

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**MOTION TO ATTACH DEFENSE
APPELLATE EXHIBITS A-K**

v.

Docket No. ARMY 20200715

Private First Class (E-3)
JEROME J. FORREST,
United States Army,

Appellant

Tried at Fort Campbell, Kentucky, on
8 May 2019, 6 August 2019, 29
August 2019, 25 October 2019, 2
December 2019, 19 February 2020, 7
December 2020, 9-11 December 2020,
and 14-16 December 2020 before a
general court-martial convened by the
Commander, Headquarters, Fort
Campbell, Colonel Matthew A.
Calarco and Colonel Jacqueline
Tubbs, military judges, presiding.

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

COMES NOW the undersigned appellate defense counsel, under rule 23 of this court's Rules of Appellate Procedure, and moves to have this court admit Defense Appellate Exhibits A through K which are attached to this motion. In the Brief on Behalf of Appellant, appellant asserts that his defense counsel were ineffective because they failed to investigate, present mitigation evidence, and request a qualified expert. The attachments are necessary to establish the facts required to meet the burden of showing that defense counsel were ineffective and that appellant's rights were violated. Also, the attachments are necessary to establish that appellant was prejudiced by that errors.

Defense Appellate Exhibit A is a declaration signed by Dr. [REDACTED]

[REDACTED]. Dr. [REDACTED] is an experienced forensic psychologist and the director of the first postdoctoral training program in forensic psychology to receive accreditation through the American Psychological Association. Dr. [REDACTED] reviewed several files relevant to the immediate case which addressed appellant's mental state at the time of the offense. Dr. [REDACTED] identified errors in the R.C.M. 706's board's findings, explained what further testing and expert assistance would have provided the defense's mitigation case, and specifically analyzed the possibility of appellant's altered mental state. Dr. [REDACTED] explained that, due to the documented severe brain injury suffered by appellant, there would have been a high possibility of a decrease in executive function and ability to form specific intent. This analysis would have been relevant to appellant's *mens rea* at the time of the offense and bared on his moral culpability during pre-sentencing. This information is not available in the current record of trial because defense counsel were ineffective and never researched or investigated sufficiently to identify the factual basis for this issue.

Defense Appellate Exhibit B is a declaration by Dr. (LCDR) [REDACTED]

[REDACTED]. LTCR [REDACTED] is the chief of the Center for Forensic Behavioral Sciences at Walter Reed National Military Medical Center and a trained forensic psychiatrist. Dr. [REDACTED] reviewed the R.C.M. 706 board results and identified several errors and

inconsistencies which would have been grounds for appellant to challenge the findings at trial. Dr. [REDACTED] identified grounds for additional mental health diagnoses which may have been missed by the sanity board including alcohol use disorder, intermittent explosive disorder, and conduct disorder. These issues should have led a forensic mental health professional to investigate additional mitigation information relevant to the trial. Dr. [REDACTED] also identified the tasks that could have been performed by a mitigation consultant which the defense failed to present to the military judge in its request for assistance. Dr. [REDACTED] provides data for the number of mitigation experts assigned to non-capital cases which rebuts the military judges claim that such assistance was not permissible in non-capital cases. This information is not available in the current record of trial because defense counsel were ineffective and never researched or investigated sufficiently to identify the factual basis for this issue.

Defense Appellate Exhibit C is a declaration by [REDACTED], appellant's sister. Ms. [REDACTED] testified at appellant's trial but explains that she was never prepared by trial defense counsel prior to the trial beginning. Ms. [REDACTED] did not know what she was allowed to say or what would help. As a result, Ms. [REDACTED] did not share as much as she would have wanted. This exhibit demonstrates defense counsel's deficient preparation and shows prejudice due to the missing facts not presented at trial.

Defense Appellate Exhibit D is a declaration by [REDACTED], appellant's mother. Mrs. [REDACTED] confirms that her and her family were unprepared by defense counsel when they testified and that they were never asked to provide additional names of possible mitigation witnesses. Mrs. [REDACTED] shared additional mitigation information that was not present in the trial due to her lack of preparation or understanding of the procedures.

Defense Appellate Exhibit E is a declaration by [REDACTED], appellant's father. Mr. [REDACTED] confirms a lack a pre-trial preparation with the defense counsel and shares further detail which was not included in his son's trial.

Defense Appellate Exhibit F is a declaration by Staff Sergeant [REDACTED]. SSG [REDACTED] was a childhood friend of appellant's who was never contacted by the defense counsel. SSG [REDACTED] would have testified to appellant's good character, and provided additional mitigation evidence including appellant's dedication to self-improvement which led him to military service.

Defense Appellate Exhibit G is a declaration by [REDACTED], a longtime friend of appellant's. Mr. [REDACTED] was never contacted by the defense counsel. If asked, Mr. [REDACTED] would have testified to appellant's character and difficulties he experienced growing up, to included being the victim of significant violence as a young adult. Mr. [REDACTED] would have also testified as to how out of character appellant's crime was which could have supported both the mitigation

case and supported arguments that appellant was suffering from a head injury at the time of the crime.

Defense Appellate Exhibit H is a declaration by Sergeant [REDACTED]. SGT [REDACTED] served with appellant at Fort Campbell at the time of the crime. SGT [REDACTED] was never contacted by the defense counsel but, if called, would have testified to appellant's military prowess, moral courage, and dedication to the mission. This was crucial information because no military witness testified at appellant's trial.

Defense Appellate Exhibit I is a declaration by Technical Sergeant [REDACTED], USAF. TSgt [REDACTED] has known appellant since childhood and is Noncommissioned Officer in the U.S. Air Force. TSgt [REDACTED] was never contacted by the defense. In both his personal and professional opinion, TSgt [REDACTED] believed appellant was a moral and ethical individual and further would have testified to appellant's high rehabilitative potential.

Defense Appellate Exhibit J is a declaration by Ms. [REDACTED], a Forrest family friend. Ms. [REDACTED] was never contacted by the defense. She was willing to testify to her opinion of appellant's good character and provide other evidence in mitigation.

Defense Appellate Exhibit K is a declaration by Ms. [REDACTED]. Ms. [REDACTED] was never contacted by the defense but would have testified to

appellant's high character and his willingness to support his sister when she became pregnant despite his parent's disapproval.


