then return to drive MH home, but they were out longer than anticipated. (R. at 1564). They came home around 0300 hours that morning, and due to the late hour, she stayed the night in their guest bedroom. (R. at 1566). MH was unable to drive when she lived in England, so she could not drive herself home. (R. at 1564-1565).

The next morning, 29 August 2021, MH awoke around 0930 hours, went to the living room, sat on the corner of the L-shaped sectional, and waited for someone to drive her home. (R. at 1567, 1569). Appellant came into the room and sat on the side of the couch farthest from MH. (R. at 1568). Appellant appeared groggy but not intoxicated. (R. at 1570).

Appellant and MH interacted for about 30 minutes. (R. at 1569). Then Appellant asked if MH has been seeing a gentleman, JB, and she explained they were only friends. (R. at 1579). Appellant responded, "Good because I've always been jealous because even talking to you and thinking about you gets me hard." (R. at 1579). MH testified, "I was immediately uncomfortable. My response to him was that I didn't want to talk about it." (R. at 1579). The two sat in silence for a minute, and then he said, "Well, can I get a hug?" (R. at 1580). MH refused, "No, I do not believe that is a good idea." (R. at 1580). Appellant persisted and MH acquiesced by scooting forward as he walked over to her. (R. at 1581). He hugged her and then

he kissed and sucked her neck. (R. at 1581). He pushed her down by the shoulders onto her back onto the couch. (R. at 1581). She testified, "I was still sitting criss-cross, so I couldn't move my legs" and he pressed himself on top of her. (R. at 1581). Appellant did not say anything, and MH couldn't see his face. (R. at 1581). MH explained, "I got scared. . . It was similar to crippling fear where it felt like I couldn't move." (R. at 1582). But she managed to tell Appellant, "No," but he ignored her and continued to kiss and suck her neck. (R at 1582-1583). Approximately a minute later Appellant got off her, stood over her, and demanded that she take off her clothes. (R. at 1582).

MH was still sitting back on the couch when Appellant told her to take her clothes off. (R. at 1583). She did not comply. (R. at 1583). He demanded again more sternly with a "death stare." (R. at 1584). MH was terrified by Appellant, so she complied. (R. at 1583). She proceeded to take off her shirt and bra and then she took off her pants and underwear. (R. at 1584). He then pushed her back on the couch. (R. at 1584). MH explained, "Then he sat on top of me and was telling me to hold myself open. At first, I didn't understand what he meant, so he was repeating himself to hold myself open. He was gesturing like this towards my genitalia . . . ." (R. at 1584). Eventually, MH understood what he was telling her to do, and she complied by holding open her labia. (R. at 1587). "I held my labia open and then, at that point, he took off his shirt first and then he removed his pants. While he was still sitting on me, he shifted weight to one leg to another to take his pants off." Then he pinned her arms down and prevented her from moving her legs. (R. at 1586). He performed oral sex on her by penetrating her vulva with his tongue. (R. at 1586).

MH testified, "I was afraid that, if I didn't comply, that I was going to get hurt in sort of way; because everyone has heard everybody else's stories . . . So, in my mind, it was a do what

he says so you don't get hurt kind of moment." (R. at 1587). She was frozen with fear, and she was unable to move away from Appellant. (R. at 1586). But she managed to tell him "No" three times. (Id.). He did not stop, and he licked and sucked her clitoris for 15 minutes. (R. at 1589). While he was doing that, he mumbled to himself at least three times, "This is purely transactional." (R. at 1590). MH testified that the encounter was not consensual. (R. at 1605). "I didn't want any of that to happen. It was all forced." (Id.).

Finally, MH heard DM coming downstairs. (R. at 1590). Appellant did as well because he jumped off MH and told MH to get dressed and threw her clothes at her. (R. at 1590). DM walked into the living room and saw MH and Appellant half naked. (R. at 1591). DM asked, "What's going on here," and Appellant said, "Fucking." (Id.). MH felt safe and relieved that DM entered the room because the sexual assault stopped. (Id.). DM told MH to get her things, and DM took MH home. (R. at 1595). DM testified that MH did not indicate on the drive home whether the sexual act was consensual. (R. at 2148, 2161). According to DM, MH just kept apologizing during the drive. (Id.).

MH testified that she was silent on the drive home. (R. at 1595). MH explained that on the drive home and the rest of the morning she felt sick and violated, and she was genuinely upset. (R. at 1596). JR described MH as "withdrawn" and "solemn" that morning after dog sitting. (R. at 1767).

The morning of 30 August, Appellant walked into MH's house while she was alone. (R. at 1598). He walked through the unlocked door and said, "Hey, I just wanted to come in and apologize." (R. at 1597). MH told him to leave, and he did. (R. at 1597).

MH did not tell her mother about the incident because she was afraid that JR would not believe her. (R. at 1599). MH overheard JR discussing another case involving Appellant, and

JR stated she did not believe the victim. (R. at 1599, 1765). MH overheard this and felt that her mother would not believe her either. (R. at 1599).

The next time MH saw Appellant, she and JR were shopping at the commissary the day before Thanksgiving. (R. at 1599-1600, 1768). JR and Appellant chatted while MH stood behind her mother. (Id). MH started to shake and feel nauseous at the site of Appellant. (Id.). JR also noticed MH's reaction noting that MH went to the bathroom to throw up. (R. at 1629, 1768). During the 2021 Thanksgiving celebration hosted by MH's family, MH told SM, a close family friend, what Appellant did to her. (R. at 1601-1602, 1676). Then MH told JR the details of the sexual assault, and they eventually reported Appellant to law enforcement. (R. at 1603, 1770).

Standard of Review

Issues of legal and factual sufficiency are reviewed de novo. United States v. Washington, 57 M.J. 394, 399 (C.A.A.F. 2002).[4]

Law

The test for factual sufficiency is whether; after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, this Court is convinced of Appellant's guilt beyond a reasonable doubt. United States v. Turner, 25 M.J. 324, 325 (C.M.A. 1987). "In conducting this unique appellate role, [the court] take[s] "a fresh, impartial look at the evidence," applying "neither a presumption of innocence nor a presumption of guilty" to "make [its] own independent determination as to whether the evidence constitutes

[4] This case is reviewed under the previous version of Article 66(d)(1) (2019) because not all offenses occurred on or after 1 January 2021. *See* William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 542(c), 134 Stat. 3388, 3612 (2021).

proof of each required element beyond a reasonable doubt." United States v. Chisum, 75 M.J. 943, 952 (A.F. Ct. Crim. App. 2016) (citing Washington, 57 M.J. at 399.) This Court's "assessment of appellant's guilt or innocence for legal and factual sufficiency is limited to the evidence presented at trial." United States v. Dykes, 38 M.J. 270, 272 (C.M.A. 1993).

The test for legal sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." United States v. King, 78 M.J. 218, 221 (C.A.A.F. 2019) (internal citations omitted.) This test does not require a court to ask whether it believes the evidence established guilt beyond a reasonable doubt, but rather, whether any rational factfinder could. United States v. Acevedo, 77 M.J. 185, 187 (C.A.A.F. 2018). In applying this test, this Court is "bound to draw every reasonable inference from the evidence of record in favor of the prosecution." United States v. Barner, 56 M.J. 131, 134 (C.A.A.F. 2001) (internal citations omitted.) Thus, legal sufficiency is a very low threshold. King, 78 M.J. at 221 (internal citations and quotations omitted.)

"In determining whether any rational trier of fact could have determined that the evidence at trial established guilt beyond a reasonable doubt, [this Court is] mindful that the term 'reasonable doubt' does not mean that the evidence must be free from any conflict or that the trier of fact may not draw reasonable inferences from the evidence presented." Id. The standard for legal sufficiency "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." United States v. Oliver, 70 M.J. 64, 68 (C.A.A.F. 2011).

When assessing legal sufficiency, "[t]he evidence necessary to support a verdict 'need not conclusively exclude every other reasonable hypothesis and need not negate all possibilities

except guilt.'" United States v. Wilson, 182 F.3d 737, 742 (10th Cir. 1999) (quoting United States v. Parrish, 925 F.2d 1293, 1297 (10th Cir. 1991). A legally sufficient verdict may be based on circumstantial as well as direct evidence, and even "[i]f the evidence rationally supports two conflicting hypotheses, the reviewing court will not disturb the conviction." United States v. McArthur, 573 F.3d 608, 614 (8th Cir. 2009) (citations omitted).

Analysis

A. The government proved Charge II, Specification 6, by showing Appellant penetrated MH's vulva with his tongue without her consent.

The government proved and the panel members found Appellant guilty of Charge II, Specification 6 (sexual assault): "[Appellant] did at or near Elveden, United Kingdom, on or about 29 August 2021, commit a sexual act upon MH by touching her vulva with his tongue, without her consent." (*Entry of Judgment*, ROT, Vol. 1 at 2). The government proved each element beyond a reasonable doubt: (1) that Appellant committed a sexual act upon MH by penetrating her vulva with his tongue; and (2) that Appellant did so without MH's consent. Manual for Courts-Martial, United States, pt. IV, ¶ 60.b.(2)(d) (2019 ed.).

1. The government proved Appellant performed oral sex on MH.

The government proved the first element, and Appellant does not contest it on appeal. Appellant committed a sexual act upon MH by penetrating her vulva with his tongue. "The term 'sexual act' means the penetration, however slight, of the penis into the vulva or anus or mouth." MCM, pt. IV, ¶ 60.a.(g)(1)(A). MH testified that Appellant forced her onto the couch and then used his body weight to hold her down while he licked and sucked her clitoris. (R. at 1589). A rational fact finder and this Court could determine that means Appellant penetrated MH's vulva with his tongue. DM, Appellant's wife, testified that she walked in and both MH and Appellant were naked on the couch in the living room, corroborating some kind of sexual encounter

between them. (R. at 1591). When she asked Appellant what was going on he responded, "Fucking." (R. at 1591). The government proved the first element beyond a reasonable doubt through MH's testimony, Appellant' statement, and DM's corroborating testimony that MH and Appellant were in a state of undress when she arrived in the living room that morning.

2. The government proved that MH did not consent to oral sex with Appellant.

The government proved the second element: MH did not consent to Appellant's sexual act. "An expression of lack of consent through words or conduct means there is no consent." MCM, pt. IV, ¶ 60.a.(g)(7)(A). MH told Appellant "No" three times during the 15-minute sexual assault. (R. at 1586). Thus, she expressed her lack of consent verbally to Appellant; so, no consent existed for the interaction. But Appellant persisted. (R. at 1582).

Appellant demanded that she take off her clothing while he loomed over her with a dark look in his eyes. An intimidating size difference existed between Appellant and MH. He was six feet tall standing over her as she sat on the couch. (R. at 1043; 1560). She was only 5'5" and sitting cross legged on the couch – she was in a lower and more vulnerable position. (R. at 1560; 1581). He was a fully grown man, and she was newly 20 years old. (R. at 1652). Using common sense and knowledge of the ways of the world the factfinder who saw MH and Appellant at the court-martial could determine that Appellant was much larger and more imposing than MH. Thus, the conclusion could be drawn that he used his size and intimidating stare to force MH to cooperate.

MH did not acquiesce the moment Appellant told her to undress and hold open her labia. She was so scared that she was unable to understand what Appellant was asking of her. He told her to take off her clothes multiple times, and then hold open her labia more than once. (R. at 1587). She was not comprehending what he was saying to her. Her inability to understand him

likely occurred because she was terrified, and she froze. A person who freezes out of fear would be unable to comprehend requests from another person. And MH was immobilized with fear, so she was unable to understand what Appellant was demanding without his repetition. The only reason she complied was to avoid getting hurt. (R. at 1587). Her fear of Appellant persisted and manifested even months later when she was at the commissary with her mother. They saw Appellant and while JR had a conversation with him MH was hiding behind her mother, shook, and become physically ill. Her mother corroborated this response in her testimony noting that MH had to run to the bathroom minutes later. (R. at 1629, 1768). MH was so scared of Appellant that she physically reacted to seeing him even months later. The conclusion should be drawn that her involuntary physical reaction after seeing Appellant corroborates that Appellant sexually assaulted her. SM also testified to MH's character for truthfulness. The government proved the second element beyond a reasonable doubt through MH's testimony.

The offense is legally sufficient. After "viewing the evidence in the light most favorable to the prosecution" any rational factfinder could decide that each element was proven beyond a reasonable doubt. King, 78 M.J. at 221. A rational factfinder could decide that MH articulated her nonconsent and because she feared Appellant would hurt her, she complied with his demands. Appellant then penetrated her vulva with his tongue.

The offense is factually sufficient. After weighing the evidence and making allowances for not having observed the witnesses, this Court should be convinced of Appellant's guilt beyond a reasonable doubt. Turner, 25 M.J. at 325. The evidence that the government presented constituted proof of each element of the offense, and the government met its burden beyond a reasonable doubt. Chisum, 75 M.J. at 952. This Court must make allowances for not having personally observed the witnesses. In this case, MH testified under oath as an eyewitness to the

crime. She was subject to cross examination in which every argument now raised by Appellant was highlighted by trial defense counsel. The members were able to closely observe her demeanor and her responses, and they decided that she testified credibly. Based on their in-person perceptions of her they determined the government had proven every element of the offense. This Court should take the panel's credibility determination into consideration and be convinced that MH's testimony was credible. This Court should find that the government proved each element of the sexual assault committed upon MH, should be convinced of Appellant's guilt beyond a reasonable doubt. Chisum, 75 M.J. at 952. The conviction is factually sufficient.

