

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**MOTION TO FILE
APPELLANT’S MOTION TO
ATTACH DEFENSE APPELLATE
EXHIBITS A, B, AND C UNDER
SEAL**

v.

Docket No. ARMY 20220160

Private First Class (E-3)
STEFON M. REID,
United States Army,

Appellant

Tried at Fort Polk,¹ Louisiana, on 9
and 30-31 March 2022 and 1 April
2022, before a general court-martial
appointed by the Commander, Joint
Readiness Training Center and Fort
Polk, Lieutenant Colonel Scott Z.
Hughes, military judge, presiding.

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

COME NOW the undersigned appellate defense counsel, pursuant to Rule
17.2(b) of this court’s Rules of Appellate Procedure, and move to file appellant’s
Motion to Attach Defense Appellate Exhibits A, B, and C (Appellate Exhibits)
under seal. Assignments of Error One and Two of appellant’s brief allege
ineffective assistance of counsel and prosecutorial misconduct related to evidence
that was not admitted or referenced at trial, but if raised, would have been evidence
of the “victim engaged in other sexual behavior” and therefore subject to the
procedural requirements of Military Rules of Evidence 412. Mil. R. Evid.

¹ Now named Fort Johnson.

412(a)(1). Appellate Exhibits A, B, and C of appellant's motion to attach are filed in support of appellant's brief and each exhibit discusses the other sexual behavior by the victim that was not raised at trial. Therefore, Appellant has good cause to file his brief under seal for the following reasons:

1. Appellant was convicted of Sexual Assault, in violation of Article 120, Uniform Code of Military Justice, in a contested court-martial. Appellant is submitting two Assignments of Error related to evidence of other sexual behavior by the victim. The first Assignment of Error alleges appellant's trial defense counsel's failure to move to admit the evidence of other sexual behavior by the victim amounted to ineffective assistance of counsel. The second Assignment of Error alleges prosecutorial misconduct for government counsel eliciting misleading testimony when government counsel was aware of the conflicting evidence of other sexual behavior by the victim. The evidence of other sexual behavior was not raised by either party.² The victim's other sexual behavior is discussed in the Appellate Exhibits included with Appellant's Motion to Attach.

² The government objected to questions by defense counsel on Mil R. Evid. 412 grounds on two occasions causing portions of the transcripts to be sealed. The evidence of other sexual behavior discussed in appellant's brief was not directly discussed during the sealed proceedings and the sealed portions of the transcript are not referenced in appellant's brief.

2. Counsel will be moving to file appellant's brief under seal due to the brief's repeated references to the victim's other sexual behavior.

WHEREFORE, appellate defense counsel respectfully request that this court grant the instant motion.

PANEL NO. 2

MOTION TO FILE APPELLANT'S
MOTION TO ATTACH DEFENSE
APPELLATE EXHIBITS A, B, AND C
UNDER SEAL



JAKE D. NARE
Major, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division

GRANTED: _____

DENIED: _____

DATE: 6 December 2023



MITCHELL D. HERNIAK
Major, Judge Advocate
Branch Chief
Defense Appellate Division

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army
Court and Government Appellate Division on November 28, 2023.



MICHELLE L.W. SURRATT
Paralegal Specialist
Defense Appellate Division

