IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES Appellee	**BRIEF ON BEHALF OF APPELLANT**
v.	Docket No. ARMY 20220200
Specialist (E-4) **ESTEBAN OLAH PRADO** United States Army Appellant	Tried at Joint Base Lewis-McChord, Washington on 15 November 2021, 23 February 2022, 18-21 April 2022, before a general court-martial convened by the Commander, 7th Infantry Division, Lieutenant Colonel Jessica R. Conn, military judge, presiding.

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

Assignment of Error[1][2]

I. WHETHER THE MILITARY JUDGE ABUSED HER DISCRETION BY DENYING APPELLANT'S MOTION TO COMPEL EXPERT ASSISTANCE

II. WHETHER APPELLANT'S CONVICTION FOR COMMUNICATING A THREAT MUST BE OVERTURNED BECAUSE THE PANEL INSTRUCTIONS VIOLATED THE SUPREME COURT'S TRUE THREATS DOCTRINE

[1] Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), appellant respectfully requests this court consider the information provided in Appendix A.
[2] The Statement of Trial Results should be amended—Specification 1 of Charge I should read "Not Guilty", even though it followed a motion, the result is a not guilty finding.

Statement of the Case

On 21 April 2022, an enlisted panel sitting as a general court-martial convicted appellant, contrary to his pleas, of two specifications of communicating a threat, one specification of assault consummated by battery, and three specifications of domestic violence in violation of Articles 115, 128, 128b, Uniform Code of Military Justice [UCMJ], 10 U.S.C. § 915, 928, 928b.[3] (Statement of Trial Results). The military judge sentenced appellant to be reprimanded, reduction to E-1, and 176 days confinement. (Statement of Trial Results).

On 19 May 2022, the convening authority approved the findings and sentence. (Convening Authority Action). On 14 June 2022, the military judge entered judgment. (Judgment of the Court). On 16 August 2023, this court docketed appellant's case. (Referral and Designation of Counsel).

[3] Appellant was acquitted of five specifications of domestic violence against [redacted].

I. WHETHER THE MILITARY JUDGE ABUSED HER DISCRETION BY DENYING APPELLANT'S MOTION TO COMPEL EXPERT ASSISTANCE

Facts Relevant to Assignment of Error

A. Expert Request

One 31 November 2021, appellant's trial defense counsel requested appointment of an expert consultant in forensic pathology. (App. Ex XXXVI). The request sought [redacted], a retired Air Force Colonel with a Medical Degree (MD), and board certification in pathology. (App. Ex XXXVI).

The defense request "[sought] an opinion to show whether alternative theories exist for the source of the claimed injuries." The defense continued, "the seminal question will be how these markings, *to the extent they arguably exist*, could have been caused. (App. Ex XXXVI) (emphasis added).

The convening authority denied appellant's request on 21 December 2021 – the defense moved to compel the expert on 10 January 2022. Attached to the defense's motion were the six pictures of [redacted], which were eventually admitted at trial as Prosecution Exhibit 12 or Defense Exhibit I.

In their motion, the defense again pressed ". . . the absolute seminal questions [sic] will be how these markings, to the extent they arguably even exists (*and were not manipulated*), could have been caused." (App. Ex. XXXV)(emphasis added).

B. Expert Testimony at Motions Hearing

Appellant's counsel asked [redacted] about his testimony in previous courts-martial. His area of expertise was "primarily about the interpretation of photographic or narrative evidence of injuries and trying to correlate that with the proposed mechanisms of imparting them on an individual." (R. at 21). [redacted] was qualified as an expert and testified "many times." (R. at 21).

On pages 23 to 28 of the record, [redacted] provides opinions on the photographs ultimately admitted as Prosecution Exhibit 12. Regarding the first picture of Prosecution Exhibit 12, [redacted] testified he "didn't see clear evidence of a laceration to speak of." (R. at 27). He also noted the blood in the photo "cannot be explained by gravity alone because gravity will not cause the drop of stain to drift to the right." (R. at 26).

The defense suggested this could be an attempt to transfer blood from one location to another location. (R. at 26). [redacted] confirmed that possibility. "That's correct, its not the only way to assume that configuration, but what you described . . . could explain the configuration that is not consistent with the force of gravity alone." (R. at 26).