3. Appellant's arguments for legal and factual insufficiency are unsupported by the record.

Appellant argues that MH contradicted herself when she made statements to DM and then contradicted herself again when she told SM and her mother about the sexual assault. (App. Br. at 8). Appellant claims this makes the conviction legally and factually insufficient. It does not. MH testified that she did not talk with DM on the ride home – arguably she was still in shock from the sexual assault and did not recall the immediate aftermath. MH did not contradict herself – she never explained to DM whether the sexual encounter was consensual. So, when she eventually told SM and her mother that the sexual encounter was not consensual, MH was not contradicting herself.

DM testified that MH apologized profusely the whole ride home and MH said she would not tell anyone what Appellant did and could keep a secret. (R. at 2148, 2161). DM had an obvious bias in favor of Appellant, her spouse. She testified for the defense and was a favorable witness for Appellant. The panel members could have disbelieved DM's testimony because of her apparent bias towards Appellant. Even if the panel members believed DM's testimony, it

would have only differed from MH's testimony on the narrow issue of whether MH spoke on the ride home. If the panel decided DM's testimony was credible, when asked by a panel member if MH indicated to DM that the sexual encounter was consensual, DM testified that MH "didn't lead me to believe either way. She just kept apologizing." (R. at 2161).

Appellant claims, "it can be reasonably inferred that MH's disclosures to SM originated in the context that she was sharing confidences with SM" and the allegations got away from MH. But the inference is not reasonable. MH initially did not want to tell SM and JR about the sexual assault because she had reason to believe they would not believe her allegations. But MH testified that she saw Appellant in the commissary the day before Thanksgiving, and she had an adverse physical reaction when she saw him. The emotions of the sexual assault were brought to the surface. MH decided to tell her mother about the sexual assault before she confided in SM. (R. at 1603). MH did not know that SM was attending Thanksgiving, but MH used the opportunity to talk with SM about what happened to her. The allegations were not getting away from her, they were brought to the surface when she encountered Appellant in the commissary triggering fear and a need to tell someone about the sexual assault. Viewing the evidence in the light most favorable to the prosecution, this Court should find that seeing Appellant again triggered MH's need to report. And this Court should decide Appellant's alleged inference is unreasonable and be convinced of Appellant's guilt beyond a reasonable doubt.

The government proved each element of the sexual assault against MH beyond a reasonable doubt. Appellant used his tongue to penetrate MH's vulva without her consent. This Court should find Charge II, Specification 6 (sexual assault) is legally and factually sufficient.

B. The government proved Charge V, Specification 3 (Conduct Unbecoming an Officer and a Gentleman) by showing Appellant compromised his standing as an officer by making sexual statements to MH and forcing her onto the couch.

The government proved and the panel members found Appellant guilty of Charge V, Specification 3 (conduct unbecoming an officer and a gentleman):

> [Appellant] [d]id, at or near Elveden, United Kingdom, on or about 29 August 2021, act wrongfully and dishonorably by stating to MH, a woman who was not his wife, "I've always wanted to get with you. Even talking and thinking about you gets me hard" or words to that effect, kissing and sucking on her neck demanding her to remove her clothing, pushing her onto a couch, repeatedly demanding her to hold open her labia, climbing on top of her, and pinning down her arms and legs with his arms which was conduct unbecoming an officer and a gentleman.

(*Entry of Judgment*, ROT, Vol. 1 at 4). The government proved that: (1) Appellant did do a certain act; and (2) under the circumstances, the act constituted conduct unbecoming an officer and gentleman. MCM, pt. IV, ¶ 90.b. "Conduct violative of this article is . . . action or behavior in an unofficial or private capacity which, in dishonoring or disgracing the officer personally, seriously compromises the person's standing as an officer." MCM, pt. IV, ¶ 90.c.2. "There are certain moral attributes common to the ideal officer and the perfect gentleman, a lack of which is indicated by acts of dishonesty, unfair dealing, indecency, indecorum, lawlessness, injustice, or cruelty." Id.

On appeal, Appellant does not dispute that MH was the daughter of his subordinate, JR, and that he employed MH as a dog sitter. Appellant does not dispute MH's testimony that Appellant started a sexual discussion with her at 0930 hours on 29 August 2021. He asked her whether she was dating a gentleman and then expressed his jealousy at the thought of her dating someone. (R. at 1579). Appellant does not dispute that he told MH, "Good because I've always been jealous because even talking to you and thinking about you gets me hard." (R. at 1579).

He does not dispute that he kissed and sucked on MH's neck. And he does not dispute that making nonconsensual sexual advances toward hit dog sitter while his wife was upstairs in the same house would be indecorous or "conflicting with accepted standards of good conduct or good taste." Indecorous, MERRIAM WEBSTER'S DICTIONARY (2024 online ed.). The government proved the first element through MH's testimony that Appellant made sexual statements toward MH, kissed and sucked her neck, and physically forced her onto the couch. Then the government proved the second element through MH's testimony that he committed these acts against his subordinate's daughter (and his dog sitter) while his wife was upstairs. Thus, a rational trier of fact and this Court could find that under the circumstances, the act constituted conduct unbecoming an officer and gentleman.

Appellant's only argument against this conviction consists of one sentence: "As argued above, the motive to misrepresent applies equally to the allegations made in Specification 3 of Charge V." (App. Br. at 9).[5] MH did not have a motive to mispresent, and Appellant fails to articulate how a motive to misrepresent makes this offense legally and factually insufficient.

MH's allegations were not getting away from her after she told SM about Appellant's actions. Instead, her emotions about the sexual assault were brought to the surface when she unexpectantly encountered Appellant in the commissary months after the assault and a day before telling SM. Seeing him reignited her fear and triggered a need to tell someone about the sexual assault. She had an obvious physical reaction to seeing him. She was not attempting to fabricate allegations. If she had been trying to misrepresent what happened, then she would not have provided the details about taking off her own clothing or holding open her labia – difficult

[5] Appellant pleaded guilty by exceptions to this offense. The government litigated the excepted words, and the members found Appellant guilty of the excepted words (thus they found him guilty as charged).

facts to overcome until the factfinder learned about the crippling fear MH experienced because of Appellant. She initially told SM and then provided her mother with more details about the sexual assault until her mother knew all the details that MH testified to at the court-martial.

This Court should not be persuaded by Appellant's one sentence claim that MH had a motive to misrepresent her interactions with Appellant. Appellant made a sexual advance toward his dog sitter while his wife was upstairs. That is conduct unbecoming an officer. The offense is legally sufficient. A rational factfinder viewing the evidence in the light most favorable to the prosecution could find each element was proven beyond a reasonable doubt, while finding that MH did not have a motive to misrepresent. After weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, this Court should be convinced of Appellant's guilt beyond a reasonable doubt. The government proved each element of the offense beyond a reasonable doubt. This Court should find the conviction factually sufficient and should find Appellant's arguments unpersuasive and deny Appellant's assignment of error.

II.

THE MILITARY JUDGE DID NOT ERR WHEN HE DENIED APPELLANT'S REQUEST FOR RELIEF UNDER ARTICLE 10, UCMJ.

Additional Facts

The military judge made the essential findings of fact relevant to Appellant's Article 10 claim. (App. Ex. XVI at 1).

Initial Preferral and Order into Pretrial Confinement

Appellant's group commander preferred charges against Appellant on 9 September 2021, and the General Court-Martial Convening Authority (GCMCA) referred them to a general court-

martial on 9 November 2021. (Id.). The parties scheduled motions for 2 April 2022 and findings for 23 May 2022.

On 15 December 2021, MH reported to the Office of Special Investigations (OSI) that Appellant sexually assaulted her and unlawfully entered her home in August 2021. (Id. at 2). On 16 December 2022, Appellant was ordered into pretrial confinement based on MH's allegations. (Id.).

Pretrial Confinement Hearing

On 21 December 2021, a Pretrial Confinement Review Officer (PCRO), "conducted a 7-day review hearing pursuant to R.C.M. 305(i)(2)." A military defense counsel represented Appellant in person during the hearing, and Appellant's civilian defense counsel appeared via video teleconference. (Id.). During the hearing, the PCRO "advised [Appellant] of the crimes he was suspected of committing." (Id.). "On 22 December 2021, the PCRO found that continued pretrial confinement was appropriate pursuant to the criteria set forth under R.C.M. 305(h)(2)(B)." (Id. at 3).

Interview Coordination for JR

On 20 December 2021, investigators interviewed JR as "an outcry witness to MH's allegation, [as] MH's mother, and [because JR] worked with the Accused." (Id.). During the interview, JR alleged Appellant committed abusive sexual contact against her, and on 22 December 2021, she requested victim's counsel representation. (Id.). "As a result, the process in procuring a [victim's counsel] for JR, [OSI] was not able to complete a follow-up interview with JR until 27 January 2022." (Id.). During JR's follow up interview "she provided names of individuals who may have witnessed [Appellant] perpetrate the alleged crimes." (Id. at 2).

On 13 January 2022, Appellant demanded a speedy trial. (Id.). Then in February 2022, additional OSI agents were assigned to Appellant's case to "assist in the investigation" and conduct interviews of potential witnesses. (Id.) Special Agent (SA) HO was assigned to Appellant's case and in March 2022 she became the lead agent. She requested assistance from other OSI Detachments – because witnesses were spread out all over the world – and she emphasized the need to conduct interviews quickly. (Id. at 3). "SA [HO] followed-up multiple times over the telephone and by email to expedite the process." (Id.). SA HO testified at the motions hearing in this case and the military judge found she testified credibly. (Id. at 6).

Interview Coordination for SS

On 8 February 2022, 9 February 2022, and 10 February 2022 an OSI agent reached out to Appellant's first ex-wife (SS) for an interview in Alabama. (Id. at 2). On 11 February 2022, SS returned their calls and provided her contact information. (Id.). On 22 February 2022, OSI coordinated between Detachments to conduct the interview. (Id.). OSI interviewed SS on 2 March 2022. (Id. at 3). During the interview, SS alleged that Appellant sexually abused her now 28-year-old son (SH) when he was a child. (Id. at 3). OSI then tried to contact SH. (Id).

Interview Coordination for SH

On 9 March 2022, OSI coordinated between Detachments to interview SH. (Id. at 3). SH was interviewed on 18 March 2022. (Id. at 3). During his interview, SH alleged abusive sexual contact against Appellant when he was in middle school. (Id. at 3).

Interview Coordination for TH

On 8 February 2022, 9 February 2022, and 10 February 2022 an OSI agent tried to contact Appellant's second ex-wife (TH) in Texas. (Id.). On 28 February 2022, OSI agent's visited TH's house, but she was not home, so they left their contact information. (Id.). And she

called them the same day and agreed to an interview. (Id.). On 11 March 2022, the JBSA-Lackland Victim Witness Assistance Program (VWAP) Coordinator and the RAF Lakenheath VWAP Coordinator provided TH victim and witness resources. (Id. at 4). On 15 March 2022, TH contacted the RAF Lakenheath VWAP Coordinator and explained she wanted to report Appellant but "she believed a provision in her divorce decree prohibited her from doing so." (Id.). On 23 March 2022, TH contacted the VWAP coordinator and explained, under advice of counsel, that she would be unable to interview with OSI unless she received a subpoena. (Id.).

On 24 March 2022, the base legal office "requested authorization from 3 AF/CC to issue a pre-referral investigative subpoena to TH" (Id.). On 30 March 2022, government counsel was allowed to issue a "pre-referral investigative subpoena for TH to disclose records and supporting evidence" of Appellant's misconduct against TH and her son, AH. (Id.). The base legal office sent TH's victim's counsel the subpoena on 30 March 2022. (Id.). On 11 April 2022, TH's victim's counsel emailed OSI to set up an interview. (Id.). TH was interviewed on 14 April 2022. (Id.).

Interview Coordination for AH and TH (11-year-old son)

On 9 March 2022, OSI agents coordinated between detachments to set up interviews with TH's sons, AH and TH (11-year-old son). (Id. at 3). On 15 March 2022, the lead investigator requested information about when the interviews with the boys were scheduled. (Id.). On 29 March 2022, agents responded explaining interviews of AH and TH (11-year-old son) were scheduled for 30 March 2022. (Id. at 4). The interviews were conducted on that date. (Id.).

Additional Interview Coordination for MH

On 12 April 2022, MH contacted OSI via the victim's paralegal to disclose additional information, and they coordinated an interview time. (Id.). During the 20 April 2022 interview,

MH disclosed additional allegations against Appellant. (Id.). Due to the additional allegations, OSI asked MH to travel to the nearest installation in Nebraska for an in-person victim interview. (Id. at 4). MH agreed and on 25 April 2022, OSI coordinated the interview between Detachments. MH was interviewed in person on 4 May 2022. (Id. at 5).

Procedural Steps

On 15 March 2022, the convening authority withdrew and dismissed the previously referred charges and specifications. (Id. at 4).

On 11 April 2022, the Special Court-Martial Convening Authority (SPCMCA) "excluded 81 days from the 120-day speedy [trial] clock pursuant to his authority under R.C.M. 707(c)." The exclusions of time included:

- 20 December 2021 to 27 January 2022;
- 8 February 2022 to 4 March 2022; and
- 9 March 2022 to 25 March 2022.

(Id.).

On 13 May 2022, the SPCMCA "excluded 32 days from the 120-day speedy [trial] clock pursuant to his authority under R.C.M. 707(c)." The exclusion of time included:

- 5 March 2022 to 8 March 2022 and
- 26 March 2022 to 22 April 2022.

(Id. at 5). Between 9 May 2022 and 14 June 2022, the government drafted and reviewed the six charges and 20 specifications in this case. (Id. at 5; *Entry of Judgment*, ROT, Vol. 1). On 15 June 2022, the 48 MDG/CC preferred the charges and specifications against Appellant. (App. Ex. at XVI at 5).