All eleven Defense Appellate Exhibits are relevant to appellant's assignments of error.

Conclusion

WHEREFORE, the appellant requests this honorable court grant this motion, attach Def. App. Ex. A-K to the record, and consider the matters presented therein.

Panel No. 4


MOTION TO ATTACH DEFENSE APPELLATE EXHIBIT A:

GRANTED:  _____

DENIED: _____

DATED: 18 JAN 2022

MOTION TO ATTACH DEFENSE APPELLATE EXHIBIT B:

GRANTED:  _____

DENIED: _____

DATED: 18 JAN 2022

MOTION TO ATTACH DEFENSE
APPELLATE EXHIBIT C:

GRANTED:  _

DENIED: _____

DATED: 18 JAN 2022

MOTION TO ATTACH DEFENSE
APPELLATE EXHIBIT D:

GRANTED: 

DENIED: _____

DATED: 18 JAN 2022

MOTION TO ATTACH DEFENSE
APPELLATE EXHIBIT E:

GRANTED:  _

DENIED: _____

DATED: 18 JAN 2022

MOTION TO ATTACH DEFENSE
APPELLATE EXHIBIT F:

GRANTED:  _

DENIED: _____

DATED: 18 JAN 2022

MOTION TO ATTACH DEFENSE
APPELLATE EXHIBIT G:

GRANTED: _____

DENIED:  _____

DATED: 18 JAN 2022

MOTION TO ATTACH DEFENSE
APPELLATE EXHIBIT H:

GRANTED: _____

DENIED:  _____

DATED: 18 JAN 2022

MOTION TO ATTACH DEFENSE
APPELLATE EXHIBIT I:

GRANTED: _____

DENIED:  _____

DATED: 18 JAN 2022

MOTION TO ATTACH DEFENSE
APPELLATE EXHIBIT J:

GRANTED: _____

DENIED:  _____

DATED: 18 JAN 2022

MOTION TO ATTACH DEFENSE
APPELLATE EXHIBIT K:

GRANTED: _____

DENIED:  _____

DATED: 18 JAN 2022



NANDOR F.R. KISS
CPT, JA
Appellate Defense Counsel
Defense Appellate Division



LAUREN M. TEEL
CPT, JA
Branch Chief
Defense Appellate Division

Defense Appellate Exhibit A

AFFIDAVIT OF PAUL MONTALBANO, PhD, ABPP (Forensic)

I, [REDACTED], Ph.D., ABPP (Forensic) am a board-certified forensic psychologist with over thirty years of experience in clinical and forensic psychology. I am the director of the first and only postdoctoral training program in forensic psychology to receive accreditation through the American Psychological Association. I have specialized forensic expertise in performing psychological evaluations, in forensic, military and civil settings in both pre-trial and post-trial contexts and have expertise as an expert witness testimony to a wide range of forensic issues, including specialized forensic expertise in competency to stand trial, competency to waive Miranda rights, false confession vulnerability risk factors, criminal responsibility, assessment of malingering, violence risk assessment/risk management, sexual recidivism/risk management, sentencing mitigation and capital cases. My history includes extensive experience in inpatient forensic hospital and correctional settings treating and evaluating a wide range of psychopathology. My forensic experience includes involvement in high profile forensic cases including [REDACTED] and [REDACTED] as well as evaluation and testimony in capital cases in federal court.

I was asked by CPT [REDACTED] to review various documents in the case of US v Jerome Forrest and provide opinions regarding the case. Opinions could address mental state and specific intent at the time of the offense and various issues around mitigation at the time of sentencing. It is my understanding the PCF Forrest was convicted of Murder in the Second Degree and sentenced to life. Documents reviewed include: 1) Charge Sheet, 2) Motion to Compel Expert Consultants (29 July 2019), 3) Activity Detail Incident regarding [REDACTED] ([REDACTED]) (18 Dec 2018), 4) Medical Records Skyline Medical Center, 5) CV for [REDACTED], Ph.D., 6) RCM 706 by COL [REDACTED] (11 Mar 2019), 7) Government Response to Defense Motion to Compel Experts (31 July 2019), 8) Request for Appointment of a Child Forensic Psychologist (23 July 2019), 9) Memorandum for Convening Authority regarding Defense Request for Appointment of Expert Consultant, Dr. [REDACTED] 10), CV of [REDACTED] MA, LPC, 11) 39a Argument of MTC Experts, 12) Article on Neuorimaging in Traumatic Brain Imaging (2005), and 13) 39a Military Judge's Ruling on MTC Experts.

In his 706 COL [REDACTED] concluded that PFC Forrest was competent to stand trial and criminally responsible. He opined that PFC Forrest did not have a severe mental disease or defect at the time of the alleged offense and the only diagnosis he met criteria for at that time was Relationship Distress with Spouse or Intimate Partner. A sine qua non in a forensic evaluation is to gather information from multiple sources and to seek convergent validity before any opinions or conclusions are offered. Quite often collateral interviews are performed. COL [REDACTED] did not perform any collateral interviews. This limits the basis for his conclusions. He did, however, have psychological testing performed. The testing was performed by CPT [REDACTED] under the supervision of [REDACTED], PhD. Assuming the section on the test results in the report reflect the conclusions of Dr. [REDACTED], it was concluded that PFC Forrest invalidated the MMPI-2 RF. It was reported that he "endorsed a high number of inconsistent, bizarre, and/or atypical symptoms" and "an unusually high number of non-credible memory complaints." It was opined that, "this level of distortion rises to the threshold that malingering should be considered."

Additional tests performed included the two cognitive measures: 1) the Shipley Institute of Living Scale (Shipley-2), and 2) the Repeatable Battery for the Assessment of Neurological Status (RBANS). The results of these cognitive measures were not reported. In addition, it was noted that the Structured Inventory of Malingering Symptomatology (SIMS) was administered. These results were also not reported. In light of the finding about possible malingering based on the MMPI-2 RF, in my view, it would have been important to report the results of this measure. Since I do not currently have access to the raw data or the results of the testing, it is difficult to analyze how those results may have influenced other conclusions such as impairment in cognitive functioning as it relates to possible TBI, problems with impulse control and potential deficits in executive functioning as well as diagnostic formulations. It is my understanding that appellate defense counsel has requested this information but has not yet received it.