C. Military Judge's Ruling

On 12 May 2022, the military judge issued a written ruling denying the defense an "expert witness." (App Ex. LVIII pg 1). The military judge reasoned

that at the Article 39(a), UMCJ session the defense asserted that they were no longer requesting a consultant, but rather an expert witness. The defense did not make the affirmative statement that they were withdrawing their request for an expert consultant.

The military judge also concluded that the defense failed to adequately address the *United States v. Houser,* 36 M.J.392, 397 (C.M.A) factors and therefore the request for an expert witness was denied.

The military judge conducted an in the alternative review of the *United States v. Gonzalez* test and found "[t]he evidence in question are suboptimal photographs . . . there are no medical records . . . and the defense has not met its burden to show any expert is necessary to understand bruises or review photographs." (App Ex LXVIII, pg 6).

The military judge's ruling ignored [redacted] testimony about gravity's impact on how blood will naturally flow, or whether or not a laceration is apparent in the photos. Instead, the military judge commented, "[redacted] provided caveated opinions and conceded that the photographs were of low quality and suboptimal." (App Ex. LVIII pg. 3).

Standard of Review

"A military judge's ruling on a request for expert assistance is reviewed for an abuse of discretion." *United States v. Lloyd*, 69 M.J. 95, 99 (C.A.A.F. 2010)

(citing *United States v. Bresnahan*, 62 M.J. 137, 143 (C.A.A.F. 2005)). A military judge abuses her discretion when her ruling is arbitrary, fanciful, clearly unreasonable, or clearly erroneous. *Lloyd,* 69 M.J. at 99 (citations omitted). "[I]n determining whether the military judge abused his discretion in denying the defense's request for an expert consultant, each case turns on its own facts." *Bresnahan,* 62 M.J at 143.

Law

A military accused is entitled to employment of expert assistance upon a showing of necessity. *United States v. Garries*, 22 M.J. 288, 291 (C.M.A. 1986). To prevail, an accused must establish "a reasonable probability exists that (1) an expert would be of assistance to the defense and (2) that denial of the expert assistance would result in a fundamentally unfair trial*." Lloyd,* 69 M.J. at 99 (quoting *United States v. Freeman,* 65 M.J. 451 (C.A.A.F. 2008)).

To show an expert would be of assistance to the defense, an accused must answer the three prongs of the *Gonzalez* test: "First, why the expert assistance is needed. Second, what would the expert assistance accomplish for the accused? Third, why is the defense counsel unable to gather and present the evidence that the expert assistant would be able to develop?" *United States v. Gonzalez,* 39 M.J. 459, 461 (C.A.A.F. 1994).

Most recently, this court found error when a military judge denied appellant an expert who would have provided relevant evidence related to the impact of alcohol consumption on the alleged victim's memory. Most concerning for the court was that the judge's ruling prohibited the defense from presenting a theory that the government's case doesn't make sense ". . . effectively limit[ing] appellant to contesting his guilt only insofar as he did not deviate from the government theory of the case." *United States v. Kornickey*, ARMY 20210636, 2023 CCA Lexis 336, *21-22 (Army Ct. Crim. App. 31 July 2023)(mem. op)

Argument

Given the facts of appellant's case, the military judge abused her discretion when she denied appellant an expert pathologist. Appellant met his burden to satisfy the necessity for expert assistance, and the denial resulted in a fundamentally unfair trial because the defense was prohibited from exploring their theory.

A. The Judge's Decision Was an Abuse of Discretion.

1. The Judge Contradicts Herself in Her Opinion

Despite, the motion asking for an expert consultant, the military judge made the defense counsel choose whether they were asking for a consultant or a witness. After that, the defense announced they were seeking an expert witness. (R. at 51). However, the defense never formally withdrew their request for a consultant, and

yet the military judge determined the defense had withdrawn the request. (App Ex. LVIII pg 5). Despite the motion filed by the defense seeking an expert consultant, the military judge chastised defense counsel for not addressing the *Houser* factors for an expert witness.

Most troubling, the military judge's opinion is internally inconsistent. On the one hand, in her conclusions of law, she declares, "the Court did not rule on the motion to compel [redacted] as an expert consultant because the Defense was no longer seeking . . . an expert consultant." (App. Ex. LVIII pg. 5). Yet, the first page of her "Ruling" denies the defense's request for an expert consultant. (App Ex. LVIII pg 1).