On 15 June 2022, 16 June 2022, 17 June 2022, 18 June 2022, and 20 June 2022, trial counsel requested trial defense counsel's availability for the Article 32 preliminary hearing. (Id.). Trial counsel informed defense counsel that "the government was prepared to proceed with

the hearing on 24 June 2022" but defense counsel stated they were unavailable for that date. (Id.). Trial defense counsel agreed to "schedule the preliminary hearing for 22 July 2022." (Id.).

On 30 June 2022, the SPCMCA "excluded 12 days from the 120-day speedy trial clock pursuant to his authority under R.C.M. 707(c)." (Id.). The exclusion of time included:

- 23 April 2022 to 4 May 2022.

(Id.). On 30 June 2022, the SPCMCA also appointed a preliminary hearing officer (PHO). (Id.). "The preliminary hearing was scheduled, and completed, on 22 July 2022." (Id.). Between 22 July 2022 and 29 August 2022, the PHO worked on the PHO report, and the base legal SJA requested regular status updates. (Id. at 6). The PHO completed the report on 29 August 2022. (Id.).

On 1 September 2022, the SPCMCA "excluded 66 days from the 120-day speedy trial clock pursuant to his authority under R.C.M. 707(c)." (Id. at 6). This exclusion included:

- 24 June 2022 to 21 July 2022 and
- 22 July 2022 to 29 August 2022.

(Id.).

Between 25 July 2022 and 13 September 2022, trial counsel coordinated with the four victim's counsel to determine their trial availability and requested potential court members. (Id. at 6). On 1 September 2022, the referral package was sent to the GCMCA's legal team for action. (Id.).

On 7 September 2022, the trial counsel requested trial defense counsel's availability for "arraignment, bifurcated motions, and trial." (Id.). On 8 September 2022, the GCMCA referred all the charges and specifications to a general court-martial. Trial counsel notified defense counsel of referral and requested their availability. (Id.). On 13 September 2022, trial defense counsel provided trial counsel their availability, and the parties agreed on trial dates. (Id.). "On

14 September 2022, trial counsel emailed an amended docketing request because one of the detailed [victim's counsel] was unavailable for the bifurcated motions hearing." (Id.).

On 15 September 2022, the court-martial arraigned Appellant. (Id.). On 31 October 2022, the court-martial held a motions hearing. (Id.). The trial on the merits commenced on 13 March 2022. (Id.)

In his findings of fact, the military judge adopted the timeline provided by trial counsel and agreed to by the parties as fact. "except for the time the P.H.O. took to complete his report; the Court does not exclude, the entire time the P.H.O. took to complete his report." (Id.). The military judge subtracted 8 days from the exclusion of time. (Id.).

Appellant filed a motion to dismiss for violation of speedy trial under R.C.M. 707; Article 10, UCMJ; and the Sixth Amendment. (App. Ex. II). The military judge denied relief on all three grounds. (App. Ex. XVI at 18.)

For purposes of Article 10, the military judge calculated that 451 days had elapsed between Appellant's entry into pretrial confinement and the commencement of trial on the merits. (Id. at 15.)

Standard of Review

"Whether an accused was denied his right to a speedy trial is a question of law we review de novo, deferring to the military judge's findings of fact unless those findings are clearly erroneous." United States v. Reyes, 80 M.J. 218, 226 (C.A.A.F. 2019) (internal citations omitted).

Law and Analysis

The government diligently investigated all allegations made against Appellant, and the delay between Appellant's pretrial confinement and the trial on the merits does not warrant relief

under Article 10, UCMJ. "[A]ny person subject to [the UCMJ] who is charged with an offense under this chapter may be ordered into arrest or confinement as the circumstances require." 10 U.S.C. § 810(a). "When a person subject to [the UCMJ] is ordered into arrest or confinement before trial, immediate steps shall be taken to inform the person of the specific offense of which the person is accused; and to try the person or to dismiss the charges and release the person." 10 U.S.C. § 810(b). Appellant was placed in pretrial confinement on 16 December 2024, and seven days later with his defense counsel at his side, Appellant was notified of the charges against him. Appellant experienced a 451-day delay in his case, but the government was diligent in investigating Appellant's case and relief is unwarranted.

A. Article 10, UCMJ only applies to the offenses for which Appellant was confined, and he was confined for crimes reported in December 2021.

MH reported allegations against Appellant on 15 December 2021, and he was put in pretrial confinement in response to those allegations. "For Article 10, UCMJ, to apply, confinement must be related to specific charges." United States v. Cooley, 75 M.J. 247, 257 (C.A.A.F. 2016) (citing United States v. Mladjen, 19 U.S.C.M.A. 159, 161 (C.M.A. 1969)). To determine which charges are "'in connection with confinement' for Article 10, UCMJ, purposes, military judges should look to the confinement order and related documents." Cooley, 75 M.J. at 258. In this case, the initial confinement order, dated 16 December 2021, stated the pretrial confinement was initiated for violations of Article 120, UCMJ (sexual assault), and Article 112, UCMJ (drunk on duty). (App Ex. III at 28). And the PCRO's Pretrial Confinement Review memorandum lists the offenses for which Appellant was being confined:

> For purposes of this hearing, [Appellant] is alleged to have committed the following offenses: Drunk on Duty (Article 112, UCMJ) on or about 1 December 2021; Sexual Assault (Article 120, UCMJ) on or about 29 August 2021; Unlawful Entry (Article 129, UCMJ) on or about 30 August 2021; and Conduct Unbecoming an

> Officer and a Gentleman (Article 133, UCMJ) on or about 29 August 2021.

(App. Ex. III at 30). The PCRO also noted, Appellant "is also pending court-martial charges preferred on 9 September 2021." (Id.) But he did not list the offenses from the 9 September 2021 charge sheet as reasons for the pretrial confinement. (Id.).

Appellant argues that "the military judge erred by excluding the offenses preferred on 9 September 2021 from Article 10's application." The military judge did not err. The PCRO likely included the original charge sheet and noted that other charges had been preferred to ensure a complete record, but the PCRO did not state that they formed a basis for pretrial confinement. Had the PCRO intended for some or all the offenses on the 9 September 2021 charge sheet to form the basis for confinement he would have listed them out with the same specificity that he used for the other alleged offenses.

Appellant also argues, "Paradoxically, the military judge did find that the 9 September 2022 offenses were covered under the R.C.M. 707 speedy trial clock as a function of Lt Col Hilton's placement in pretrial confinement." (App. Br. at 15). But it is not a paradox. Appellant misapprehends the different triggers for Article 10, UCMJ, versus R.C.M. 707. Article 10 is triggered upon arrest or confinement. But R.C.M. 707 is triggered, for purposes of this case, by "preferral of charges" ***or*** "imposition of restraint." R.C.M. 707(a)(1-2). Because offenses were preferred on 9 September 2021, the military judge correctly noted the start of the R.C.M. 707 clock.

Appellant was placed in pretrial confinement for violations of Article 112 (drunk on duty), Article 120 (sexual assault), Article 129 (unlawful entry), and Article 133 (conduct unbecoming an officer and a gentleman). Thus, these are the only offenses for which Article 10 relief can be given because Article 10 only applies to the charges for which Appellant was

confined. *See* Cooley 75 M.J. at 257. In Mladjen our superior court held that an accused's confinement date on the original charges "marked the beginning of the period for which the Government was accountable ... as to those charges" but the other, unrelated, charges still under investigation were not a part of such accountability because "a period of investigation is normally not part of the period for which the Government is accountable in determining the timeliness of prosecution, unless the suspect or accused is confined or restrained in connection with those charges." 19 C.M.A. at 161, 41 C.M.R. at 161.

B. Although the delay was 451 days, the government was reasonably diligent in investigating allegations against Appellant that were reported in December 2021.

To determine if the government was reasonably diligent in its investigation and bringing Appellant to trial, this Court uses the four-part test set out in Barker v. Wingo. Cooley, 75 M.J. at 259. (citing Barker v. Wingo, 407 U.S. 514 (1972)). This Court balances: "(1) the length of the delay; (2) the reasons for the delay; (3) whether the appellant made a demand for a speedy trial; and (4) prejudice to the appellant." Id. "None of these factors alone are a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." Reyes, 80 M.J. at 226 (internal citations omitted).

1. Length of the Delay

A 451-day delay is facially unreasonable and triggers further analysis under Barker. Appellant was placed in pretrial confinement on 16 December 2021 after MH reported new misconduct against Appellant – misconduct that was not preferred on 9 September 2021. The trial on the new misconduct for which he was placed in confinement, was set to commence on 13 March 2022. This Court measures the length of delay for Article 10 purposes from the date an accused entered pretrial confinement until commencement of the trial on the merits. United States v. Wilder, 75 M.J. 135, 138 (C.A.A.F. 2016); United States v. Danylo, 73 M.J. 183, 189

(C.A.A.F. 2014). For Article 10 purposes, the military judge correctly calculated that 451 days elapsed, and Appellant does not dispute the calculation on appeal. (App. Ex. XVI at 15; App. Br. at 15). The government agrees with the military judge that this delay triggered the Barker analysis. Reyes, 80 M.J. at 226 (451 days triggered the Barker analysis); Cooley, 75 M.J. at 260 (289 days was unreasonable in a complex investigation).

2. Reasons for the Delay

The government showed due diligence in this case by investigating MH's allegations. "[I]t is Government's responsibility to provide evidence showing the actions necessitated and executed in a particular case justified delay when an accused was in pretrial confinement." Cooley, 75 M.J. at 259. "[T]he Government has the right (if not the obligation) to thoroughly investigate a case before proceeding to trial." United States v. Cossio, 64 M.J. 254, 258 (C.A.A.F. 2007).

During the investigation into MH's allegations, OSI agents discovered that JR was a witness to MH's allegations and a victim herself. JR then provided OSI with names of additional witnesses that OSI followed up on. OSI reached out to Appellant's ex-wives and found additional allegation involving the women and their children. As OSI gathered information they followed up quickly, and they did not allow the investigation to linger. "Article 10, UCMJ, does not demand constant motion but does impose on the Government the standard of reasonable diligence in bringing the charges to trial." Reyes, 80 M.J. at 226 (citing Cooley, 75 M.J. at 259). The days or short weeks of "brief periods of inactivity" are "not fatal to an otherwise active prosecution." Wilson, 72 M.J. at 351. At no point did the government deliberately attempt to delay the trial or hamper the defense, rather OSI was trying to conduct a comprehensive investigation of Appellant. Barker, 407 U.S. at 531.

The investigation ended up discovering multiple victims with varying levels of legal representation to navigate, and the investigation had global reach because – as is the nature of the military – the witnesses moved duty locations. This became a complex case to navigate trying to locate witnesses and coordinate interviews. The government thoroughly investigated leads and proceeded in a reasonably diligent manner to bring the case to trial.

Appellant argues that canvas interviews should have been done during the 2020 investigation into EL's allegations. (App. Br. at 17). Reasonable diligence does not demand perfection, and although canvas interviews were not accomplished during EL's investigation, they may not have turned up any evidence. This argument speculates that these alleged victims, discovered during MH's investigation, would have been willing to discuss their allegations if OSI had approached them sooner. TH demonstrated reluctance to talk with OSI because her divorce decree appeared to prohibit her from discussing Appellant's misconduct without a subpoena. MH's allegations had not occurred at the time of the original investigation, but even if they had, MH waited almost four months to report her allegations out of fear she would not be believed. And JR did not discuss allegations that Appellant touched her buttocks until her daughter divulged allegations against Appellant. So, Appellant's argument that canvas interviews during EL's investigation would have found new victims is speculative.

3. Appellant invoked his right to a speedy trial.

Appellant demanded speedy trial once on 13 January 2022, 29-days after he entered pretrial confinement. This factor weighs in favor of Appellant.

4. Appellant did not experience prejudice warranting relief.

Appellant did not experience prejudice outside of the general anxiety caused by being in pretrial confinement. Prejudice "should be assessed in the light of the interests of defendants[,]

which the speedy trial right was designed to protect." Mizgala, 61 M.J. at 129. This Court evaluates three interests: "(1) preventing oppressive pretrial incarceration; (2) minimizing anxiety and concern of the accused; and (3) limiting the possibility that the defense will be impaired." Cooley, 75 M.J. at 262. Appellant does not articulate any specific anxiety, and Appellant's ability to mount a defense was not hindered by his confinement. While Article 10 relief can be given even without identifying a specific prejudice, this Court should decline to do so.

Appellant argues that he "suffered from particularized anxiety while in pretrial confinement." (App. Br. at 21). Appellant fails to pinpoint any particular anxiety at all. He claims, because he waited for months and did not know the specific allegations for which he was under investigation, he experienced more anxiety than normal. (App. Br. at 21). But he was aware of at least four offenses that he was being investigated for because they were read to him by the PCRO: drunk on duty, sexual assault of MH, unlawful entry into MH's home, and conduct unbecoming an officer and a gentleman. CAAF explained, "[W]e are concerned not with the normal anxiety and concern experienced by an individual in pretrial confinement, but rather with some degree of particularized anxiety and concern greater than the normal anxiety and concern associated with pretrial confinement." United States v. Wilson, 72 M.J. 347, 353 (C.A.A.F. 2013). Thus, because he knew the general nature of the crimes he was under investigation for, he was in the same position as any other accused in pretrial confinement with a pending investigation. His generalized anxiety does not amount to an Article 10 violation or warrant relief.