If this case had been referred to the Center for Forensic Behavioral Science at the time of sentencing, a comprehensive consultation and evaluation would have been performed. Often the first task in a forensic evaluation is to clarify the referral question or questions. In a case, where the individual has serious charges and is facing a lengthy sentence, there a number of factors that can be taken into account during sentencing. A skilled and experienced forensic practitioner would inquire about addressing a number of these factors, even if only one or two had been requested. Often after a discussion with defense, the referral issue broadens and a wider range of factors are taking into consideration. Potential mitigating factors at sentencing include: 1) potential for rehabilitation, 2) impaired capacity, 3) extreme emotional disturbance, 4) no prior criminal record, 5) cooperation with authorities, 6) unstable childhood with physical abuse, 7) history of sexual abuse, 8) family history of mental illness, 9) serious car accident with loss of consciousness shortly before the offense, 10) marital and financial stressors around the time of the offense, 11) positive prisoner conduct and 12) future risk of violence.

In my experience, when an individual is charged or convicted of a violent offense, the defense typically requests a violence risk assessment. A violence risk assessment and risk management plan is crucial in addressing rehabilitative potential. In this case, since the victim was his spouse both a violence risk assessment and domestic violence risk assessment could have been performed. Forensically trained psychologists and psychiatrists have training, experience and expertise in performing these risk assessments since the empirically validated methodologies include specific instruments and tools designed for this purpose. The oldest approach to risk assessment is unstructured clinical judgment, where the evaluator selects risk factors perceived as related to violence and then assesses the status of those risk factors. Since this approach is dependent on the judgment of the evaluator, there can be a range of factors selected and different weights placed on these factors. This strategy relies solely on clinical judgment to formulate an overall risk level. A variation of the clinical judgment is what is called the individualized or anamnestic approach. In this approach, the evaluator strives to ascertain what factors are associated in a given individual with a particular outcome such as violence. The individualized approach is longitudinal and case specific. Another approach to risk assessment is actuarial assessment. In this approach, a fixed set of risk factors are scored in a weighted fashion and compared to known base rates yielding varying probabilities of recidivism for specified periods. Various meta-analyses (summaries of multiple studies) which have been conducted demonstrate that actuarial frameworks outperform clinical judgment in terms of predictive accuracy for violence risk. Another approach called structured

professional judgment (SPJ) involves the review of a set list of various empirically validated risk factors. Summing the items and weighing their importance introduces clinical judgment into an assigned level of risk. In SPJ rating approaches, a final summary risk judgment is generated utilizing clinical judgment. Both actuarial and SPJ approaches employ reviewing risk factors for violence which have been empirically validated in that they have been selected because of their empirical relationship to the outcome of violence. Both approaches specify the variables to be considered so that the selection of variables is not left up to the judgment of the evaluator. Both approaches require that the variables be adequately operationalized to permit reliable coding or rating as opposed to clinical judgment where the interrater reliability is not as well established. Without the requisite training it is unlikely that the experts appointed in this case for the defense could have performed a risk assessment utilizing state-of-the-art actuarial or SPJ tools. If a detailed, empirically validated risk assessment had been performed, it would have included a risk management plan, which would have identified specific dynamic risk factors, which could have been targeted for treatment and amelioration. Successful treatment would then lower his risk and make him a viable candidate for release under specified conditions at some point in the future.

An experienced forensic practitioner would have been able to provide expert consultation during the both the pre-trial phase and during sentencing. Approximately one week before the offense, PFC Forrest was involved in a serious high speed car accident. This resulted in a loss of consciousness (LOC) and Level 1 trauma treatment, which is the highest level of treatment available. According to medical records, his Glasgow Coma Scale score was 7, placing him in the category of severe head injury. It was noted that he could not be interviewed due to his altered mental status. While his CT scan of the head revealed "no evidence of acute intracranial changes," this does not rule out brain injury. There are a number of more sophisticated brain imaging techniques such as Magnetic Resonance Imaging (MRI) of Diffusion Tensor Imaging (DTI), which could have been performed. It is also standard practice to have a battery of neuropsychological tests performed after such a severe head injury to rule in or rule out brain injury and to ascertain whether there are deficits in executive functioning. Executive functioning involves the set of mental skills that include the self-regulation abilities necessary to plan, focus attention and guide behavior. Deficits in executive functioning may result in poor impulse control and reactive unplanned behavior. Such an analysis would have had bearing on whether there was any specific intent at the time of the offense and the defense may have been able to offer expert testimony that cast doubt on his ability to control and regulate his impulses and to plan his actions. Additional imaging and neuropsychological testing may also have yielded findings relevant to his mental state at the time of the offense and to his ability to plan or control his impulses.

[REDACTED]
[REDACTED], Ph.D., ABPP (Forensic)
Board Certified in Forensic Psychology
Director
Forensic Psychology Postdoctoral Fellowship
Center for Forensic Behavioral Science
Walter Reed National Military Medical Center

7 Jan 2022
Date

Defense Appellate Exhibit B



**WALTER REED NATIONAL MILITARY MEDICAL CENTER
CENTER FOR FORENSIC BEHAVIORAL SCIENCES**



04 JAN 2022

MEMORANDUM FOR Captain [REDACTED], Appellate Attorney, Defense Appellate Division, U.S.
Army Legal Services Agency, 9275 Gunston Road, Fort Belvoir, Virginia 22060-5546

FROM: LCDR [REDACTED], M.D., Forensic & General Psychiatrist, Chief, Walter Reed Center for
Forensic Behavioral Sciences & Acting Program Director, Forensic Psychiatry Fellowship, National
Capital Consortium, Bethesda, Maryland 20816

SUBJECT: Affidavit Regarding Forensic Mental Health Expert (FMHE) Consultant Standards & Review
of the Original Sanity Board Evaluation under RCM 706 ICO PVT Forrest, Jerome J.

