

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee

v.

Private First Class (E-3)

JOHN K. JARLEGO

United States Army,

Appellant

MOTION TO NOTICE

Docket No. ARMY 20210389

Tried at Fort Bliss, Texas on 24 July 20, 9-10 September 20, 14 December 20, 28-29 June 2021, and 18 October 2021, before a general court-martial appointed by the Commander, Headquarters, 1st Armored Division and Fort Bliss, Colonel Robert L. Shuck and Colonel Jeffrey W. Hart, military judges, presiding.

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

COMES NOW the undersigned appellate defense counsel, pursuant to Rule 23 of this Court's Rules of Appellate Procedure and move this court to notice an error in the compilation of the Record of Trial.

- a. **Index: Trial Exhibits page numbers:** The Certified Record of Trial Index entries for Prosecution Exhibits 3 and 10 are erroneously marked and cite to incorrect paginations. (Index, p. 4). The entry for Exhibit 3 cites the military judge's initial ruling to admit the evidence at R. at 329. (Index, p. 4). However, the military judge later modified his ruling stating, "In regards to Prosecution Exhibit 3, the court was under the impression that [Miss ■■■] would be testifying. So, the court's going to modify its ruling and conditionally admit Prosecution Exhibit 3." (R. at 335). When the government moved to admit a redacted version of the evidence as Prosecution Exhibit 10, the military judge ruled, "The defense's objections as to Prosecution Exhibit 10 for identification is sustained. At this point, there's insufficient evidence showing the relevance of Prosecution Exhibit 10 for identification." (R. at 339). However, the Index cites Prosecution Exhibit 10

as being admitted/not admitted at R. at 340. (Index, p. 4). This is inaccurate because page number goes to the next witness's testimony. The military judge effectively excluded the evidence, when he stated, "The government may move to admit Prosecution Exhibit 10 for identification and Prosecution Exhibit 3 for identification later in the case." (R. at 339). The government did not move to admit the evidence later. Therefore, both exhibits should be noted as Not Admitted at R. at 339.

b. **Exhibits Admitted into Evidence:** This portion of the Record of Trial erroneously contains Prosecution's Exhibit 3 as admitted evidence. As mentioned in the above section, the military judge modified his initial ruling to admit the exhibit. Moreover, before deliberation, the military judge verified with both sides asking "Are Prosecution Exhibits 1, 2, 5, and 8 the only exhibits that should go back with the court?" (R. at 382-83). The parties affirmed. Therefore, Prosecution's Exhibit 3 should be removed from the "Exhibits Admitted into Evidence" section.

WHEREFORE, appellate defense counsel respectfully requests that this Court notice and correct these errors in the Record of Trial.

PANEL NO. 3

MOTION TO NOTICE:


GRANTED: _____

DENIED: _____

DATE: 18 August 2023



TUMENTUGS ARMSTRONG
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Appellate Defense Counsel
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MITCHELL D. HERNIAK
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was electronically submitted to the Army Court and Government Appellate Division on 8 August 2023.



TUMENTUGS D. ARMSTRONG
Captain, Judge Advocate
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