Appellant claims that his "the long delay in confinement thwarted [his] ability to prepare for his defense, especially given that [he] was not fully appraised of the charges that he faced

until 15 June 2022." (App. Br. at 21). Understanding that "[t]he inability of a defendant to adequately prepare his case is the 'most serious' interest to be considered when reviewing alleged speedy trial violations for prejudice," Appellant's defense was not hindered. Cooley, 75 M.J. 247, 262 (citing United States v. Wilson, 72 M.J. at 353). He was apprised of the charges and specifications on 15 June 2022, and the trial on the merits commenced on 13 March 2023. Thus, Appellant had 271 days to prepare for trial knowing the specifics for all 20 specifications. Appellant does not make any claims that his attorneys were unable to access evidence, witnesses, or him while in confinement. Appellant's defense was not hindered; so, relief under Article 10 is not warranted.

Although the 451-day delay was facially unreasonable, and Appellant demanded a speedy trial, the remaining factors favor the government. The government had good reason for the delay. And Appellant did not provide evidence of prejudice. His generalized anxiety does not warrant relief, and his defense was not hindered by the delay. The government was reasonably diligent in its investigation. This Court should deny this assignment of error.

III.

THE MILITARY JUDGE DID NOT ERR WHEN HE DENIED APPELLANT'S REQUEST FOR RELIEF UNDER R.C.M.707.

Additional Facts

The United States incorporates the facts from Issue II into Issue III.

Standard of Review

This Court reviews speedy trial claims de novo. United States v. Guyton, 82 M.J. 146, 151 (first citing Wilder, 75 M.J. at 138; and then citing Danylo, 73 M.J. at 186). But this Court reviews "decisions granting delay under R.C.M. 707, thereby rendering that time excludable for speedy trial purposes, for an abuse of discretion." Guyton, 82 M.J. at 151 (citing United States

v. Lazauskas, 62 M.J. 39, 41-42 (C.A.A.F. 2005)). "[I]n the absence of an abuse of discretion by the officer granting the delay, there is no violation of R.C.M. 707." Lazauskas, 62 M.J. at 42.

Law and Analysis

Appellant faced two sets of charges (initial and new), and each set of charges had their own R.C.M. 707 clock. Using the discretion granted to convening authorities under R.C.M. 707, the SPCMCA properly granted exclusions of time for the government, and Appellant was brought to trial within the 120-day clock for both sets of charges. Appellant does not challenge the calculations for the 120-day clock. He challenges the convening authority's discretion in granting the exclusions. The convening authority provided reasons for each brief exclusion of time, most of which revolved around interviews for newly discovered victims of Appellant. Under the discussion of R.C.M. 707(c)(1), "time to secure the availability . . . substantial witnesses, or other evidence" is a permissible reason to grant an exclusion. The convening authority acted within his discretion to grant the exclusions of time. With the exclusions of time, Appellant's right to a speedy trial under R.C.M. 707 was not violated.

A. Two different R.C.M. 707 clocks were triggered in Appellant's case, one for each set of charges, and the government brought both sets of charges to trial within 120-days.

Appellant faced two sets of charges (initial and new), and each set of charges had their own R.C.M. 707 clock. Both sets of charges were brought to trial within 120-days. "The accused shall be brought to trial within 120 days after the earlier of: (1) Preferral of charges; (2) The imposition of restraint . . . ; or (3) Entry on active duty . . . ." R.C.M. 707(a). The 120-day R.C.M. 707 clock stops upon arraignment. R.C.M. 707(b)(1). "When charges are preferred at different times, accountability for each charge shall be determined" based on preferral, pretrial confinement, or entry onto active duty for each charge. R.C.M. 707(b)(2). But both sets of

charges were brought to trial within the respective 120-day R.C.M. 707 clocks due to the convening authority's appropriate use of discretion granting exclusions of time.

The initial charges (Charge II, Specification 2; Charge III, Specification 3; Charge IV, Specification 1, Charge V, Specification 1) were preferred on 9 September 2021 triggering the R.C.M. 707 clock. On 15 March 2022, the convening authority withdrew and dismissed the initial charges and specifications; thus, resetting the speedy trial clock. Because Appellant was in pretrial confinement when the offenses were withdrawn and dismissed, "a new 120-day period begins on the date of the dismissal or mistrial." R.C.M. 707(b)(3)(A)(i). Thus, the R.C.M. 707 clock began anew on 16 March 2021. On 15 June 2022, these offenses were re-preferred and re-referred to a general court-martial using substantially the same evidence. (App. Ex. XVI at 5). The court-martial arraigned Appellant on 15 September 2022. Thus, the government needed to account for 184 days for the initial offenses. (Id. at 17).

Appellant's entry into pretrial confinement on 16 December 2021 triggered the R.C.M. 707 clock for the new offenses (Charge I, Specification; Charge II, Specifications 1, 3, 4, 5, 6; Charge III, Specifications 1, 2; Charge IV, Specification 2; Charge V, Specifications 2, 3, 4, 5; and Charge VI, Specification). The court-martial arraigned him on 15 September 2021. Thus, the government needed to account for 273 days for the new charges. (App. Ex. XVI at 17).

Appellant and the government agree that the military judge correctly calculated the duration of each speedy trial clock. (App. Br at 24). But Appellant challenges the exclusions of time that the convening authority authorized.

B. The convening authority operated within his discretion when he granted the government's exclusions of time.

The convening authority did not abuse his discretion by granting four exclusions of time from the R.C.M. 707 speedy trial clock. "Prior to referral, all requests for pretrial delay, together

with supporting reasons, will be submitted to the convening authority." R.C.M. 707(c)(1). The convening authority authorized the excusals before referral on 8 September 2022. Thus, he maintained proper authority to exclude time related to a delay. If a convening authority or military judge approves a pretrial delay, then that time is excluded. R.C.M. 707(c). "The decision to grant or deny a reasonable delay is a matter within the sole discretion of the convening authority or a military judge." R.C.M. 707(c)(1), Discussion. In this case, the convening authority approved four exclusions from the speedy trial clock for proper purposes as listed in the chart below.

1. The convening authority had good cause to grant the exclusion of time.

The convening authority had good cause to issue seven exclusions of time from the R.C.M. 707 clock in this case. Appellant relies heavily on a nonexistent requirement for "special" or "extraordinary" circumstances to occur before an exclusion of pretrial delay may be granted. (App. Br. at 17). But the Discussion of R.C.M. 707(c)(1) lists quite ordinary litigation events that permit a pretrial delay:

> time to enable counsel to prepare for trial in complex cases; time to allow examination into the mental capacity of the accused; time to process a member of the reserve component to active duty for disciplinary action; time to complete other proceedings related to the case; time requested by the defense; time to secure the availability of the accused, substantial witnesses, or other evidence; time to obtain appropriate security clearances for access to classified information or time to declassify evidence; or additional time for other good cause.

The ordinary reasons provided by the convening authority are permissible litigation reasons for an exclusion of time under R.C.M. 707. The SPCMCA approved seven exclusions of time and determined none of the exclusions constituted an undue delay. Each approval for an exclusion of

time was accompanied by a legal review laying out the reasons for each exclusion. The convening authority adopted each of those reasons in his approval.

Days Excluded	Dates Excluded and Reason for Exclusion
39 days	**20 December 2021 to 27 January 2022** This time accounts for the period between JR's first and second interviews. She requested victim's counsel, the request was approved, and she developed the attorney-client relationship before returning to OSI for an interview. (App. Ex. III at 95, 97).
25 days	**8 February 2022 to 4 March 2022** This time accounts for the period between OSI's first attempt to contact SS and the completion of her interview. OSI made several attempts to contact SS, and then the Detachments coordinated available manpower to conduct the interview. (App. Ex. III at 95, 97)
17 days	**9 March 2022 to 25 March 2022** This time accounts for the period between OSI's request for an interview with SH, and the interview being conducted. (App Ex III at 95, 97)
32 days	**5 March 2022 to 8 March 2022 and 26 March 2022 to 22 April 2022** This time accounts for the period between OSI's first attempt to contact TH and the date OSI provided the details of her interview. She requested a preti·ial subpoena because her divorce decree prohibited her from speaking with law enforcement about Appellant's misconduct. This time also includes the period between requesting an interview with TH's sons, AH and TH (11-year-old son). (App. Ex. III at 104-105, 107).
12 days	**23 April 2022 to 4 May 2022** This times accounts for the period between MH's victim's paralegal notifying OSI of a new infonnation from MH, OSI calling her, and then OSI detennining an in-person meeting was more appropriate. Then OSI organized the in-person meeting and conducted the interview. (App. Ex. III at 132, 134).
28 days	**24 June 2022 to 21 July 2022** This time accounts for the period between the government ready date and the defense counsel's ready date for the Aliicle 32 prelimina1y hearing. (App. Ex. III at 152-153).

38 days	**22 July 2022 to 29 August 2022** This time accounts for the period between the date of the Article 32 preliminary hearing and the date the PHO published his report. Appellant did not waive the Article 32 hearing. (App. Ex. III at 152-153).

Appellant claims that the exclusions were blanket exclusions of time, and they were not based upon intervals between events. (App. Br. at 25). It was not a blanket exclusion, and it was based on intervals between events. United States v. Nichols, 42 M.J. 715, 721 (C.A.A.F. 1995). This case is unlike cases like United States v. Proctor where the government requested a "blanket exclusion of time while the case would continue to be processed." 58 M.J. 792, 795 (A.F. Ct. Crim. App. 27 January 2003). In Proctor, the SJA requested an exclusion of time and "anticipated that the case would proceed through the Article 32 investigation, forwarding of charges, referral, and trial during the period purportedly excluded." Id. This Court held that was an impermissible blanket delay because it was "not logical that the government can be delayed and moving forward at the same time." Id. Here the government encountered actual delays while coordinating witness interviews. Some witnesses were not responsive or required attorney consultation before being interviewed – all of which require some amount of time. But the government worked to contact multiple witnesses at once and coordinated multiple interviews simultaneously with multiple OSI detachments worldwide to ensure the investigation was not unreasonably delayed. Thus, the convening authority's excusal was not a blanket delay but a legitimate excusal of time between two events and not an abuse of discretion.

2. The convening authority's delays were reasonable in length.

The length of the convening authority's excused delays were reasonable. This Court evaluates "the facts and circumstances of each case" to determine whether the delay was reasonable. Guyton, 82 M.J. at 151. None of the convening authority's delays were longer than

40 days, and with each interview or investigative step, OSI worked diligently to conduct the interviews and investigate all allegations of misconduct that arose against Appellant.

3. The convening authority was permitted to grant the exclusions ex parte and post hoc.

Appellant also claims that the government's ex parte application for approval of delay and the convening authority's after-the-fact excusal of the delay are an abuse of discretion. (App. Br. at 25). This Court should decline to take such a position. R.C.M. 707 "does not preclude after-the-fact approval of a delay by a convening authority that otherwise meets good-cause and reasonableness-in-length standards." United States v. Thompson, 46 M.J. 472, 475 (C.A.A.F. 1997). The convening authority here met both requirements as discussed above. Thus, the convening authority did not abuse his discretion by granting the exclusions ex parte and post hoc.

In Thompson, CAAF stated that "a post hoc request likely will be viewed with considerable skepticism if it appears to be a rationalization for neglect or willful delay," but such skepticism is unwarranted in this case. Id. at 475. The government took reasonable steps to investigate the allegations made by MH and the additional misconduct that flooded in with additional witness interviews. This is not a situation in which the government sat idly by while the R.C.M. 707 clock ran out of time. OSI diligently worked to contact witnesses and negotiate interview dates within very short time periods – most interviews were accomplished within 20 days of a request for an interview.

"Also, R.C.M. 707 does not preclude the convening authority from approving an ex parte request for a delay; it is the non-binding Discussion that recommends delays should not be granted ex parte." United States v. Heppermann, 82 M.J. 794, 803-804 (A.F. Ct. Crim. App. 28 September 2022). This Court in Heppermann then said, "The discussion does not elaborate on

the nature of this [recommendation], and [precedential] case law has not addressed the significance of this discussion." Id. (internal citations omitted) (alterations in the original). Although the R.C.M. 707's discussion recommends against ex parte excusals, the convening authority did not err or abuse his discretion by granting the government's excusal request without first consulting Appellant.

The military judge calculated 117 days of exclusions for the initial charges, but he subtracted 8 days for the delay in the PHO report. (App. Ex. XVI at 17). The government needed to account for 184 days. With the exclusions, the military judge ultimately decided only 75 days of the 120 days had elapsed (the government still had 45 days left before a violation occurred). (Id.) With these calculations, no R.C.M. 707 violation occurred for the initial charges. Id.

The military judge calculated 192 days of exclusions for the new charges. (Id.). But then he "subtracted 8 days from the excluded 39 days for the PHO to complete his report, bringing the number of excludable days to 184." Id. Thus, only 84 days of the 120-days elapsed and no violation of R.C.M. 707 occurred for the new charges. Id.

The convening authority's exclusion of time was for good cause and a reasonable in length. Thus, the convening authority did not abuse his discretion in granting it. The government did not violate the R.C.M. 707 speedy trial clock. This Court should deny this assignment of error and deny Appellant's requested relief.

IV.[6]

THE MILITARY JUDGE DID NOT ERR BY DENYING DEFENSE'S OBJECTION UNDER MIL. R. EVID. 615 TO ALLOW JR TO REMAIN IN THE COURTROOM DURING THE TESTIMONY OF MH.

Additional Facts

On 14 March 2023, trial defense counsel filed a motion to exclude two named victims, JR and MH from the courtroom during each other's respective testimonies. (App. Ex. XXXVII). Trial defense counsel later amended their position to only request the exclusion of JR (R. at 930). Without citing any case law in support of their position, trial defense counsel argued Mil. R. Evid. 615 allowed for the exclusion of JR. (App. Ex. XXXVII). That same day, special victim's counsel for JR filed an opposition motion objecting to her exclusion stating that under Mil. R. Evid. 615(d) and (e) JR could not be excluded because she was both "a person authorized by statute to be present" and "a victim of an offense from the trial of an accused for that offense." (App. Ex. XL). Trial government counsel objected to trial defense counsel's request, but did not file a written response. (R. at 913.)