1. Purpose & Scope. Per request from CPT [REDACTED] and following confirmation that PVT Forrest authorized disclosure of all information considered in forming this opinion, this affidavit serves to:
 - a. Discuss and critique the original Sanity Board Evaluation under RCM 706 of PVT Forrest, Jerome J., by COL [REDACTED], dated 11 MAR 2019
 - b. Discuss frequency of approved requests and services rendered by forensic experts in DoD as mitigation/recidivism experts in military Courts-Martial not involving capital offenses.
 - c. Outline anticipated standard of performance of a forensic psychiatry expert performing in the role of confidential defense consultant.
2. Background/Basis. This affidavit comes from the Chief of the Center for Forensic Behavioral Sciences (CFBS) at Walter Reed National Military Medical Center, also serving as the Acting Program Director of the Forensic Psychiatry Fellowship program. CFBS is the DoD's only full-time forensic mental health practice. CFBS is a multidisciplinary, multi-institutional service offering specialized forensic evaluations and consultations supporting the military criminal justice system, military criminal investigation organizations (MCIOs, i.e., CID, OSI, and NCIS), the intelligence community (IC), and the legal and administrative requirements of military commanders throughout the DoD, as well as other federal agencies requiring this specialized expertise. The CFBS also conducts the DoD's only fellowship training programs for Forensic Psychiatry and Forensic Psychology subspecialists and supports forensic behavioral science training for other non-specialists as well. CFBS staff members hold faculty appointments at USUHS and the National Intelligence University, and also provide training to Judge Advocate General (JAG) and MCIO personnel. A copy of my CV has been provided to defense counsel, separately.
3. Sources of Information
 - a. DD Form 458 (Charge Sheet) of PVT Forrest, dated 11 JAN 2019
 - b. Memorandum, Subject: "Sanity Board Evaluation of PVT Forrest, Jerome J.," dated 11 MAR 2019, by COL [REDACTED] (Forensic Psychiatrist)
 - c. Defense Motion to Compel Expert Consultants, *US v Forrest*, pages 1-8, 54-89, and 100-109, dated 29 JUL 2019
 - d. Government Response to Defense Motion to Compel Experts, *US v Forrest*, marked as Appellate Exhibit IV, 23 pages total, dated 31 JUL 2019
 - e. Motions Hearing Transcripts, *US v Forrest*, pages 91-121 from 29 AUG 2019) & 184-190 from 25 OCT 2019

SUBJECT: Affidavit Regarding Forensic Mental Health Expert (FMHE) Consultant Standards & Review of the Original Sanity Board Evaluation under RCM 706 ICO PVT Forrest, Jerome J.

4. Discussion and Critique of Original Sanity Board / RCM 706 Inquiry

a. This section serves to discuss a critique of the *full report* under RCM 706(c)(3)(B) provided to PVT Forrest's trial defense counsel by COL [REDACTED], a forensic psychiatrist, on 11 MAR 2019. I conducted a detailed analysis was conducted of the full report.

b. To preserve the confidentiality & privilege interests of PVT Forrest, I offer the following summary critique of the original Sanity Board.

- i. The full report does not reference or attribute information to sources of collateral information expected for evaluations consistent with professional guidelines regarding forensic psychiatric evaluations published by the American Academy of Psychiatry and the Law (AAPL).
- ii. The analysis of the Government's version of the criminal conduct in question compared with PVT Forrest's narrative of the events surrounding the criminal conduct provides or likely provides insufficient basis for analysis of PVT Forrest's understanding of the alleged charge and to sufficiently comment on his appreciation of evidence in this case relevant to competency under RCM 909.
- iii. Errors which may be scrivener-type such as sentence fragments (e.g. – "He stated..." without completion of sentence) or likely errant dates in certain sections of the report reflect the possibility of errors directly relevant to an RCM 706 opine.
- iv. Psychological or other testing mentioned in the report reached certain conclusions which were not reflected in the diagnostic opinion section.
- v. Elements of social and personal history such as the presence or absence of childhood abuse experienced by PVT Forrest were not fully developed or accounted for in the diagnostic reasoning section of the report. These factors are commonly referenced in developing mitigation arguments by Defense Counsel in my experience as a forensic psychiatry expert consultant.
- vi. Diagnoses directly relevant to the issues of both trial competence and lack of mental responsibility were not discussed in the diagnostic reasoning section of the report. Information gathered earlier in the report was not accounted for, leaving the expert reviewer uncertain about potential diagnoses present both chronically and contemporaneously with the time of the criminal conduct.
- vii. Overall, while the Sanity Board opinion in this case likely meets standards of practice (this opinion does not serve as and should not be construed as a formal standard of practice review), the above concerns each inform that:
 1. Most directly, I would have arrived at different conclusions related to one or more of the questions posed to PVT Forrest's RCM 706 Sanity Board given only the database used in the full report. For instance, the data:
 - a. Clearly provide that PVT Forrest suffered from an Alcohol Use Disorder, which was not diagnosed.
 - b. The data and opinion in the original report insufficiently exclude the diagnoses of Intermittent Explosive Disorder and Conduct Disorder. Specifically, the report was internally inconsistent and self-contradictory regarding presence or absence of these diagnoses.
 - c. Referenced psychological testing directly suggested need to further explore the diagnosis of Malingering, which was then not addressed in the diagnostic reasoning section of the original report.
 - d. In sum, with the data available to the original RCM 706 Board, a different expert would have reasonably arrived at different diagnostic conclusions.

SUBJECT: Affidavit Regarding Forensic Mental Health Expert (FMHE) Consultant Standards & Review of the Original Sanity Board Evaluation under RCM 706 ICO PVT Forrest, Jerome J.

2. Expert assistance to the defense team in interpretation of the full report would very likely have led to additional investigation by a confidential expert defense consultant given the presence of information frequently addressed in mitigation arguments.
3. As a confidential consultant, I would have recommended either a second RCM 706 inquiry, served as a potential rebuttal witness against the original Sanity Board opinion, or a recommended a confidential consultant to perform a formal violence risk assessment further elaborating potential mitigating evidence suggested, yet incompletely developed for mitigation purposes during the Sanity Board.