2. The Judge Errs in Focusing on the Quality of the Pictures

Ultimately, the military judge dismissed the expert request because the pictures were, in the judge's opinion, "suboptimal" and therefore no useful information could be gleaned from them. (App. Ex. LVIII pg 5).

While, [redacted] remarked that some of the photos are "nonprofessional, lower quality photographs . . ." (R. at 23), he was still able to provide an expert opinion helpful to the factfinder. Analyzing the photos in the exhibit, he noted

> "that stain under the lip is not exactly disturbed in a way that is only explained by gravity. Because if we look at the cheek on the same photograph you'll see a tear drop at approximately the mid the mid portion of the right cheek which is coming straight down, and maybe with a streak

> above it. And that can be explained by an upright positon and the effect of gravity."

(R. at 26).

The comparison of the falling tear drop to the blood stain is analysis helpful to the defense. It allows the defense to make the argument that blood stain was transferred to the lower lip. This analysis is unencumbered by the poor quality of the photos.

It must be noted, [redacted] expertise is in "the interpretation of photographic or narrative evidence." (R. at 21). He has the expertise to draw expert medical conclusions from photographs of different quality – exactly what he was asked to do here.

The military judge's denial based on "suboptimal" photos, invades the province of the factfinder, who should have been permitted to weigh the value of [redacted] testimony themselves. The government could have addressed the quality of the photographs with [redacted] on cross-examination.

3. The Defense Request Satisfies Both the Consultant and Witness Tests.

Under either the *Gonzales* or *Houser* test, the fundamental question in applying the factor based tests is why the expert is "necessary" *Gonzales,* 39 M.J. at 461, or "legally relevant" *Houser*, 36 M,J. at 397.

Here, the defense theory of the case was that [redacted] was not actually struck in the face by appellant. The defense sought to pursue a theory that [redacted] used

the blood from the cut on her knee, which is present in Defense Exhibit I, and spread it on her face for the photo appearing in picture 1 of Prosecution Exhibit 12. (R. at 26-28).

Appellant could not be expected to introduce the natural effect of gravity on bleeding cuts without an expert. This is not readily understood by a panel. An expert pathologist, who would testify that gravity should cause both the cut and the tear drop in photograph 1 of Prosecution 12 to fall in a similarly straight path, is relevant and necessary to support the defense theory that [redacted] transferred the blood to her lower lip. It explains the lack of lack of clear evidence of a "laceration" beneath her lip. (R. at 27).

B. Denial of the expert resulted in a fundamentally unfair trial.

Just as in *Kornickey*, the military judge required the defense to play on the government's terms. They were forced to try to defend against the photographs in Prosecution Exhibit 12, but had to do so without their theory that [redacted] transferred the blood to her lower lip.

In *Loyd*, the defense failed to meet its burden to show the denial of a blood splatter expert would result in a fundamentally fair trial. This was because the defense at trial failed to present more than generalized notions of why the expert was necessary. 69 M.J. at 99. This case is the opposite. The defense desired to present a very specific theory to explain why the blood apparent under the lip of

[redacted] did not fall as it should due to gravity alone. The defense at trial specifically argued that the markings could have been "manipulated." (App Ex. XXV pg. 6).

The military judge at trial had the defense theory before her, and instead she focused on the quality of the photographs and ignored the crucial importance of allowing the defense to present their theory to the factfinder.

Conclusion

For denying the expert, Specifications 9 – 11 of Charge I must be set aside.

II. WHETHER APPELLANT'S CONVICTION FOR COMMUNICATING A THREAT MUST BE OVERTURNED BECAUSE THE PANEL INSTRUCTIONS VIOLATED THE SUPREME COURT'S TRUE THREATS DOCTRINE.

Facts Relevant to Assignment of Error

[redacted] and appellant had a contentious relationship, but through it all [redacted] would always go back to appellant. Even when she testified she was scared, she "was in love with him, so she didn't want to be around him because I knew I'd probably give him another chance." (R. at 421). Even after a Military Protective Order (MPO) was issued, [redacted] could not stand to be away from appellant, she "loved him and wanted to be around him." (R. at 422). [redacted] requested the MPO be lifted. (R. at 422). Even though [redacted] alleged appellant made threats against her, she testified she would still see appellant "a couple times a week" for a "friends with benefits" relationship. (R. at 437).