Following oral argument, the military judge denied trial defense counsel's motion. (R. at 934.) He found that JR was a victim as defined by 10 U.S.C. § 806b and trial defense counsel had not met their burden under Mil. R. Evid. 615 to exclude JR from the "presentation of in-court testimony of MH" (Id.) Specifically, he determined JR is "a designated victim of an offense of the accused to which he currently stands trial and therefore is authorized to be present" and "this court has not been presented with clear and convincing evidence, such that the

[6] Issue IV is raised in accordance with United States v. Grostefon, 12 M.J. 431 (1982).

testimony of JR would be materially altered if she heard the testimony of MH" (Id.) The military judge did, however, allow "liberal cross-examination on the issue." (Id.)

During his cross-examination of JR, trial defense counsel asked if she was the mother of MH, if she was present during MH's testimony, and if she believed Appellant sexually assaulted her daughter – JR answered affirmatively to all questions. (R. at 1853-55).

Standard of Review

A military judge's ruling under Mil. R. Evid. 615 will not be disturbed except for a clear abuse of discretion. United States v. Morrison, 52 M.J. 117, 122 (C.A.A.F. 1999). "The abuse of discretion standard is a strict one, calling for more than a mere difference of opinion." United States v. McElhaney, 54 M.J. 120, 130 (C.A.A.F. 2000). "A military judge abuses his discretion when: (1) the findings of fact upon which he predicates his ruling are not supported by the evidence of record; (2) if incorrect legal principles were used; or (3) if his application of correct legal principles to the facts is clearly unreasonable." United States v. Ellis, 68 M.J. 341, 344 (C.A.A.F. 2010) (citation omitted).

Law and Analysis

The military judge did not abuse his discretion in allowing JR to remain in the courtroom during the testimony of MH Mil. R. Evid. 615 provides that either at the request of a party or sua sponte, "the military judge must order witnesses excluded so that they cannot hear other witnesses' testimony." Mil. R. Evid. 615. However, a witness may not be excluded if the "person is authorized by statute to be present" or they are a "a victim of an offense from the trial of an accused for that offense, unless the military judge, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that hearing or proceeding." Mil. R. Evid. 615(d) and (e).

A victim under Article 6b "means an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under" the UCMJ. 10 U.S.C. § 806b(b). Article 6b also confers the "right not to be excluded from any public hearing . . . unless the military judge . . . after receiving clear and convincing evidence, determines that testimony by the victim of an offense under this chapter would be materially altered if the victim heard other testimony at that hearing." 10 USC §806b(a)(3).

Appellant personally argues that the military judge's ruling was an abuse of discretion and that allowing liberal cross-examination was insufficient relief. (App. Br., Appendix at 2.) Appellant relies on trial defense counsel's argument that Mil. R. Evid. 615(e) did not apply to JR because she was "testifying in part as a witness, not a victim" and, even if she was a victim for the entirety of her testimony, there was clear and convincing evidence that JR's testimony would be materially altered if JR was not excluded. (Id.) Appellant is incorrect.

As the military judge determined, JR was a victim under Article 6b. She was the named victim in three specifications of abusive sexual contact in which Appellant was the named perpetrator. (*Charge Sheet*, ROT, Vol. 1.) As a named victim, she fell under two enumerated exceptions of Mil. R. Evid. 615. First, she was authorized by statute to be present. Mil. R. Evid. 615(d). Article 6b(c) clearly provides that a victim has the right not to be excluded from a hearing. 10 U.S.C. § 806b(a)(3). And second, she was a victim of an offense from the trial of an accused for that offense. Mil. R. Evid. 615(e).

Appellant disagrees and focuses his argument on the language of subsection (e) of Mil. R. Evid. 615 – "*for that offense.*" (App. Br., Appendix at 2.) Specifically, that JR was not a victim of the offense that MH's testimony was regarding and, therefore, she could be excluded. This is illogical because it is preceded by the language "*from the trial*." Mil. R. Evid. 615(e)(emphasis

added). As a named victim in three specifications, she was a victim of an offense from *the* trial for that offense. Notably, Appellant and trial defense counsel ignored the exception under subsection (d) of Mil. R. Evid. 615, regarding a statutory right to be present, and Article 6b(c) which plainly provides a victim has the right not to be excluded from *any hearing*. Mil. R. Evid. 615(d), 10 U.S.C. § 806b(a)(3)(emphasis added). Under either exception, JR had the right not to be excluded from any portion of Appellant's court-martial.

Additionally, while both these exceptions allow for a military judge to exclude a victim if they receive clear and convincing evidence that the victim's testimony would be materially altered if the victim heard other testimony at that hearing, Appellant failed to meet that burden. 10 U.S.C. § 806b(a)(3), Mil. R. Evid. 615(e). Clear and convincing evidence is "that weight of proof which produces in the mind of the factfinder a firm belief or conviction that the allegations in question are true." United States v. Martin, 56 M.J. 97, 103 (C.A.A.F. 2001)(citations omitted).

The military judge ruled that Appellant did not present the court with clear and convincing evidence demonstrating how JR's testimony would be materially altered. (R. at 934.) During oral argument, trial defense counsel declined to address the specifics of how JR's testimony would be materially altered because he did not want to "surrender what advantage" he believed they had in trial. (R. at 929.) As the military judge found, this proffer, or lack thereof, did not amount to clear and convincing evidence that JR would materially alter her testimony. (R. at 934.) And, even on appeal with the benefit of having heard JR's testimony, Appellant only broadly argues that JR's testimony regarding MH was a "near-duplicate account" of MH's initial report regarding the sexual assault. (App. Br., Appendix at 2.) Appellant wholly fails to meet his burden and identify any specifics to demonstrate that the findings of fact upon which

the military judge relied were not supported by the evidence of record. Ellis, 68 M.J. at 344 (citation omitted).

Additionally, the military judge granted Appellant liberal cross-examination of JR. (R. at 934.) Yet, his trial defense counsel only chose to ask whether she was present during MH's testimony and did not ask what impact, if any, her presence during that testimony had on JR's in-court testimony – presumably because there was no impact.

Finally, even if this Court determines the military judge should have excluded JR, the error was harmless. *See* United States v. Langston, 53 M.J. 335, 338 (C.A.A.F. 2000) (holding a harmless-error analysis is appropriate when considering an appellant's objection to the presence of witnesses.) While JR did testify on the merits of the contested charges, the record makes clear that her pretrial statements were available to defense for impeachment. *See* Langston, 53 M.J. 335 at 338 (finding harmless error when pretrial statements and testimony were available for impeachment). As a result, there was no "reasonable possibility" that JR's testimony was materially altered by being present during MH's testimony.

Because the military judge's ruling was not an abuse of discretion, this Court should reject Appellant's assignment of error.

V.[7]

THE MILITARY JUDGE'S INSTRUCTION REGARDING EVIDENCE ADMITTED UNDER MIL. R. EVID. 413 WAS NOT ERROR AND APPELLANT WAS NOT PREJUDICED.

Additional Facts

The government provided notice to Appellant of their intent to present testimony of Capt HC pursuant to Mil. R. Evid. 413. Appellant filed a motion and objection to admission of

[7] Issue V is raised in accordance with United States v. Grostefon, 12 M.J. 431 (1982).

the testimony. (App. Ex. XXIII). The government responded in support of its admission. (App. Ex. XXIV).

During a hearing pursuant to Article 39(a), UCMJ, Capt HC testified to the following. (R. at 375-425.) In July 2020, she was working as a nurse where Appellant had been a surgeon, and she went to his house to attend a party that Appellant's wife was hosting for people in the unit. (R. at 377.) When everybody at the party went inside the house except for Capt HC and Appellant, he started taking photographs of her without her knowing it. (R. at 378.) Appellant then showed her the photos of her face and torso and said she looked beautiful. (R. at 379.) Capt HC was uncomfortable, so she immediately told Appellant's wife that he was making Capt HC uncomfortable. (R. at 379-80.) Capt HC was also uncomfortable about possible fraternization allegations, because junior enlisted members were also coming to the party soon. (R. at 380-81.) When Capt HC said she was going to leave the party, Appellant insisted on walking her out. (R. at 381.) Capt HC said, "No, you don't need to," but Appellant did so anyway. (Id.) They were alone walking through the hallway to the front door. (Id.) Once at the front door, Capt HC tried to open it, but Appellant slammed his hand on the door, put his hand on Capt HC's face, tried to kiss her on the side of her face, and put his hand in her pants and underpants. (R. at 382-83.) Capt HC got Appellant's hand outside of her underpants and pants, opened the door, got out, slammed the door shut, ran to her car, and drove home, crying the entire time. (R. at 383-84.)

During the subsequent extensive oral argument regarding admissibility, the parties and the Court discussed United States v. Wright, 53 M.J. 476 (C.A.A.F. 2000), and Mil. R. Evid. 403. (R. at 426-53.) The military judge ruled that the testimony was admissible pursuant to Mil. R. Evid. 413. (App. Ex. XXXIII.)

During the findings phase of the court-martial, Capt HC testified regarding the incident at Appellant's house from July 2020 when he inappropriately touched her. (R. at 1950-2000.)

The military judge provided the following instruction, verbatim from the *Military Judges' Benchbook*, to the court-members:

> Uncharged Sexual Offense. You heard evidence that the accused may have committed another offense of abusive sexual contact upon [HC]. The accused is not charged with this offense. You may consider the evidence of this offense for its bearing on any matter to which it is relevant, to include its tendency, if any, to show the accused's propensity to engage in sexual offenses.
>
> However, evidence of another sexual offense, on its own, is not sufficient to prove the accused guilty of a charged offense. You may not convict the accused solely because you believe he committed another sexual offense or offenses or solely because you believe the accused has a propensity to engage in sexual offenses. Bear in mind that the government has the burden to prove that the accused committed each of the elements of each charged offense.

(R. at 2312; Department of the Army Pamphlet (D.A. Pam.) 27-9, *Military Judges' Benchbook*, para. 7-13-1 (29 February 2020).) Immediately before and immediately after that instruction, the military judge reminded the court-martial members that the burden is on the prosecution to prove guilt beyond a reasonable doubt. (Id.)

As Appellant acknowledges, his trial defense counsel "did not object to this instruction or offer an amendment to the instruction…." (App. Br., Appendix at 4; R. at 2279.)

Standard of Review

This Court reviews de novo whether court-martial members were properly instructed, as a matter of law. United States v. Killion, 75 M.J. 209, 214 (C.A.A.F. 2016). A military judge's instructions are evaluated "in the context of the overall message conveyed" to the members. United States v. Hills, 75 M.J. 350, 357 (C.A.A.F. 2016) (internal citation omitted).

Law

Mil. R. Evid. 413 states, "(a) *Permitted Uses*. In a court-martial proceeding for a sexual offense, the military judge may admit evidence that the accused committed any other sexual offense. The evidence may be considered on any matter to which it is relevant."

Analysis

Appellant personally assigns error with the military judge's instruction to the court-martial members regarding Mil. R. Evid. 413, because the military judge did not instruct the court-martial members that the uncharged misconduct had to be proven by a preponderance of the evidence. (App. Br., Appendix at 3-6.) His assignment of error is without merit.

As a threshold matter, we note that Appellant is not challenging the military judge's admission of the evidence. And Appellant is not alleging his trial defense counsel provided ineffective assistance of counsel by failing to object to the military judge's instruction on Mil. R. Evid. 413 evidence.

Appellant contends the military judge's propensity instruction for Mil. R. Evid. 413 evidence was "paradoxically" given after the military judge reminded the court-martial members of the prosecution's burden of proving charged crimes beyond a reasonable doubt. (App. Br., Appendix at 3.) However, there was no error because the military judge's instruction was verbatim from the *Military Judges' Bench Book*. The Court of Appeals for the Armed Forces (CAAF) has found the use of Mil. R. Evid. 413 propensity evidence to be constitutional. Wright, 53 M.J. at 483.

In fact, CAAF has found that providing instructions on two different burdens of proof – preponderance of the evidence for Mil. R. Evid. 413 evidence and beyond a reasonable doubt for charged crimes – was contradictory. Hills, 75 M.J. 357. In fact, the Hills opinion stated that

providing only the higher burden of beyond a reasonable doubt protected the appellant from error:

> The instruction clearly told the jury that all offenses must be proven beyond a reasonable doubt, even those used to draw an inference of propensity. Thus, there was no risk the jury would apply an impermissibly low standard of proof.

Id. (quoting People v. Villatoro, 54 Cal. 4th 1152, 144 Cal. Rptr. 3d 401, 281 P.3d 390, 400 (Cal. 2012)).

In Appellant's case, the military judge never used the term "preponderance of the evidence" when instructing the court-martial members; he only used "beyond a reasonable doubt." Therefore, like the judge in Villatoro, the military judge in Appellant's case only instructed the members on the higher burden of proof beyond a reasonable doubt. Thus, even if, for argument's sake, there was an error in the military judge's instruction, it was prejudice to the prosecution, not against Appellant. And because the court members acquitted Appellant of five of six Specifications in violation of Article 120, UCMJ, in Charge II (R. at 2484-92), it is clear they held the prosecution to their burden of proof and were not swayed to convict by the Mil. R. Evid. 413 evidence or any instructional error. Schroder, 65 M.J. at 57.

Because the military judge's instruction was not erroneous, this Court should deny Appellant's assignment of error.