5. Non-Capital Case Mitigation Expert Work

- a. While the term *mitigation expert* or *mitigation specialist* is most familiar applied to capital cases, DoD-employed confidential defense consultants in forensic psychiatry and forensic psychology routinely provide similar services in non-capital cases.
- b. In this role, we routinely are found necessary and relevant to advise defense teams regarding a host of topics including additional expert consultations informing both merits and sentencing phases, critique other mental health opinions, informing direct and cross-examination, amongst a host of other tasks.
- c. To demonstrate the frequency of this function:
 - i. In the **preceding 12-months** (December 2020 to December 2021), my office received **85** Court (or Convening Authority) authorized requests for confidential defense consultations for non-capital Courts-Martial from across the Armed Forces for the breadth of offenses referred under the UCMJ.
 - ii. In the **last 36-months** (December 2018 to December 2021), my office received **252** Court (or Convening Authority) authorized consult requests for similar services to military Trial Defense Teams.
 - iii. Requests related to capital cases or appellate defense issues are not included in the above case count, offered as a record of regularly conducted business activity.

6. Forensic mental health expert (FMHE) roles & responsibilities as Confidential Defense Consultant:

This section discusses a non-exhaustive list of the functions ideally performed by a DoD-employed FMHE appointed as a confidential defense consultant. This list serves to inform consideration of the relevant and necessary prongs of consultant appointment. A qualified FMHE:

- a. Serves as a fully involved member of the defense team.
- b. Maintains privilege as a *lawyer's representative*, as defined in M.R.E. 502(b)(3) of the defense attorney while performing in a non-testifying consultant role, per M.R.E. 502(a)(2).
- c. Develops shared expectations roles and responsibilities with the lawyer during the initial consultant and clarifies such expectations as the specific case progresses.
- d. Assists in understanding scientific concepts beyond the scope of the lawyer's training and education.
- e. Assists counsel based on the consultant's expertise in order to maximize litigation performance.
- f. Leads pretrial discussions when retained by lawyers lacking experience in the use and/or employment of experts.
- g. Understands the legal theory and theme of the defense.

SUBJECT: Affidavit Regarding Forensic Mental Health Expert (FMHE) Consultant Standards & Review of the Original Sanity Board Evaluation under RCM 706 ICO PVT Forrest, Jerome J.

- h. Integrates understanding of specific charging language in a case with applicable forensic mental health concepts to identify testimonial or other scientific evidence relevant to the cases based on the consultant's expertise.
- i. Studies the complete case file, identifying matters furthering or refuting the legal theory of the defense, and discusses such matters with the lawyer.
- j. Identifies critical information gaps prior to and during the course of trial required to either support or refute the retaining lawyer's theory of the defense. This can include operating as a "lay" observer to discuss perceptions as a gallery witness.
- k. Assists in understanding how scientific concepts apply or may apply to the facts of the case, trial preparation, gathering of evidence, presentation of the defense, and rebuttal.
- l. Assists counsel in developing lines of questioning for both direct and cross-examination relevant to the consultant's field of expertise.
- m. Anticipates and suggests probable lines of questioning during both direct and cross-examination to the lawyer based on the consultant's expertise.
- n. Assists the defense by consulting with counsel to prepare for pretrial interviews, review notes of pretrial interviews, prepare cross-examination and direct examination questions for both Defense and Government lay and expert witnesses, observe and evaluate testimony given by Defense and Government lay and expert witnesses in trial to adjust or highlight information on cross-examination, and, if necessary and appropriate at trial, provide relevant forensic mental health testimony within the scope of the expert's professional qualifications.
- o. Assist the defense regarding any Government's expert testimony to effectively counter the deficiencies of the expert opinions given in this case and assess and evaluate testimony given by Government witnesses within the scope of the expert's professional qualifications.
- p. Assists counsel in developing opening and closing statements based on the consultant's field of expertise.
- q. Assists counsel in selecting an optimal order of witnesses (lay and expert) to establish foundations for anticipated expert testimony relevant to the consultant's field of expertise.
- r. Educates the lawyer about scientific issues the attorney has identified within the scope of the consultant's expertise and the state of the relevant science.
- s. Proactively identifies and independently brings to the lawyer's attention any additional scientific issues which may support or refute the defense's theory and theme as the trial progresses (*e.g.* – During a case where an expert is initially retained related to memory impairments, the expert may independently recognize concerns for false or coerced confessions. The expert would proactively address such concerns with the lawyer.). The lawyer then decides how or if this additional scientific information is integrated into the case.
- t. Provides assistance during both merits and sentencing phases of the Courts-Martial.
- u. Reviews and offers insight to the lawyer about mental health and other medical records of an accused, including but not limited to review and interpretation of the findings, strengths, and weaknesses of prior R.C.M. 706 evaluations, risk/recidivism assessments, or other forensic reports.
- v. Suggests additional expert consultations for topics beyond the scope of the consulting expert's qualifications per M.R.E. 702 (*e.g.* - formal neuropsychological testing for evaluation of impairments related to head or brain injuries, consultation with toxicology or pharmacology experts in cases of multi-drug intoxication or withdrawal), or appropriate other medical specialty consultations for expert matters beyond the training and education of the lawyer and consultant.
- w. Maximizes physical presence in the gallery during all hearings related to the case unless otherwise directed by the lawyer or the Court.

SUBJECT: Affidavit Regarding Forensic Mental Health Expert (FMHE) Consultant Standards & Review of the Original Sanity Board Evaluation under RCM 706 ICO PVT Forrest, Jerome J.

- x. Is or can be present physically or telephonically to provide as-needed consultation as requested by the defense attorney prior to and during the course of a hearing.
 - y. Provides advice on specific issues related to the case in hearing based on applicable forensic or general psychiatric expert knowledge.
 - z. Identifies elements of evidence in the case file and/or that admitted into evidence in hearing with relevance to forensic mental health concepts.
 - aa. Identifies essential elements of evidence required to enable a forensic mental health opinion which either supports or refutes the defense's strategy.
 - bb. Proactively offers limitations of the expert's opinion based on the state of the relevant science, professional guidelines, and the expert's qualifications.
 - cc. Performs as a neutral expert witness if converted from the role of a confidential defense consultant to the purpose of providing expert testimony.
 - dd. Does not perform as both a panel / jury consultant and confidential consultant or expert witness.
 - ee. Assists in other tasks as requested by the defense attorney which fall within the scope of the expert's professional qualifications.
7. POC for this memorandum is the undersigned, [REDACTED]

[REDACTED]
[REDACTED] M.D., M.B.A.
LCDR MC USN
Forensic & General Psychiatrist
Chief, Center for Forensic Behavioral Sciences

Defense Appellate Exhibit C

DECLARATION

I, [REDACTED], on this 5th day of January 2022, declare under the penalty of perjury that information contained herein is the truth.

