

**IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS**

UNITED STATES

Appellee

**MOTION TO RECONSIDER  
MOTION TO ATTACH DEFENSE  
APPELLATE EXHIBITS G-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 reconsider appellant's motion to admit Defense Appellate Exhibits G 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.

One of the ways in which a defense counsel's performance may be deficient is when they fail to investigate the case adequately. *United States v. Scott*, 1987 CMA LEXIS 2557, \*19 (C.M.A. 1987). In preparing a defense, "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland v. Washington*, 466 U.S. 668, 691 (1984); *see also United States v. Sales*, 56 M.J. 255, 258 (C.A.A.F. 2002). "Prejudice may occur at the sentencing phase, even when trial defense counsel presents several character witnesses, if 'there is a reasonable probability that there would have been a different result if all available mitigating evidence had been exploited by the defense.'" *United States v. Scott*, 81 M.J. 79, 84-85 (C.A.A.F. 2021) (quoting *United States v. Akbar*, 74 M.J. 364, 438 (C.A.A.F. 2015)).

In *United States v. Scott*, the Court of Appeals for the Armed Forces assessed ineffective assistance in the context of counsel's failure to "seek witness[es]" who could provide mitigation testimony. 81 M.J. at 86. Given the possibility of a severe sentence stemming from "extremely aggravating facts," the CAAF held that it was "not a close call;" counsel were ineffective for failing to *seek* witnesses that could provide mitigation. *Id.* at 85-86. ("Accordingly, trial

defense counsel did not seek witnesses who could testify about Appellant's combat record and his multiple instances of bravery. Trial defense counsel also did not seek non-local witnesses who could testify about other impressive aspects of Appellant's long military career.”). Given the circumstances, the CAAF could “see no reasonable tactical reason that trial defense counsel might have had for not seeking additional information,” and found counsels’ performance deficient. *Id.* at 86. The holding in *Scott* means that counsel have an independent obligation to seek out mitigation witnesses and extenuating evidence regardless of whether appellant gives them a list, or those individuals are otherwise included in the trial record. Going even further, the Supreme Court has recognized that counsel maintains an independent obligation to investigate, even when the client is wholly unhelpful or unwilling to help counsel develop the case. *Porter v. McCollum*, 558 U.S. 30, 40 (2009). In *Porter*, the Supreme Court held while “Porter may have been fatalistic or uncooperative, [] that does not obviate the need for defense counsel to conduct *some* sort of mitigation investigation.” *Id.* (emphasis in original). This can be seen in several other military cases. *See e.g. United States v. Allen*, 8 C.M.A. 504, 512, 25 C.M.R. 8, 12 (1957) (noting that appellant’s wife was an available, unused mitigation witness); *United States v. Boone*, 42 M.J. 308 (C.A.A.F. 1995) (“Appellant has furnished affidavits indicating that his mother and his uncle, an Air Force career officer, were willing to attest to his family background and good character.”); *United States v. Saintaude*, 56 M.J. 888 (Army Ct. Crim. App. 2002) (appellant’s counsel furnished thirteen letters

from individuals who would have testified on appellant's behalf but were never contacted by trial defense counsel. The Court found defense counsel ineffective because of their failure to investigate appellant's background for potential mitigation evidence.).

In the immediate case, appellate defense counsel were able to identify several possible mitigation witnesses by merely asking appellant and his immediate family for names of people to contact. These individuals, many of whom are listed below, all stated that they would have been willing to testify on appellant's behalf, that trial defense counsel never contacted them, and each provided information that would have defense counsel were defective by a complete failure to investigate and identify these, or other mitigation witnesses that may have been able to testify at pre-sentencing. "it should not require an attorney of extreme competence or vast experience to realize that when representing a [a soldier] who is facing life in prison... some extra effort may be necessary to prepare a credible case in extenuation and mitigation." *United States v. Dorsey*, 30 M.J. 1156, 1160-61 (A.C.M.R. 1990). Military case law provides no precedent that appellant must have offered witness names to his counsel in order to make a claim that counsel were ineffective for failing to identify witnesses in support of a mitigation case. Rather, the precedent establishes the opposite. Attorneys hold the burden of investigation, not their clients. *See Strickland*, 466 U.S. at 691. As a result, the following witness declarations should be considered by this court in its determination of appellant's assignments of error.

Defense Appellate Exhibit G is a declaration by [REDACTED], a longtime friend of appellant's, the two had known each other since childhood. 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 as detailed in her declaration.

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 five remaining Defense Appellate Exhibits are relevant to appellant's assignments of error. The above declarations offer distinct accounts and information regarding appellant's character, rehabilitative potential, and background. This information was crucial for any fact-finder to be able to adjudge an appropriate sentence.

### Conclusion

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

Panel No. 4

MOTION TO ATTACH DEFENSE  
APPELLATE EXHIBIT G:

GRANTED: ☐—

DENIED: \_\_\_\_\_

DATED: 21 JAN 2022

MOTION TO ATTACH DEFENSE  
APPELLATE EXHIBIT H:

GRANTED: ☐—

DENIED: \_\_\_\_\_

DATED: 21 JAN 2022


MOTION TO ATTACH DEFENSE  
APPELLATE EXHIBIT I:

GRANTED: ☐—

DENIED: \_\_\_\_\_

DATED: 21 JAN 2022


MOTION TO ATTACH DEFENSE  
APPELLATE EXHIBIT J:

GRANTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

DATED: 21 JAN 2022

MOTION TO ATTACH DEFENSE  
APPELLATE EXHIBIT K:

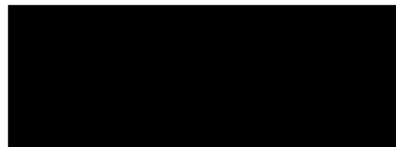
GRANTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

DATED: 21 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 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

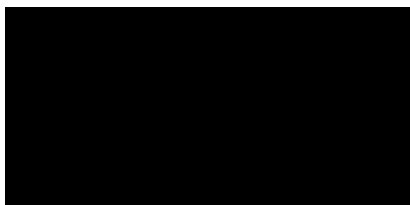

with me of his bad encounters with family and co-workers day by day. I sometimes would advise him on how to try to get through the day or how to avoid issues.

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 3<sup>rd</sup> 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 3<sup>rd</sup> 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 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 6<sup>th</sup> day of January, 2022.

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Signature

A black rectangular redaction box covering a line of text.

## 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 [REDACTED] 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.**

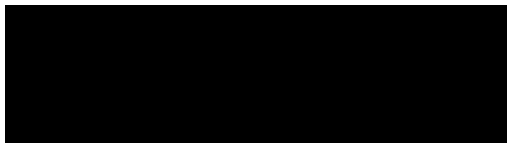
Executed on this the 5<sup>th</sup> day of January 2022.

[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 20, 2022.



MELINDA J. JOHNSON  
Paralegal Specialist  
Defense Appellate Division

