

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

UNITED STATES	)	No. ACM 40761
<i>Appellee</i>	)	
	)	
v.	)	
	)	ORDER
Christopher L. Smith	)	
Second Lieutenant (O-1)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	Panel 2

A military judge sitting alone as a general court-martial convicted Appellant, contrary to his pleas, of one specification of abusive sexual contact of XR without her consent in violation of Article 120, Uniform Code of Military Justice, 10 U.S.C. § 920. On 25 May 2024, the military judge sentenced Appellant to a dismissal, 75 days confinement, and a reprimand. The convening authority took no action on the findings or the sentence, and provided the language for the reprimand. Appellant's case was docketed with this court on 16 January 2025.

On 26 May 2026, Appellant moved this court for leave to file a motion to remand Appellant's case to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the record.* On 29 May 2026, the Government responded to Appellant's motion indicating they did not oppose Appellant's request to have his case remanded. However, the Government further added that "this court should follow the lead of a sister service court and avoid unnecessary and time-consuming remands by allowing the Government to attach missing documents to the record." We grant Appellant's request and remand the case back to the Chief Trial Judge, Air Force Trial Judiciary, for the reasons stated below.

Even a cursory review of this record of trial reveals that it is fraught with errors. In addition to Appellant's motion that identifies two audio recordings of the court-martial proceeding as missing, numerous other errors were discovered by the court: (1) matters in the record are sealed that should not be sealed; (2) exhibits not matching the court reporter's Exhibit Index list; (3) sealed material not marked as "*in camera*" pursuant to paragraph 9.3.2 of the Department of Air Force Manual (DAFMAN) 51-203; (4) exhibits inadequately

* Appellant has been granted fourteen enlargements of time since this date.

identified, such “DoD SAFE Documents” (Appellate Exhibit (A.E.) XXXIII); and (5) an order by the military judge sealed that should not be sealed (*see* A.E. XXXIII). We note that the discrepancies do not end here.

Rule for Courts-Martial 1112(b), *Contents of record of trial*, specifically states what the records of trial in every special and general court-martial shall include. “[I]f a record is incomplete or defective, a court reporter or any party may raise the matter to the military judge for appropriate corrective action.” R.C.M. 1112(d)(2). “A superior competent authority [such as Courts of Criminal Appeals] may also return the record of trial to the military judge for correction under this rule. *Id.* Upon notice of the matter, “[t]he military judge shall give notice of the proposed correction to all parties [of the court-martial] and permit them to examine and respond to the proposed correction.” *Id.*

As a result of both the number of errors already identified above and recent trends in the number of cases that have been remanded, we implore the Chief Trial Judge, Air Force Trial Judiciary, to ensure a careful and thorough review of the entire record of trial before returning it to the court.

Accordingly, it is by the court on this 3d day of June, 2026,

ORDERED:

The record of trial in Appellant’s case is **RETURNED** to the Chief Trial Judge, Air Force Trial Judiciary, for correction under Rule for Courts-Martial (R.C.M.) 1112(d) to account for the above-described defects, and all other portions of the record that are determined to be missing or defective hereafter, after consultation with the parties. *See* R.C.M. 1112(d)(2)–(3). Thereafter, the record of trial will be returned to this court for completion of its appellate review under Article 66(d), Uniform Code of Military Justice, 10 U.S.C. § 866(d).

The record of trial will be returned to the court not later than **30 June 2026**. If the record cannot be returned to the court by that date, the Government will inform the court in writing not later than **27 June 2026** of the status of the Government’s compliance with this order.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court