I am Private First Class Jerome Forrest's sister. I testified during the pre-sentencing portion of his trial but I feel that I was not adequately prepared to share my thoughts. Prior to testifying, I had minimal contact with Jerome's attorneys. I did not talk to them about my testimony until I was already at Fort Campbell in the middle of Jerome's trial. My parents and I were there for two weeks but Jerome's attorneys did not come speak to us about our testimony until the day before it happened, and even then it was only about 10-15 minutes. Prior to trial, I was never asked to find other people that may have been willing to testify on my brother's behalf.

When I testified, I was not sure what I could say and did not have time to prepare my thoughts. If I had more time to reflect, I would have liked to share the following with the court:

My heart is completely broken, the first love of my life. My brother Jerome and I grew up very close, our parents always said he would chuckle when I sneezed as a baby he thought it was the funniest thing in the world. We were born in Kingston, Jamaica, our parents came here for a better life for us and that it was. Growing up he was always by my side, he was a brother to admire, the best a little sister could ask for. We used to share art supplies, video games and love for music. Can you believe every project I needed help with he would spring into action to make sure it was the best of the best when it came to art or molding figures for displays? Yes, this is the Jerome I know and still to this day believe he is. A caring and compassionate person who would stop to help others. There is something the prior prosecution and court completely missed about this wonderful man, that he has a heart that beats just like you and I.

My brother loved science, arts and math and never thought twice about making sure I was also good with those things. We often had talks on walks home from school together and if I ever had a problem he would always swoop in to fix it. We grew up and I had a baby of my own, whom he adored and to my surprise she has taken on his love for art and can draw like no other. We now have to share drawings by mail. She also has been heavily affected by this judgment as the love for her Uncle will only be known to paper and phone calls. He worked various jobs until he found something he was committed to, helping this country be what it is today. Bringing fabrics of other nations together, and weaving it into a strong unit which included Jerome. Unfortunately, he was failed by colleagues and also those around him by not protecting him when he needed it the most even when he signed up for his life to be put on the line.

This is the scariest thought ever, when I got the call of this saddening event, I sat with my mouth wide open in shock because this is not my brother, this is not who he is as a person. There were too many other scenarios overlooked and now he is paying the consequences by hands of those who do not know who he really is. I know in my heart he is another man fighting for his life, fighting for his voice to be heard and I pray and hope he is not silenced again. I believe his cries, his sorrows and regrets, this is not him. He deserves to live, create life and move on, how this has played out will never sit right with me and should not to anyone else. The little boy who

would wipe my tears, share his clothes and toys with anyone around him is now physically gone to another realm that doesn't deserve his presence. He is love, he is passion, he is grace, he is hope and I want everyone to know that from the bottom of my soul.

In accordance with 28 U.S. Code §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 5th day of January, 2022.

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Signature

A solid black rectangular box used to redact the name.

Defense Appellate Exhibit D

DECLARATION

I, [REDACTED] on this 6th day of January 2022, declare under the penalty of perjury that information contained herein is the truth.

I am Private First Class Jerome Forrest's Mother. I wish there was more time focused on family and friend's statements towards Jerome's Trial. Unfortunately, we were not best prepared to share our thoughts with the public/court. We had very little communication over the course of the months dealing with his trial and during the 2 week trial with his lawyers and counsel in regards to testifying on his behalf. They never prepared us to testify until the trial was already on-going. We were never asked to provide the names of others willing to testify for our son. I feel the following would have been vital information to assist with the court getting to know who he is as a person. We did the best under the circumstances with lack of understanding what our part was in helping my son. There are friends and family who would rally for him and we deserve to be heard and given the opportunity to show them who he is.

My son was always a good child growing up, he always followed the rules of the home and my husband and I never had issues with him. He is a sweet, caring and helpful son. I am a God fearing woman and always made sure my children were raised the same. He has always loved children and to be around them. Each week when we went to church, all the children floated to him because he would draw pictures for them to show his love for art.

Jerome has always been a law abiding citizen of this nation and decided to sign his life up to protect this country. That is something to admire and protect. I know my son is no threat to anyone and deserves to be given the chance to live a normal life. My family has been robbed of the chance of making sure he gets to see the light of day and truly hope with the opportunity for a new judgment we get that chance to help him. He was always a hard worker and just was starting to plant his roots and find his way in life, which has now been taken from him without fair judgment.

The light the prosecution and defense provided of my son is not the son I know and love deeply. There is so much that should have been said and was not, that I know in my heart is an injustice. I know my son is brave and strong in his situation and has the ability to be a great man through this all and hope one day we can see him on the other side. I love my son more than life itself and would switch places with him in a heartbeat if I could, he deserves love and deserves better from all of us including this country.

In accordance with 28 U.S. Code §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 6th day of January, 2022.

[REDACTED]
Signature
[REDACTED]

Defense Appellate Exhibit E

DECLARATION

I, [REDACTED] on this 6th day of January 2022, declare under the penalty of perjury that information contained herein is the truth.

I am Private First Class Jerome Forrest's father. It saddens me that we were not given the opportunity and time to give more effort to help my son. His lawyers did not spend enough time trying to get to know us or Jerome. They always asked specific questions and I wish they did their best to get the positive and great life Jerome had in him. Over the 2 years we had minimal contact with lawyers and even during the 2 week trial, most of the contact came from my daughter reaching out to them for updates. We were left in the dark throughout this whole ordeal and I know that so was my son's ability to really show who he was as a person, because he is human and loves just as much as I do.