CONCLUSION

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

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CERTIFICATE OF FILING AND SERVICE

I ce1iify that a copy of the foregoing was delivered to the Comi and the Air Force Appellate Defense Division on 27 Januaiy 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	M**OTION FOR ENLARGEMENT OF TIME TO FILE REPLY BRIEF OUT OF TIME**
v.	)	Before a Special Panel
Lieutenant Colonel (O-5), **WILLIAM M. HILTON,** United States Air Force, *Appellant.*	)	No. ACM 40500
	)	31 January 2025

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 an enlargement of time to file a reply to the Government's Answer filed with this Court on 27 January 2025. Appellant requests an enlargement for a period of 21 days, which will end on **24 February 2025**. The record of trial was docketed with this Court on 3 August 2023. From the date of docketing to the present date, 547 days have elapsed. On the date requested, 571 days will have elapsed.

On 15 September 2022; 31 October 2022; 19 January 2023; 13 – 17 March 2023; and 19 – 24 March 2023, Appellant was tried by a general court-martial at Royal Air Force Lakenheath, United Kingdom. Consistent with his pleas, the court-martial convicted Appellant of one charge and one specification of drunk on duty in violation of Article 112, Uniform Code of Military Justice (UCMJ); one charge and one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and three specifications of conduct unbecoming of an officer in violation of Article 133, UCMJ. R. at 278 – 280. Contrary to his pleas, the panel convicted Appellant of one charge and one specification of sexual assault in violation of Article 120, UCMJ. Appellant was acquitted of five specifications of abusive sexual contact in violation of Article 120, UCMJ;

one charge and three specifications of assault consummated by battery in violation of Article 128, UCMJ; one specification of unlawful entry in violation of Article 129, UCMJ; and one charge and specification of pandering by enticement in violation of Article 134, UCMJ. R. at 2484 – 2486. The military judge sentenced Appellant to 40 months of confinement, dismissal, and a reprimand. R. at 2744 – 2746. The convening authority took no action on the findings or sentence adjudged by the court-martial. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Lt Col William M. Hilton*, dated 12 April 2023.

The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. Appellant is not currently in confinement. Mr. Frank Spinner is lead counsel.

Undersigned counsel is currently assigned 20 cases; 9 cases are pending initial AOEs before this Court. Undersigned military counsel's top priorities before this Court are as follows:

1) *United States v. Sanger*, ACM S32773 – The record of trial consists of two electronic volumes. The transcript is 141 pages. There are four prosecution exhibits, one defense exhibit, and four appellate exhibits. This case is on its eighth enlargement of time.
2) *United States v. Licea*, ACM 40602 - The record of trial consists of seven electronic volumes, and the transcript is 173 pages. There are 12 prosecution exhibits, five defense exhibits, 22 appellate exhibits, and one court exhibit. This case is on its seventh enlargement of time.
3) *Torres Gonzalez*, ACM 24001 - The record of trial consists of six volumes and a 608-page transcript. There are 46 prosecutions exhibits, eight defense exhibits, and 25 appellate exhibits. This case is on its seventh enlargement of time.

Through no fault of Appellant, his retained counsel has been working on other assigned matters and have been unable to complete work on a reply brief. On 27 January 2025, Mr. Spinner was in a

Dubay hearing for *United States v. Sherman* which took place at Fort Leavenworth, Kansas. Mr. Spinner did not return home from this until the afternoon of 29 January 2025. These circumstances furnish good-cause to file this motion out of time because this hearing occupied Mr. Spinner's full attention at the time that the Government filed its Answer. An enlargement of time is further justified because of other priorities that Mr. Spinner must balance along with this case. Mr. Spinner will be preparing for a special petition before the Court of Appeals for the Armed Forces (C.A.A.F.) in *United States v. Serjak* which will take up much of his time over the next few days. Additionally, Mr. Spinner has two clemency and parole hearings on 5 February 2025 which cannot be rescheduled. Both of this will involve Mr. Spinner preparing witnesses. Mr. Spinner does not anticipate being able to do any meaningful work on this case until 6 February 2025. This, along with the number of issues raised in this case, requires additional time to file a reply brief.

Undersigned military counsel has recently been detailed to *United States v. Cook*, a case which the C.A.A.F. granted for review on 29 January 2025. The grant brief and joint appendix are due for that case on 19 February 2025. Additionally, counsel has been hard at work on an Assignment of Errors in *United States v. Sanger*. That case has presented wide complexity, and counsel anticipates raising five errors before this Court. Given this, counsel has worked through the previous two weekends on it. These efforts have been strained by medical issues that one of counsel's close family members has experienced which has required counsel to drive to the Walter Reed Medical Center three days a week for treatment during hours of operation. Accordingly, an enlargement of time is necessary for detailed counsel to complete work on a reply brief in this case.

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

Respectfully submitted,

[redacted]

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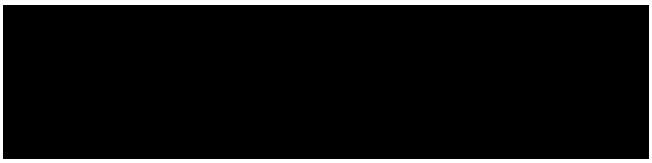
CERTIFICATE OF FILING AND SERVICE

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 31 January 2025.

Respectfully submitted,



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4 Februaiy 2025

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

UNITED STATES, *Appellee*, v. Lieutenant Colonel (0-5) WILLIAM M. HILTON, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELIANT'S MOTION FOR ENLARGEMENT OF TIME ACM40500 Special Panel

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 Enlai·gement of Time that Appellant made out of time, to submit a reply brief to the Government's Answer to Assignments ofEnor brief.

The United States respectfully maintains that sho1t of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to complete his briefing to this Comt. If Appellant's new delay request is granted, the defense delay in this case will be 571 days in length. Appellant's more than a year and a half long delay ensures this Court will not be able to issue a decision that complies with our superior Comt's appellate processing standai·ds. Appellant consumed the entire 18-month standard for this Comt to issue a decision, which leaves no time for this Comt to perfo1m their separate statuto1y responsibilities.

WHEREFORE, the United States respectfitlly requests that this Comt deny Appellant's enlai·gement motion.

[redacted]

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CERTIFICATE OF FILING AND SERVICE

I ce1iify that a copy of the foregoing was delivered to the Court, to Civilian Defense Counsel, and to the Air Force Appellate Defense Division on 4 Febmaiy 2025.

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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40500**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
William M. HILTON	)	
Lieutenant Colonel (O-5)	)	
U.S. Air Force	)	
Appellant	)	**Special Panel**

This court specifies the following issue for briefing in the above-captioned case:

> WHETHER APPELLANT'S PLEA OF GUILTY TO SPECIFICATION 2 OF CHARGE V WAS PROVIDENT.

Accordingly, it is by the court on this 6th day of February, 2025,

ORDERED:

Appellant and Appellee shall file briefs on the specified issue with this court. Briefs should focus on whether Appellant's statements satisfied the element that being drunk under these circumstances constituted conduct unbecoming an officer and a gentleman. Both briefs are due not later than **24 February 2025**. No reply briefs for this issue will be permitted without leave from the court.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**UNITED STATES' ANSWER TO SPECIFIED ISSUE**
v.	)	Before a Special Panel
Lieutenant Colonel (O-5) **WILLIAM M. HILTON** United States Air Force *Appellant.*	)	No. ACM 40500
	)	24 February 2025

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

SPECIFIED ISSUE PRESENTED

WHETHER APPELLANT'S PLEA OF GUILTY TO SPECIFICATION 2 OF CHARGE V WAS PROVIDENT.

STATEMENT OF CASE

In accordance with his pleas, the military judge found Appellant guilty of one charge and one specification of being drunk on duty (in violation of Article 112, UCMJ), one charge and one specification of unlawful entry (in violation of Article 129, UCMJ), and one charge and three specifications of conduct unbecoming an officer and a gentleman (in violation of Article 133, UCMJ).[1] (*Entry of Judgment*, dated 13 July 2023, ROT, Vol. 1). Contrary to his pleas, a panel of officer members sitting as a general court-martial found Appellant guilty of one charge and one specification of sexual assault (in violation of Article 120, UCMJ). (Id.).

[1] As discussed in the government's previous filing, Appellant pleaded guilty by exceptions to Specification 3 of Charge V, conduct unbecoming an officer and a gentleman (a violation of Article 133, UCMJ). (*Entry of Judgment*, ROT, Vol. 1). The panel found Appellant guilty of the excepted words; thus, Appellant was found guilty as charged of Charge V, Specification 3. (Id.).

The military judge sentenced Appellant to a dismissal, 40 months confinement, and a reprimand. (Id.). The military judge awarded Appellant 464 days (approximately 15 months) of pretrial confinement credit. (Id.).

STATEMENT OF FACTS

Appellant pleaded guilty to Specification 2 of Charge V, conduct unbecoming an officer, in violation of Article 133, UCMJ. (R. at 279). The military judge read the following elements to Appellant:

> [(1)] That between on or about 4 July 2020 and on or about 30 September 2020, at or near Royal Air Force Lakenheath, United Kingdom, on divers occasions, you did certain acts, to wit: were drunk in the presence of subordinate members of the 48th Medical Group, Royal Air Force Lakenheath, United Kingdom; and
>
> [(2)] that under the circumstances, [Appellant's] conduct was unbecoming an officer and a gentleman.

(R. at 320). The military judge also informed Appellant of the relevant definitions, specifically the definitions for "unbecoming" conduct and "drunk." (R. at 288, 307). The military judge defined "unbecoming" as "behavior more serious than slight and of a material and pronounced character. It means conduct morally unfitting and unworthy, rather than merely an opposite or unsuitable misbehavior, which is more than opposed to good taste or propriety." (R. at 307). In relevant part, the military judge defined "drunk" as "the state of intoxication by alcohol that is sufficient to impair the rational and full exercise of mental or physical faculties." (R. at 288). During the guilty plea inquiry, Appellant admitted that he was drunk in front of his subordinates – some of whom were enlisted – on two different occasions, once on 4 July 2020 and another time on 3 October 2020, and that conduct was unbecoming of a commissioned officer.

A. Occasion 1: Conduct Unbecoming an Officer and a Gentleman on 4 July 2020

Appellant explained to the military judge that he visited his neighbors' house in Elveden, United Kingdom for a Fourth of July celebration that lasted from 3 July 2020 until 5 July 2020. (R. at 325). Appellant agreed that Elveden, United Kingdom was 15 minutes away from RAF Lakenheath, and he considered it "at or near RAF Lakenheath." (R. at 322). He also admitted that 3 July 2020 and 5 July 2020 were on or about 4 July 2020, or within the range charged. (R. at 349).

While at the party, he "drank to excess and became drunk." (R. at 321). Appellant was so drunk that he was slurring his words, and his balance was impaired. (R. at 323). He claimed, "I don't think my speech was unintelligible, but it was not as crisp . . . I didn't fall down. . . . Also, I wasn't stumbling, but my gait, my balance was impaired. That led me to believe that I was drunk." (R. at 323). He said, "I was drunk[,] and I was clumsy." (R. at 325).

Members of the 48th Medical Group also attended the party, and Appellant interacted with them. (R. at 321, 325). Appellant explained that "no one from the 48th Medical Group was there who [was] senior to" him, (R. at 327), and approximately two to four subordinates witnessed him in a drunken state, (R. at 326, 331). Appellant remembered that two of the subordinates in attendance were senior noncommissioned officers and one was a nurse with whom Appellant worked in the operating room. (R. at 326, 331).

Appellant admitted that, as a senior commissioned officer, "[M]y drunkenness in front of them degraded my standing as an officer in their eyes of their image of who I am, what I should be as an officer and me personally." (R. at 333). Appellant also admitted, "Being drunk in the presence of members, especially subordinate members of my unit, the 48th Medical Group, who rely on my leadership, especially in the operating room, being drunk in their presence, in my

mind, would degrade their confidence in me as a surgeon." (R. at 331). Appellant explained that a subordinate seeing his drunken behavior could "copy their mental construct of me onto another officer and that would impact the officer corps, not just me. It's not just isolated to me." (R. at 332).

B. Occasion 2: Conduct Unbecoming an Officer and a Gentleman on 3 October 2020

On 3 October 2020,[2] Appellant's wife, DM, hosted a "girls' night" at Appellant's house, and she invited three of Appellant's subordinates from the 48th Medical Group to the event. (R. at 321). The subordinates included a civilian contractor neurology technician, the unit's enlisted First Sergeant and operating room nurse, and a subordinate commissioned officer and nurse. (R. at 337-338). Although the event occurred at his home, Appellant was not invited to the "girls' night," but he still walked into and out of the event as he drank alcohol. (R. at 340). "I was in the living room. They were having their get-together in the dining room. I would go in there occasionally and they would see me." (R. at 340).

While his subordinates were socializing with DM, Appellant "drank to excess and became drunk in their presence." (R. at 321). "I was clumsy with my behavior, my words may have been slurred. I just remember feeling drunk. I remember drinking two or three, maybe -- at maximum, maybe four mixed drinks and that is sufficient to make me feel like I am drunk []." (R. at 336). Appellant again admitted that getting drunk in front of his subordinates could affect their view of him as an officer. "Because of that behavior, I can see how it could easily influence their idea of me, concept of me, and in the future, it may seriously compromise my ability as an officer, basically, to complete the mission." (R. at 340).

[2]Appellant admitted that "3 October 2020 . . . is on or about 30 September 2020." (R. at 322).

ARGUMENT

APPELLANT'S PLEA TO CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN (CHARGE V, SPECIFICATION 2) WAS PROVIDENT.