[redacted] testified that once appellant discovered she spoke with [redacted], issued threats. Including "I should kill you." (R. at 441-442). She alleged that this happened while she was standing against a wall and appellant "'chocked her' while saying it." (R. at 442). However, [redacted] also admitted the two engaged in consensual strangulation during previous sexual encounters. (R. at 449).

[redacted] testified appellant made the same threat about a week later near the end of June. (R. at 452). Immediately after making the threat, appellant and [redacted] engaged in consensual sex. (R. at 453). [redacted] testified she did this because she believed it would "calm him down." (R. at 453).

[redacted] admitted that even after all the alleged abuse, the breakup, and crying she was still consensually intimate with appellant. "I knew I was willing to sacrifice my feelings to be with him and make him happy. So I wanted to still see him." (R. at 437)

Relevant to the threat charges, the military judge instructed,

> "The communication must be one that a *reasonable person* would understand as expressing a present determination or intent to wrongfully injure the person, the property, or reputation of another person presently or in the future. Proof that the accused actually intended to kill, injure, damage, or destroy is not required. A communication is wrongful if the accused transmitted it for the purpose of issuing a threat, or with the knowledge that it would be viewed as a threat. A communication is not wrongful if it is made under circumstances that reveal

> it to be in jest, or for an innocent or legitimate purpose that contradicts the express intent to commit the act."

(R. at 704-705)(emphasis added).

Standard of Review

Instructional errors are reviewed de novo. *United States v. Killion*, 75 M.J. 209, 214 (C.A.A.F. 2016). An instructional error with constitutional dimensions is tested for prejudice under the harmless beyond a reasonable doubt standard. *United States v. Upshaw,* 81 M.J. 71, 74 (C.A.A.F 2021). This standard is met "where a court is confident that there was no reasonable possibility that the error might have contributed to the conviction." *United States v. Prasad*, 80 M.J. 23, 29 (C.A.A.F. 2020) (internal quotation marks omitted) (quoting *United States v. Tovarchavez*, 78 M.J. 458, 460 (C.A.A.F. 2019).

Law

A. *Counterman v. Colorado*

In the recent opinion from the Supreme Court of the United States, the Court, in an opinion authored by Justice Kagan, determined the appropriate mens rea requirement for "true threats" must be a subjective, not objective standard. *Counterman v. Colorado,* 143 S. Ct. 2106, 2111 (2023)

The Court held the First Amendment concerns underlying the criminalization of speech required proof that the defendant had a *subjective*

understanding of the threatening nature of his statement. *Id.* That subjective standard was satisfied by a showing of recklessness. *Id.*

Counterman engaged in a pattern of "stalking," sending hundreds of unwanted and sometimes threatening messages to the victim. The State of Colorado charged Counterman under a statute making it unlawful to "[r]epeatedly . . . make[ ] any form of communication with another person" in "a manner that would cause a *reasonable person* to suffer serious emotional distress and does cause that person . . . to suffer serious emotional distress." *Counterman v. Colorado*, 143 S. Ct. 2106, 2109-2110 (citing Colo. Rev. Stat. §18-3-602(1)(c)) (emphasis added). The Court held this reasonable person standard did not satisfy the First Amendment concerns and overturned Counterman's conviction.

Military law employs the prohibited objective standard. *United States v. Rapert*, 75 M.J. 164, 168 (C.A.A.F. 2016). "We have long embraced an objective approach in determining whether a communication constitutes a 'threat under the first element of" communicating a threat. *Id*. at 168. Rapert was convicted for threatening [redacted]. *Id*. at 165-66. Rapert was visiting the home of some friends on the evening of the 2012 Presidential election. *Id*. When it became clear [redacted] would be re-elected, Rapert told his friend that Rapert "might have to go back home in his upcoming training session . . . and break out [his] KKK robe that was handed down to me by my grandfather and go put one order up

and make it my last order to kill the President." *Id.* The recipient of the statement took it seriously and Rapert's "threat" was eventually reported to his chain of command and the Secret Service. *Id.* at 166. At trial, a Secret Service agent testified Rapert admitted to making the remarks, but said the statement was meant as a joke. *Id*. The Secret Service also found no connection between Rapert and the Ku Klux Klan. *Id.* Rapert was nevertheless convicted of communicating a threat. *Id.* at 166.