My son has always had a love for the army ever since highschool, he joined the JROTC program, which we supported because this country has given us opportunities that made us thankful. When my son told me he decided to join the arm, my heart filled with joy and I was the proudest father ever. He was always about helping those around him and finally finding his passion was so deserving.

I know if given the chance to make sure that he is loved, safe and can continue life normally I would do anything to do so. He deserves to be normal and live normally, I know that he has been shed in a different light that does not belong to him. Jerome was my first child and only son, he showed me a love like no other and I know that he is a dedicated, loving and caring man to anyone around him. God bless him and those who are now in control of his fate, that they may see what I see with how much I love my son.

In accordance with 28 U.S. Code §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 6th day of January, 2022.

[REDACTED]
Signature
[REDACTED]

Defense Appellate Exhibit F

DECLARATION

I, Staff Sergeant [REDACTED], on this _____ day of _____, 2022, declare under the penalty of perjury that information contained herein is the truth.

I, SSG [REDACTED], have been a friend of Jerome Forrest's for about twenty years. I was never contacted by PFC Forrest's attorneys but if I was called to testify, I would have testified largely along the following lines:

I met Jerome Forrest circa 2002 at St. Patrick's Catholic School in Jersey City, NJ. He was new to the small school where everyone knew each other but word spread fast about how smart Jerome was. We were not that close then but later on in life we became closer around 2004. Jerome lived in the same neighborhood as I and knew the same people. Jerome has always been a great friend to anyone that has befriended him or vice versa. He always was level headed, family oriented, and never stayed out after the street lights went on.

Jerome Forrest was a hard working young man, he was a handy man working on any odd jobs he could get hired to complete, to provide for himself. His pride and joy was the clothing line he created. The local clothing line gained popularity because of his own designs, he named it "Esquire," they were hand painted articles of clothing from Jackets to pants. This also helped him gain popularity and attention from his peers. Jerome loved to party and everyone loved Jerome. Jerome always had the latest tapes and music that we would listen to. All this started during his time at Lincoln High School.

As we got older Jerome worked construction and also worked on cars. He also pursued general labor work because that is what he was good at and wanted to do. His passion was always and fashion because of his clothing line. I also remember him wanting to be an advocate for Marijuana, to help others in all issues surrounding it.

Jerome's willingness to be and do better led him to the U.S. Military like a few of his friends including me. Jerome was doing well, getting fit and got married. Jerome getting married was odd to me because Jerome was a "Lady's man," but whatever made him happy made his friends happy because that would be his exact response to us all. Jerome is a strong caring person, the actions that he has been convicted of are not of his character and not of any influence of his background. His friends and community back home in Jersey City, NJ are still confused to this day. I pray this letter shows the type of person Jerome was in my eyes.

In accordance with 28 U.S. Code §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 13 day of JANUARY, 2022.

[REDACTED]
Signature
[REDACTED]

Defense Appellate Exhibit G

DECLARATION

I, [REDACTED], on this __05__ day of __january__ 2022, declare under the penalty of perjury that information contained herein is the truth.

I, [REDACTED] am a friend of Jerome Forrest for about sixteen years have pretty much grew up with each other in the neighborhood of Jersey City, New Jersey. I was never contacted by PFC Forrest's attorneys but if I was called to testify, I would have testified largely along the following lines:.

I met Jerome through a mutual friendship back when I was very young just going to Lincoln High School in Jersey City not too far from both of our address. After school I would hang out with some of my friends I met in high school which were also friends of Jerome's, we hung out in front of some of our porches throwing the football back and forth and walking to corner stores to buy snacks. Jerome was a very cool guy, very intelligent, I've noticed he loves math. Creative always would think of new ideas to put things together, turn nothing into something guy. Funny, and only because he would have to always defend himself night and day from people making bad comments about the size of his nose.

A lot of people would pick fights with Jerome, I think because he was such a people person that others felt intimidated. Growing up, Jerome would get jumped frequently, sometimes as much as once a week. Usually people would attack him because they knew he wasn't a fighter. He was always able to keep his cool. It took a lot for him to be provoked and people would often take advantage, he was never a violent person. I can definitely say that Jerome's regular day wouldn't be the same compared to everyone else's.

As a friend of Jerome he would always express to me his passion to design clothes and eventually not have work so hard working long shifts. After we both graduated from high school it seemed like life became harder for Jerome. He used to hang out at my house and share stories

with me of his bad encounters with family and co-workers day by day. I sometimes would advise him on how to try to get through the day or how to avoid issues.

Jerome stayed in Jersey City New Jersey for about six more years after graduating high school with me and some of our friends before starting a new life elsewhere in America. Months before he left he would always mention to me about how hard he was trying and he still doesn't understand why so many people would want to pick a fight with him where ever he goes. While trying to presume his passion of clothing design he would pick up a-lot of side jobs to fund his own business. Jerome eventually moved out of Jersey City. After a while I found out he joined the army and he was in training camp so he wasn't able to contact his close friends and even some family. From my perspective through Facebook and word to mouth Jerome was doing fine.

One day, I looked on Facebook and found him on a news article, reporting he killed his wife. Jerome is a very good guy and means no harm. He dealt with a lot in his life and had to be provoked to do any harm. It is not in his character to do that. Even when he was pushed, his intentions would never to be to kill.

In accordance with 28 U.S. Code §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the __05____ day of _____january_____, 2022.



Signature

Defense Appellate Exhibit H

DECLARATION

I, Sergeant [REDACTED] on this 3rd day of December 2021, declare under the penalty of perjury that information contained herein is the truth.

Private First Class Forrest and I served together in the same unit while we were both stationed at Fort Campbell. I knew him both before and after his investigation started. I was on CQ at the time it was reported. I was never contacted by PFC Forrest's attorneys but if I was called to testify, I would have testified largely along the following lines:

During my time serving with PFC Forrest I've had nothing but friendly encounters along with a healthy leader to soldier relationship. Forrest was always smiling and happy to be around others he could share the things that was going on in his life. He spoke very highly of his family and how He enjoyed spending time with them when we weren't out in the field training to become better infantrymen. He would always seek out others that were similar to himself and the background he proudly represented. PFC Forrest was a solid Infantryman and was always out in front leading the way when it came to physical fitness. He continuously showed moral courage and always motivated others to the very end. In training he always sought those with experience and didn't hesitate an opportunity to learn more about his job and everyone else's. Outside of work I knew Forrest to be an easygoing and down to earth person and was always spreading laughter around the people he was with.