Standard of Review

A military judge's decision to accept a guilty plea is reviewed for an abuse of discretion and questions of law arising from the guilty plea are reviewed de novo. *See* United States v. Inabinette, 66 M.J. 320, 322 (C.A.A.F. 2008) (finding a provident plea); United States v. Eberle, 44 M.J. 374, 375 (C.A.A.F. 1996) (same). A military judge can abuse this discretion "if he fails to obtain from the accused an adequate factual basis to support the plea – an area which [the Court must] afford significant deference." Inabinette, 66 M.J. at 322 (citation omitted).

Law and Analysis

The military judge did not abuse his discretion when he accepted – as provident – Appellant's plea to conduct unbecoming an officer and a gentleman (Charge V, Specification 2). When reviewing the adequacy of an appellant's plea, this Court must afford the military judge "significant deference," Inabinette, 66 M.J. at 322, and uphold a guilty plea unless there is a "substantial basis" in law and fact for questioning the plea. *See* United States v. Hiser, 82 M.J. 60, 64 (C.A.A.F. 2022) (citing United States v. Prater, 32 M.J. 433, 436 (C.M.A. 1991)). Here, no "substantial basis" in law or fact exists to question Appellant's plea because the military judge developed a strong factual basis to support each element of and the definitions for the offense of conduct unbecoming an officer. Id.

During the guilty plea, the military judge must ensure an accused understands the facts (*i.e.*, what he did) that support a guilty plea, be satisfied that the accused understands the law applicable to his facts (*i.e.*, why he is guilty), and conclude that he is actually guilty. *See* United

States v. Care, 18 U.S.C.M.A. 535, 541 (C.M.A. 1969). To elicit the factual predicate from Appellant, the military judge here diligently and properly marched through each element of the offense and asked multiple clarifying questions, while differentiating the conduct of both incidents. (R. at 321-342). The military judge therefore ensured Appellant admitted to the facts that demonstrated his criminality, that Appellant knew what he was pleading guilty to, and that Appellant acknowledged he was actually guilty.

"The factual predicate is sufficiently established if the factual circumstances as revealed by the accused himself objectively support that plea." United States v. Castro, 81 M.J. 209, 215 (C.A.A.F. 2021) (citations omitted). Appellant's admissions objectively support the plea. Appellant admitted to each element of this offense, and explained during the guilty plea inquiry that his drunken behavior in front of subordinates seriously deteriorated his authority, compromised their view of him as an officer, jeopardized the subordinates' view of other officers ("It's not just isolated to me"), and therefore qualified as conduct unbecoming an officer and gentleman. "Conduct violative of [Article 133] is . . . action or behavior in an unofficial or private capacity which, in dishonoring or disgracing the officer personally, seriously compromises the person's standing as an officer." Manual for Courts-Martial, United States, pt. IV, ¶ 90.c.2 (2019 ed.). "Conduct unbecoming disgraces the officer personally or brings dishonor to the military profession such as to affect his fitness to command the obedience of his subordinates to accomplish the mission." United States v. Pitman, No. ACM 37453, 2011 CCA LEXIS 93, *24-25 (A.F. Ct. Crim. App. 19 May 2011) (unpub. op.) (internal citations and quotations omitted). Appellant's drunken conduct brought not just dishonor, but seriously compromised Appellant's standing as an officer and affected his fitness to command the obedience of his subordinates.

During both the 4 July 2020 and 3 October 2020 incidents, Appellant admittedly drank so much that his speech was significantly hindered, he was visibly "clumsy," and his balance was impaired. He drank to excess in front of two to four subordinates on each occasions – so at least four, though likely eight, subordinates saw him obviously drunk. He regularly worked closely with these medical professionals, and their trust in him as an officer and medical practitioner was paramount not just for mission success, but patient safety as well. By drinking to excess in front of these subordinates and interacting with them in an obviously drunken state, Appellant acted with a lack of decorum that disgraced him personally and left questions about his professionalism as an officer (and medical professional). Accordingly, Appellant's recitation of the relevant facts provided a more-than-adequate factual basis to support the plea, and the military judge's acceptance of that plea should be afforded significant deference. *See* Inabinette, 66 M.J. at 322.

Though not all cases of mere drinking alcohol in front of a subordinate could rise to the level of conduct unbecoming an officer, the conduct here—fully supported by the record—no doubt did. "[N]ot every deviation from the high standard of conduct expected of an officer constitutes conduct unbecoming an officer." United States v. Shober, 26 M.J. 501, 503 (A.F.C.M.R. 1986). For example, in United States v. Murchison, the appellant wore his flight suit improperly in the presence of enlisted members on a commercial aircraft while traveling home, and this Court decided that such conduct did not rise to the level of conduct unbecoming of an officer. *See id*., No. ACM 32412, 1997 CCA LEXIS 442, *3 (A.F. Ct. Crim. App. 20 August 1997) (unpub. op.). Notwithstanding Murchison, military courts regularly highlight that proper superior-subordinate relationships within a unit are "vital to discipline in the armed forces." United States v. Adames, 21 M.J. 465, 467-468 (C.M.A. 1986). The appellant in

Adames was convicted of fraternization under Article 134, UCMJ, as well as conduct unbecoming of an officer because of his unprofessional interactions with subordinate trainees at a party. Id. Subordinates testified that the appellant "should not have attended the party because he was an officer." Id. Appellant's conduct is analogous to Adames given his manifest lack of decorum, professionalism, and bearing. *See, e.g.*, United States v. Lofton, 69 M.J. 386, 387 (C.A.A.F. 2011) (senior officer violated Article 133 by making sexual comments to an enlisted woman trying to start an unprofessional relationship with her); United States v. Rogers, 54 M.J. 244, 245 (C.A.A.F. 2000) (senior officer violated Article 133 by developing an unprofessional relationship with a subordinate member of his command); United States v. McGlone, 18 C.M.R. 525, 535 (C.M.A. 1954) (officer violated Article 133 when he drank to excess with a subordinate and fell asleep on a cot with her); United States v. Taylor, No. 39978 (f rev), 2022 CCA LEXIS 196, *12 (A.F. Ct. Crim. App. 30 March 2022) (unpub. op.) (officer's guilty plea for violating Article 133 by performing a lap dance in front of multiple spouses of enlisted Airmen was provident); United States v. Cahill, No. ACM 32439, 1997 CCA LEXIS 187, *3-4 (A.F. Ct. Crim. App. 16 June 1997) (unpub. op.) (officer's plea to Article 133 was provident when he drank, gambled at a casino, and went to a strip club with five enlisted members, and told them to call him by his first name); United States v. Schumacher, 11 M.J. 612, 613 (A. Ct. Crim. App. 1981) (appellant violated Article 133 by being drunk in public – blocking traffic on a highway – while in uniform).

Like Adames, the importance of the superior-subordinate relationship rings true in this case as well. Appellant admitted that these drunken interactions eroded trust in his leadership and trust in the operating room. (R. at 331). Appellant admitted that, as a senior commissioned officer, "[M]y drunkenness in front of [senior noncommissioned officers] degraded my standing

as an officer in their eyes of their image of who I am, what I should be as an officer and me personally." (R. at 333). He explained that because of his conduct, his subordinates may lose trust in his leadership and skills in the operating room and cause them to question whether a "surgical error" with a scalpel was a mistake or caused was caused by alcohol use. (R. at 331-332). "Because of that behavior, I can see how it could easily influence their idea of me, concept of me, and in the future, it may seriously compromise my ability as an officer, basically, to complete the mission." (R. at 340). Appellant's drunken behavior, therefore, constituted unbecoming conduct.

In reviewing the providence of a guilty plea, courts consider the appellant's "colloquy with the military judge, as well [as] any inferences that may reasonably be drawn from it." United States v. Carr, 65 M.J. 39, 41 (C.A.A.F. 2007). The military judge – an officer who ostensibly understood the importance of maintaining decorum with subordinates – is uniquely situated to confirm that Appellant committed the acts, and that the acts were done in a way that was unbecoming of an officer. During the plea, the judge engaged in an expansive inquiry into why Appellant believed his alcohol use surpassed the realm of being reasonable, and entered a zone of "dishonor," given Appellant had lost the control of his faculties in plain view of his subordinates. (R. at 321, 331-332). Appellant admitted he drank so much that he began slurring his words and walking with an unbalanced gait. By so doing, Appellant did not merely engage in the social activity of drinking alcohol around his subordinates, but he twice drank well past the point of intoxication, and displayed an unprofessional demeanor by slurring and stumbling, in addition to possessing a physical appearance that undermined his authority as an officer and the professional integrity of his workplace. These relevant facts brought Appellant's conduct into the realm of criminality, and the military judge was correct to both elicit those facts and use them

as a basis for finding Appellant guilty. At bottom, this Court should grant the military judge significant deference here because the military judge elicited a strong factual basis from Appellant, in addition to citing to and factually supporting the legally correct elements and definitions.

This Court must uphold a guilty plea unless there is a "substantial basis" in law and fact for questioning the plea, and no such basis exists in this case. *See* Hiser, 82 M.J. at 64. Each element of conduct unbecoming an officer was met: On at least two occasions, Appellant engaged in the behavior, and his behavior was indecorous and dishonorable before his subordinates. The military judge thus did not abuse his discretion in deciding that a factual basis for the plea existed. Accordingly, this Court should find the military judge did not abuse his discretion by accepting Appellant's plea to Specification 2 of Charge V and affirm the findings and the sentence.

CONCLUSION

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

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FOR
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CERTIFICATE OF FILING AND SERVICE

I ce1iify that a copy of the foregoing was delivered to the Comi and the Air Force Appellate Defense Division on 24 Febmaiy 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**APPELLANT'S BRIEF ON**
Appellee	)	**SPECIFIED ISSUE**
	)	
v.	)	Before A Special Panel
	)	
Lieutenant Colonel (O-5)	)	No. ACM 40500
WILLIAM M. HILTON	)	
United States Air Force	)	24 February 2025
Appellant	)	

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

SPECIFIED ISSUE

WHETHER APPELLANT'S PLEA OF GUILTY TO SPECIFICATION 2 OF CHARGE V WAS PROVIDENT.

Statement of the Facts

Lt Col Hilton entered a plea of guilty to Specification 2 of Charge V, admitting that "on divers occasions between on or about 4 July 2020 and on or about 30 September 2020, "[he was] drunk in the presence of subordinate members of the 48th Medical Group, Royal Air Force Lakenheath, United Kingdom, which was conduct unbecoming an officer and a gentleman." (Charge Sheet.) During the providence inquiry he identified only two occasions on which this misconduct occurred. The first was at a tree-day "block party" held in his neighborhood and the second was at his home when his wife invited female friends to a "girls night out." Essentially, both events were of a social nature unrelated to any official function.

In the course of the providency inquiry, the primary focus was upon how many subordinates were present and how Lt Col Hilton knew he was drunk. While struggling with his memory of these events, he acknowledged that he was drunk and he did not dispute whether the subordinates who were present perceived that he was drunk. He also struggled with articulating

how his behavior constituted conduct unbecoming an officer and a gentleman. The military judge nonetheless accepted his plea and found him guilty of this specification.

Argument

APPELLANT'S PLEA OF GUILTY TO SPECIFICATION 2 OF CHARGE V WAS NOT PROVIDENT.

Standard of Review

This Court reviews a decision to accept a guilty plea for an abuse of discretion. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008) (citing *United States v. Eberle*, 44 M.J. 374, (C.A.A.F. 1996). There must be a substantial basis in law or fact to question the plea before a guilty plea will be set aside. *Id*. (citing *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991).

Law and Analysis

In conducting the providency inquiry, the military judge provided in pertinent part the following definitions to guide Lt Col Hilton in responding to his questions:

> Drunk means the state of intoxication by alcohol that is sufficient to impair the rational and full exercise of mental or physical faculties or the state of meeting or exceeding a blood alcohol content limit with respect to alcohol concentration in a person's blood of 0.08 grams of alcohol per 100 milliliters of blood and with respect to alcohol concentration in a person's breath of 0.08 grams of alcohol per 210 liters of breath, as shown by chemical analysis.
>
> * * *
>
> The term "gentleman" connotes failings in an officer's personal character, regardless of gender. Conduct unbecoming an officer and a gentleman means actions or behavior in . . . an unofficial or private capacity, which in dishonoring or disgracing the officer personally, *seriously* compromises the person's standing as an officer.
>
> There are certain moral attributes common to the ideal officer and the perfect gentleman, a lack of which is indicated by acts of dishonesty, unfair dealing, indecency and decorum, lawlessness and justice or cruelty. Not everyone is, or can be, expected to meet unrealistically high moral standards, but there is a limited of [sic] tolerance based on customs of the service and military necessity, below which the personal standards of an officer, cadent [sic] or midshipman cannot fall without *seriously* compromising the person [sic] standing as an officer, cadet or midshipman, or the

person's character as a gentleman.

> Unbecoming means behavior more *serious* than slight and of a material and pronounced character. It means conduct morally unfitting and unworthy, rather than merely an opposite or unsuitable behavior, which is more than opposed to good taste or propriety. Wrongful is without legal justification or authorization. Dishonorable, essentially means conduct exposing the officer to a disgrace as a person.

(R. at 288, 306-07) (emphasis added).

In a nutshell, Lt Col Hilton was unable to articulate how his behavior, becoming drunk and nothing more, in an unofficial social setting rose to the "serious" level required by the definition for conduct unbecoming an officer and a gentleman. (R. 320-50.) He merely speculated that it could be serious, without identifying any facts that made his conduct more serious than slight or that seriously compromised his standing as an officer or gentleman. In researching military appellate decisions no case was found in which a comparably drafted specification with a comparable set of facts was found to support a conviction under Article 133, UCMJ. Simply being or appearing drunk in a social public setting or in the privacy of one's residence, without more, does not rise to the level of "exposing the officer to disgrace as a person." Lt Col Hilton's plea was improvident.