Rapert appealed, claiming his conviction was legally insufficient because his statement was constitutionally protected speech and was not a threat in light of *Elonis v. United States*, 575 U.S. 723 (2015). 75 M.J. at 166. The Court of Appeals for Armed Forces affirmed Rapert's conviction. *Id.* at 173. The Court found to determine whether an accused communicated a threat required an objective and subjective analysis. *Id*. at 168-69. First, the factfinder must determine whether the statement would constitute a threat from "the point of view of a reasonable [person]." *Id*. at 168 (quoting *United States v. Phillips*, 42 M.J. 127, 130 (C.A.A.F. 1995)). "The [Manual for Courts-Martial]'s requirement that the Government prove that an accused's statement was wrongful because it was not made in jest or as idle banter, or for an innocent or legitimate purpose, prevents the criminalization of otherwise 'innocent conduct,' and thus requires the Government to prove the accused's mens rea rather than base a conviction on mere

negligence." *Id.* at 168. The court further found the third element, "that the communication was wrongful," was the subjective mens rea required for such crimes. *Id.*

[redacted] and [redacted] dissented. *Id*. at 173. As the dissenters noted, the majority opinion "avoid[ed] the gravamen of the crime by failing to specify the level of mens rea required of an accused in communicating a threat and negligent criminality is not ruled out." *Id.* at 177 ([redacted]., joined by [redacted]., dissenting). The dissent noted that the majority's definition was premised on the notion that a speaker who communicates what could be perceived as a threat would still be convicted unless the speech was intended as "a joke or idle banter." *Id.* The dissent also found fault with the majority's claim that a statement made for an "innocent or legitimate purpose" would shield a blameless speaker. *Id*. "If we are to look to the purpose for which language is spoken to determine criminality, we cannot legitimately criminalize language with a purpose other than that targeted by the offense." *Id*. The dissent presciently proposed recklessness as the appropriate mens rea. *Id.*

In response to *Elonis* and *Rapert*, the explanation in Article 115 was amended to be "consistent" with those two cases. Manual for Courts-Martial, United States (2019 ed.) [MCM], App. 17-9. But the explanation still contains the impermissible "reasonable person" standard.

Per Article 115's definitions (and as demonstrated by the corresponding instructions provided by the military judge in appellant's case (R. at 598-600)), the panel first determines whether a reasonable person would believe the words uttered were a threat. The burden then shifts to the accused to persuade the panel the words were uttered in jest or for some innocent or legitimate purpose. If the accused cannot carry that burden, the panel convicts. Jest, innocent, or legitimate purposes are the only exceptions to the true threat conviction in the military justice system. *Id.* at 169. This is contrary to *Counterman* holding, where no such limits are specified.

Counterman outlines where the burden should properly lie in a communicating a threat case—on the government—but Article 115 embodies improper burden-shifting. Pursuant to the instructions, once a panel determines a reasonable person would believe the words were a threat, the burden shifts to an accused to prove beyond a reasonable doubt the statement was made in jest or otherwise innocent or legitimate. This burden shift is similar to what was held improper in *United States v. Prather*, 69 M.J. 338, 341-42 (C.A.A.F. 2011).

Prather was convicted of aggravated sexual assault. 69 M.J. at 339. At trial and on appeal, Prather claimed removing consent from the statutory scheme for aggravated sexual assault created an impermissible burden shift, requiring that Prather establish as an affirmative defense that the victim had consented. *Id*. at

341. The CAAF agreed. "In an area of law with many nuances, one principle remains constant – an affirmative defense may not shift the burden of disproving any element of the offense to the defense." *Id*. at 343.

The Court also rejected the government's argument that the "ultimate burden" instruction provided by the military judge cured the improper burden shift. Id. at 344. "[I]t is our view that where the statutory scheme has shifted the burden to the accused to negate or disprove an element of the offense and the panel is so instructed, standard 'ultimate burden' instructions are insufficient to resolve the constitutional issue." Id.