In accordance with 28 U.S. Code §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 3rd day of December, 2021.

[REDACTED]
Signature
[REDACTED]

Defense Appellate Exhibit I

11thDECLARATION

I, Technical Sergeant [REDACTED], on this 11th day of January 2022, declare under the penalty of perjury that information contained herein is the truth.

I, TSgt [REDACTED], have been a friend of Jerome Forrest since childhood. I was never contacted by PFC Forrest's attorneys but if I was called to testify, I would have testified largely along the following lines:

I am TSgt [REDACTED], NCOIC, Equipment Support, 436 LRS/LGRDDO, Dover Air Force Base, with approximately 12 years of service. I currently supervise a section comprised of 40 active duty members and nine civilians. Throughout the course of my career I've amassed a total of three AFAM's, NCO of the year, and Airman of the Quarter.

I met Jerome Forrest as a childhood friend in Jersey City, NJ in 2006. At the time, we were classmates fostering a true friendship and mentorship as he was a class above me.

In my professional and personal opinion, Jerome's morale and ethical compass has always been in tune with whom he was. Jerome was more of a brother than he was a friend in our younger years, as his humility often would draw him to help both myself and my mother with anything we ever needed. Sometimes, Jerome would even help me afford school lunches on day's I fell short. Jerome held himself in high regards, as well as the company he kept. His presence in in my life was uplifting. The Jerome Forrest that I know is well versed in empathy not apathy and will put everything on the line to make sure and take care of his friends and, those that he considers family.

I am aware of Jerome's accusations, charges, and sentencing. I understand that if this letter is being read by you, you have found him guilty and this information will be used to help determine his appeal. In my opinion, Jerome's rehabilitative potential is exponentially high.

In accordance with 28 U.S. Code §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 11th day of January, 2022.

[REDACTED]
[REDACTED], TSgt, USAF
NCOIC, Equipment Support
[REDACTED]

Defense Appellate Exhibit J

DECLARATION

I, [REDACTED] on this 6th day of January 2022, declare under the penalty of perjury that information contained herein is the truth.

I, [REDACTED] have known PFC Jerome Forrest since he was young. I was never contacted by PFC Forrest's attorneys but if I was called to testify, I would have testified largely along the following lines:

I would like to speak a little bit about this young man and his relation to me. I know him through my son, though, he became one of my sons through the years. Jerome was in my house as much as my son too. He was a little more quiet and reserved but he had personality. I still can't figure out how he always knew I was on my way home with groceries, but he somehow managed to be there to help drag my cart full of groceries (or many, many bags) up four flights of stairs. I did, however, realize he was also there to help eat most of those groceries and I was ok with that. Even when my son graduated and moved out, Jerome would still come and check on me or even save the day and come and remove a mouse stuck to a trap, so that I can safely return to that room once again. There were even times that I would leave him in my son's room, hanging out, and I would go in my room, take a nap, wake up and he would be in the same spot either on the computer or playing the game and he would always ask, "Had a good nap ma?". You see, I loved that my son's friends felt like my house was a safe space and I (and perhaps his mother would agree) would much rather them be in my house safe, than on the streets getting into God knows what.

Getting to know Jerome was quite revealing because there were things that left me in awe of this young man. Not only is he a considerate and loving individual to his core, but he is a true artist with an old soul. Some of his designs literally made my jaw drop. You felt his passion when you looked at the things that his mind created. He even had fashion creations. He had an entrepreneurial mindset since I've known him.

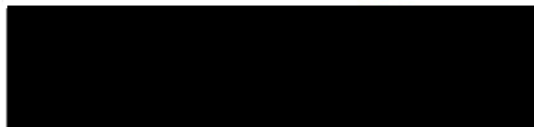
Jerome, like most, spent some time after High School trying to figure out his space in life. He worked different jobs in different fields but he wanted a career, something that would benefit him in the long run. When he contacted me on messenger, a few years after I left New Jersey, to tell me he was joining the Army I was, first, shocked because I didn't see him ever saying that but secondly, I was super proud of him for making such a mature and upstanding decision. He clearly thought it through and I supported him whole heartedly. He also contacted me to tell me he was married. I congratulated him and, just like his second mother, I counseled him but supported him and his decision.

I don't know the facts to this case and will refrain from any such comments except to say, a mistake doesn't make a man. While that is little consolation to all families involved, Jerome isn't a monster or some hardened career criminal. This is a young man that loves, is

loved, is responsible, compassionate, a true humble spirit. This is how I've always known him, and will always love him as such.

In accordance with 28 U.S. Code §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 6th day of January, 2022.

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Signature

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Defense Appellate Exhibit K

DECLARATION

I, [REDACTED], on this 5th day of January 2022, declare under the penalty of perjury that information contained herein is the truth.

I have known Jerome Forrest for over 15 years. I was never contacted by PFC Forrest's attorneys but if I was called to testify, I would have testified largely along the following lines:.

I have known Jerome Forrest for over 15 years - growing up I became best friends with his sister Janeille Forrest and I spent a lot of time around their entire family. Jerome has always been a strong, dependable man. Jerome is one of the most strong-willed and talented people I have ever encountered. At a generally young age, Jerome's sister became pregnant - Jerome was extremely supportive even against her families initial reaction. When Janeille delivered her daughter, Jerome was more than involved. Jerome's captivating personality and smart wit made him very popular in school and everyday life. Jerome's current standing doesn't do him justice or represent who is really is as a person or in our hearts.

In accordance with 28 U.S. Code §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 5th day of January 2022.

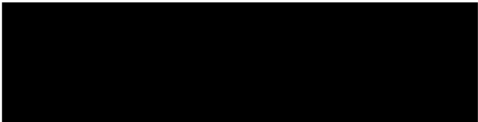
[REDACTED]

Signature

[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army
Court and Government Appellate Division on January 14, 2022.



MELINDA J. JOHNSON
Paralegal Specialist
Defense Appellate Division