WHEREFORE, Lt Col Hilton respectfully requests that this Honorable Court set aside the finding of guilty of Specification 2 of Charge V and the sentence accompanying that specification.

Respectfully submitted,

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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 24 February 2025.

Respectfully submitted,

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**REPLY BRIEF ON BEHALF OF APPELLANT**
v.	)	Before a Special Panel
Lieutenant Colonel (O-5) **WILLIAM L. HILTON** United States Air Force *Appellant*	)	No. ACM 40500 24 February 2025

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

Appellant, Lt Col William L. Hilton, pursuant to Rule 18(d) of this Court's Rules of Practice and Procedure, files this Reply to the Government's Answer (Ans.), dated 27 January 2025. In addition to the arguments in his opening brief (Appellant's Br.), filed on 27 December 2024, Lt Col Hilton submits the following arguments for the issues below.

I.

The findings of guilty of Specification 6 of Charge II and the excepted language found in Specification 3 of Charge V, to which Appellant plead not guilty, are legally and factually insufficient.

The Government places too much weight on M.H.'s claim that she purportedly "froze" during the encounter with Lt Col Hilton. (Ans. at 11-12.) As previously argued at trial and now on appeal, M.H. was not credible by making this claim that she froze intermittently while conceding that she consensually responded to Lt Col Hilton's advances by moving toward him and hugging him. (R. at 1581.) It defies logic that she would not freeze, then freeze, then not freeze. When the act of oral sex was occurring, given the natural physical location of his head in relation to her legs would suggest that she could have undertaken actions to stop his efforts. She appeared to admit that the act itself went on for some time, possibly as long as fifteen minutes. (R. at 1590.) Her other claims that she told Lt Col Hilton "no" multiple times are simply not credible beyond a reasonable

doubt as the government claims. (Ans. at 10.) She never told D.M. this immediately after the encounter.

The government also unjustifiably discounts D.M.'s testimony about what she observed when she came into the room and the subsequent conversation she had with M.H. during the drive back to M.H.'s home. (Ans. at 12.) The government's argument that D.M. had an "obvious bias" also falls flat. (Ans. at 12.) If anything, D.M., knowing her husband as she did, would have questioned whether he would sexually assault a woman anywhere, much less in his own home with his wife present. The government's argument unfairly assumes that a wife will always run to the defense of their husband no matter what the truth is. If she believed he was innocent based on what she actually observed and what M.H. told her, then should she not testify truthfully when placed under oath? If anything, D.M. would have been upset with her husband whether or not what happened was consensual.

The Government heavily relies on the notion that the offense was commissioned by Lt Col Hilton by placing M.H. in a state of fear. This includes the argument that Lt Col Hilton "used his size and intimidating stare to force M.H. to cooperate." (Ans. at 10.) The Government also suggests that "[a] rational factfinder could decide that M.H. articulated her nonconsent and because she feared [Lt Col Hilton] would hurt her, she complied with his demands." (Ans. at 11.) However, the Government did not charge sexual assault by threat or fear, which is a separate theory of liability under Article 120, 10 U.S.C. § 920(b)(1)(A). The Government chose to charge Lt Col Hilton exclusively with sexual assault based on lack of consent. 10 U.S.C. § 920(b)(2)(A). Because these are two different theories of liability, the Government cannot now rely on the uncharged theory to support the conviction. *United States v. Mendoza*, ___ M.J. ___, 2024 CAAF LEXIS 590, at *18 (C.A.A.F. 2024) (holding that Article 120 establishes distinct theories of liability

depending on the alleged manner that sexual assault is commissioned which precludes the Government from proving one theory with reference to another). Aside from the limitations created by the charging theory, the Government presented no evidence that Lt Col Hilton had threatened M.H. in any way, or actually done anything to put her in a state of fear.

Limiting this inquiry to the theory charged by the Government, the record contains evidence undermining a lack of consent, or at the very least raising a mistake of fact as to consent. M.H. voluntarily removed her clothing in front of Lt Col Hilton and then sat down on the couch while spreading her labia open. (R. at 1584-1586, 1642.) She remained in this position while Lt Col Hilton removed his own clothing before performing oral sex on her. (R. at 1585, 1642.) D.M., the only third-party witness to the encounter, described M.H. as appearing like she got caught being complicit and being extremely apologetic. (R. at 2162.) This renders the convictions for Charge II, Specification 6 and Charge V, Specification 3 factually and legally insufficient. Lt Col Hilton therefore requests that this court set aside the findings of guilty and the sentence accompanying the specifications.

II.

The Government violated Lt Col Hilton's rights under Article 10 as to both the original charges preferred on 9 September 2021 and the later allegations by failing to expediently bring all offenses to speedy disposition, resulting in prejudice to Lt Col Hilton.

Lt Col Hilton is entitled to relief under Article 10 for all allegations the Government based the confinement decision on. This includes both the new allegations that were reported by M.H. on 15 December 2021, as well as the charges which the Government had preferred on 9 September 2021. This is because the confinement was in connection with all of those offenses. The Government attempts to collect a windfall by absolving itself of responsibility for acting expediently under Article 10 as to the earlier preferred charges despite having relied upon them to

justify the confinement. It does so by emphasizing a limited read of the pretrial confinement record that minimizes reference to the older charges. (Ans. at 23-24.)

Article 10 protection applies to all offenses that the confinement order is made in connection with. *United States v. Cooley*, 75 M.J. 247, 257 (C.A.A.F. 2016 (quoting *United States v. Mladjen*, 19 C.M.R. 159, 161 (C.M.A. 1969)). This inquiry stretches beyond simply looking at the Government's representation as to what charges were relevant. Instead, it requires an examination of the confinement order and related documents. *Cooley*, 75 M.J. at 257. The confinement order does not clarify the specific offenses held in connection with the confinement, only giving general reference to Article 112 and Article 120. (App. Ex. III at 28.) The Government appears to concede that the pretrial confinement review officer (P.C.R.O.) memorandum documents the charges preferred on 9 September 2021 under the heading "OFFENSES ALLEGED." (Ans. at 24.) This shows that Lt Col Hilton's confinement was held in connection with those offenses. The Government defies the plain reading of memorandum and offers this Court speculation. (*Id.*) ("The [P.C.R.O.] *likely* included the original charge sheet and noted that other charges had been preferred to ensure a complete record.") (emphasis added). Why the older charges were necessary to form a "complete record" for pretrial confinement can only be answered in one way: to fully document all of offenses relevant to the confinement. This Court should dispense with the speculation offered by the Government and instead interpret the pretrial confinement record for what it plainly states, which is that Lt Col Hilton was confined in connection with the charges preferred on 9 September 2021. Moreover, the Government contradicts itself by arguing that the original charges were not a part of the confinement action but then admitting that the speedy trial clock under R.C.M. 707 began anew once those same charges were dismissed by virtue of the confinement. (Ans. at 31.)

United States v. Mladjen is inapposite. 19 C.M.R. at 159. In that case, the appellant was placed in pretrial confinement after he was apprehended for an unauthorized absence. *Id.* at 160. While there, the Government identified him as the culprit for another crime unrelated to the appellant's unauthorized absence. *Id.* at 161. The C.M.A. held that the speedy trial clock for the charges uncovered in the later investigation was not triggered by the confinement for unauthorized absence. *Id.* at 161. This is because the investigation was separated in time from the confinement, and there was no indication that the appellant was confined in connection with offense discovered after. *Id.* This case is chronologically different. Unlike *Mladjen*, the investigation into the offenses on the 9 September 2021 charge sheet took place and were fully maturized *before* the confinement order was made. This means that they were not severable by virtue of having been discovered *after* Lt Col Hilton was confined. To the contrary, they were explicitly considered by the reviewing authorities as part of the confinement record. (App. Ex. III at 30.)

This case is more akin to *United States v. Brooks*, 48 C.M.R. 257 (C.M.A. 1974). There, the appellant was under investigation for one set of allegations, but then later placed in pretrial confinement for additional misconduct that took place after. *Id.* at 258. The C.M.A. held that even if the subsequent misconduct was the triggering event for pretrial confinement, the Government was still accountable for the totality of the delay as it related to the original investigation. *Id.* This is because the Government delayed the disposition of the first set of allegations while the appellant remained in confinement. *Id. See also United States v. Bray*, 52 M.J. 659, 661 (A.F. Ct. Crim. App. 2000) (holding that the Government is accountable under speedy trial for all offenses potentially related to confinement rather than just those minimally necessary to justify it); *United States v. Mohr*, 45 C.M.R. 134, 136 (C.M.A. 1972) ("delay in proceeding to trial on the original charges,

because of a desire to join with them later charges, may result in denial of the accused's right to speedy disposition of the original charges.").

The delay in case processing was caused by the Government's negligent investigation with E.L. The Government justified the delay during the court-martial by leaning into the need to accomplish canvas interviewing to complete the investigation. The Government now argues that canvas interviewing was unnecessary during E.L.'s investigation because it "may not have turned up any evidence." (Ans. at 27.) The Government provides no explanation for why this apparently fruitless investigative process became so important after Lt Col Hilton was placed in pretrial confinement that it justified delay in bringing him to trial. Article 10 prohibits delays for the purpose of allowing the Government to perfect their case. *Cooley*, 75 M.J. at 153. Yet, the delay on the original charges was entirely due to the Government's failure to conduct canvas interviewing at an earlier stage during E.L.'s investigation. The Government misapprehends the purpose of canvas interviewing, which was to look into "behavioral character witnesses," not new victims. (Ans. at 27; R. at 71.) Had this been completed with E.L., it would not have been necessary to re-accomplish during the investigation with M.H. or the subsequent named victims. (R. at 67-68.)

Lt Col Hilton was prejudiced by his diminished ability to prepare his defense on the original charges while he remained in pretrial confinement. This prejudice was exacerbated by the nature of the delay that he experienced. The Government used the delay occasioned by the revelation of new charges to perfect the case against Lt Col Hilton for the original set of charges. However, the confinement did not give the Government license to postpone its accountability. *United States v. Ward*, 1 M.J. 21, 25 (C.M.A. 1975). The unjustified delay based on the need to for canvas interviewing placed Lt Col Hilton into an impermissible limbo status, while the Government

continued to perfect investigative steps that were long past due. *United States v. Mickla*, 29 M.J. 749, 753 (A.F. Ct. Crim. App. 1989) (cautioning against Government actions which put the case into a limbo status while investigation is perfected). Accordingly, this Court should find that Lt Col Hilton's Article 10 rights were violated and dismiss the charges and specifications with prejudice.

III.

The Government failed to comply with R.C.M. 707 by relying on after-the-fact blanket exclusions of time that merely captured normal case processing.

Lt Col Hilton was denied speedy trial under R.C.M. 707 because the convening authority abused his discretion by issuing a series of after-the-fact exclusions without reasonable justification. The Government contends that the delays were permissible because R.C.M. 707 allows for exclusions of time due to routine occurrence in the trial process. (Ans. at 32.) However, the rule requires that delays be supported by good cause and reasonable in length. *United States v. Guyton*, 82 M.J. 146, 151 (C.A.A.F. 2022). Nor does a delay allow for the Government to proceed in a leisurely fashion. *Ward*, 23 M.J. at 25. Here, the Government did just that by using the delays in large part to proceed with investigative canvassing which should have been completed months earlier during the investigation of E.L.

The Government's delays amounted to blanket exclusions of time. The Government concedes that a delay is an impermissible blanket exclusion unless it addresses an interval between events. (Ans. at 34.) In *United States v. Proctor*, 42 M.J. 715 (A.F. Ct. Crim. App. 2003), this Court recognized the distinction between blanket exclusions that merely address case processing versus delays which are intervals between events. *Id.* at 795. Events relevant to measuring a delay may include, but are not limited to, placement in pretrial confinement, an Article 32 hearing, and arraignment. *See generally United States v. Rowe*, No. ACM 34578, 2003 CCA LEXIS 61, at *6

(A.F. Ct. Crim. App. Feb. 28, 2003) (disapproving delay for case processing before Article 32 hearing). Based on these standards, it is evident that the delays granted by the convening authority only amounted to normal case processing and investigation. The Government argues that the exclusions were legitimate delays because they were arranged around investigative steps. However, it offers no authority to explain how these investigative steps qualify as anything other the type of case processing that this court held in *Proctor* did not validate a delay.

This Court should view the exclusions with skepticism given that the convening authority granted them after the fact. *United States v. Thompson*, 46 M.J. 472, 475 (C.A.A.F. 1997); *United States v. Nichols*, 42 M.J. 715, 721 (A.F. Ct. Crim. App. 1995) ("After-the-fact exclusion of time from the government's speedy trial accountability is no longer [under R.C.M. 707] an option."). While the Government may have required additional time to complete their investigation, the requirement to act expediently was due to its decision to place Lt Col Hilton in pretrial confinement. For the Government to be able to absolve itself of responsibility by issuing these types of exclusions is profoundly unjust. Accordingly, this Court should find that the convening authority abused his discretion by granting the blanket, after-the-fact, exclusions of time and find that the Government failed to comply with R.C.M. 707.

Respectfully submitted,

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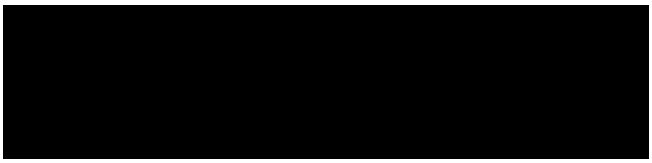
CERTIFICATE OF FILING AND SERVICE

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 24 February 2025.

Respectfully submitted,



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