B. Finality of a Case

In *Griffith v. Kentucky*, the Supreme Court held an individual with a pending appeal receives the benefit of a new constitutional rule. 479. U.S. 314 (1986).

In court-martial practice, convictions are not final until appellate review is exhausted. *Loving v. United States,* 64 M.J. 132, 137 (C.A.A.F 2006).

Argument

A. Appellant Was Convicted Under the Unconstitutional Reasonable Person Standard

The same reasonable person standard found unconstitutional in *Counterman*, was present in the panel instructions here. "The communication must be one that a *reasonable person* would understand as expressing a present determination or

intent to wrongfully injure the person, the property, or reputation of another person presently or in the future." (R. at 704).

As the Supreme Court determined, this standard has the potential to criminalize First Amendment protected speech – either in the privacy relationship context, or by chilling political speech. *Counterman*, 143 S. Ct. 2106, 2114-2115. Therefore, giving this instruction constitutes an error of constitutional dimension.

For this reason – a criminal prosecution for threats must require a fact finder to believe that the individual making the statements showed at least a reckless disregard that the other individual would perceive the statements to be a legitimate threat. The panel was instructed on the wrong standard here – a constitutional violation.

B. The Error Applies to Appellant's Case because it is Not Final

Appellant's case is still on direct appeal before the Army Court of Criminal Appeals. Therefore the new standard from *Counterman*, applies to appellant's case without retroactivity concerns. *Loving*, 64 M.J. at 137.

C. The Error Was Not Harmless Beyond a Reasonable Doubt

The constitutional violation had a profound impact. The government's case regarding the threats was weak. It was premised on [redacted] testimony and little else. Further, this case is a prime example of the harm in prosecuting a threat without considering the subjective intent of the speaker. Appellant and [redacted]

[redacted] consistently engaged in "rough sex" including strangulation during sex. (R. at 449).

[redacted] admits that one of the times appellant came over and allegedly stated, "I should kill you" it immediately led to the two engaging in consensual sex that included strangulation. (R. at 452-453). There is simply no evidence that appellant did not *subjectively* consider the statement "I should kill you" to be part of the continued consensual sexual acts that were common to their relationship.[4] This is the private conduct of consenting adults – protected by the First Amendment. The government needed to prove that subjectively appellant knew he was making a threat.

Further, the explanation of the elements in the MCM and ultimately the instructions provided the panel in this case impermissibly shifted the burden to appellant. Article 115 criminalizes what a panel deems to be an unreasonable statement and places the burden on an accused to convince the panel beyond a reasonable doubt the statement was made in jest or for other lawful or innocent purpose. That burden shift violates due process. This is especially so in a case implicating the First Amendment, where chilling speech and self-censorship are ever-present dangers. *Counterman*, 2023 U.S. LEXIS 2788 at 14. "Yet the First

[4] Even if the military did employ the correct *recklessness* standard, the facts of this case are insufficient to support a conviction.

Amendment may still demand a subjective mental-state requirement shielding some true threats from liability." *Id*

This case is on par with *United States v. Guardado*, 77 M.J. 90, 94 (C.A.A.F. 2017) (appellant had been prejudiced by the Hills instruction because, despite the young victim's credible testimony, there was no supporting evidence); and *Prasad* 80 M.J. at 30-32 (prejudice found due to the lack of physical or forensic evidence or witnesses who could support the victim's version of events, as well as her well-developed motive to fabricate).

Without corroborating evidence that can speak to appellant's subjective intent, this error cannot be considered harmless beyond a reasonable doubt.

Conclusion

Because the instructions for Specification 1 and 2 of Charge III violation the Supreme Court's true threats doctrine, the finding of guilt for those specifications must be set aside.

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Appendix A: Matters Submitted Pursuant to *United States v. Grostefon*

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), the appellant, through appellate defense counsel, personally requests that this court consider the following matters:

I. WHETHER EXCESSIVE POST-TRIAL DELAY WARRANTS RELIEF

Appellant's post trial processing took 280 days. No sufficient reasoning was given for the excessive delay. No large absences or lack of manpower or operational concerns are offered in the government's Post-Trial Processing Timeline memorandum.

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army Court and Government Appellate Division on October 11, 2023.

[redacted]
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