

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**MOTION TO ATTACH DEFENSE
APPELLATE EXHIBIT L**

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:**

COME NOW the undersigned appellate defense counsel, under rule 23 of this court's Rules of Appellate Procedure, and move for this court to admit Defense Appellate Exhibit L which is attached to this motion. Appellant asserts his defense counsel were ineffective because, among other things, they failed to reasonably investigate appellant's high speed motor vehicle accident on 9 December 2018, and whether appellant suffered a traumatic brain injury (TBI) in the accident. The attachment rebuts the affidavits of appellant's defense counsel, in which they claim they reviewed appellant's medical records and the medical records do not show appellant suffered from a TBI prior to the killing of his wife.

The attached declaration establishes facts required to meet the burden of showing defense counsel were ineffective.

Defense Appellate Exhibit L is a declaration signed by Dr. [REDACTED]. Dr. [REDACTED] is the Deputy Director of the National Intrepid Center of Excellence (NICoE) at the Walter Reed National Military Medical Center in Bethesda, Maryland. The NICoE is the TBI Directorate at Walter Reed and treats service members and their families suffering from TBI and associated health conditions. Additionally, Dr. [REDACTED] has more than twenty years of experience evaluating and treating TBI.

Dr. [REDACTED] reviewed the medical reports from appellant's high speed motor vehicle accident on 9 December 2018. It is apparent to him from the medical reports alone that appellant suffered a TBI in that accident. Additionally, Dr. [REDACTED] opines any trained medical professional would have looked at the medical report and come to the same conclusion.

Undersigned counsel received Government Appellate Exhibits A and C on 19 July 2022, in which appellant's trial defense counsel claimed they investigated appellant's car accident and came to the conclusion they did not have any evidence appellant suffered or may have suffered a TBI, or even a head injury, from the accident. Upon receiving defense counsel's affidavits, undersigned counsel requested assistance from the NICoE for a medical professional to assist in

rebutting defense counsel's affidavits. On 27 July 2022, Dr. [REDACTED] indicated he was able to review the medical reports from appellant's accident and render an opinion. Dr. [REDACTED] completed his review and provided a written affidavit on 11 August 2022. Undersigned counsel had hoped to have the attached declaration sooner, indeed before oral argument, but, because of his other duties at Walter Reed, Dr. [REDACTED] was unable to complete his review and provide the declaration before 11 August.

Conclusion

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

Panel No. 4

MOTION TO ATTACH DEFENSE
APPELLATE EXHIBIT L:

GRANTED: [REDACTED] _____

DENIED: _____

DATED: 23 AUG 2022

[REDACTED]
IAN P. SMITH
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division

[REDACTED]
RACHEL P. GORDIENKO
Major, Judge Advocate
Branch Chief
Defense Appellate Division

Defense Appellate Exhibit L

AFFIDAVIT OF DR. [REDACTED]

I, Dr. [REDACTED], am the Deputy Director of the National Intrepid Center of Excellence (NICoE) at the Walter Reed National Military Medical Center in Bethesda, Maryland. The NICoE is the Traumatic Brain Injury (TBI) Directorate at Walter Reed and treats service members and their families with traumatic brain injury and associated health conditions. Additionally, I am an Associate Professor of Neurology and Rehabilitation at the F. Edward Hebert School of Medicine, Uniformed Services University of the Health Sciences. I have more than twenty years of experience evaluating and treating traumatic brain injury and have published over 120 peer-reviewed articles and book chapters on TBI, especially military TBI.

I was asked by CPT [REDACTED] of the U.S. Army's Defense Appellate Division, to review documents from the case of US v PFC Jerome Forrest. Specifically, CPT [REDACTED] asked me to review the medical reports related to PFC Forrest's high speed motor vehicle accident on 09 December 2018. The documents were identified to me as Joint Appendix pages 304-331 and had those corresponding numbers on the bottom right of the pages. I have not reviewed any additional documents, interviewed PFC Forrest, or conducted any testing on PFC Forrest. My opinion is based entirely on the medical reports from the hospital following the car accident.

It is apparent from the medical reports I reviewed that PFC Forrest suffered a traumatic brain injury on 09 December 2018. The Computed Tomography (CT) Scan indicating there was no evidence of intracranial hemorrhage is not determinative on whether there was a brain injury. Other data in the report including Glasgow Coma Scale score and description of persistent confusion (in the absence of other factors that could depress this measure), support the diagnosis of traumatic brain injury, likely in the mild to moderate range.

I am also of the opinion that any trained medical professional would have looked at the medical report and come to the same conclusion.

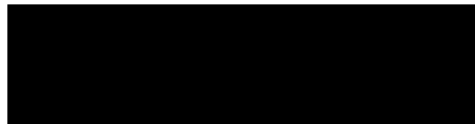
In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

[REDACTED]
Dr. [REDACTED]
Deputy Director, National Intrepid Center of Excellence
Walter Reed National Military Medical Center

Associate Professor, Neurology and Rehabilitation
Uniformed Services University of the Health Sciences

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army Court and Government Appellate Division on August 19, 2022.



MELINDA J. JOHNSON
Paralegal Specialist
Defense Appellate Division