

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**MOTION TO FILE BRIEF
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 brief in this case under seal. Assignments of Error One and Two of the 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. 412(a)(1). As appellant's brief requires extensive discussion of these matters, the brief should be sealed to comport with the requirements of Mil. R. Evid. 412.

¹ Now named Fort Johnson.

Assignments of Error One and Two are entirely related to this evidence of other sexual behavior by the victim and for this reason it was necessary to discuss these matters in appellant's brief. 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

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 attach three appellate exhibits to appellant's brief, which counsel will request to file under seal. Each exhibit references other sexual behavior by the alleged victim.

3. The undersigned appellate counsel cannot properly fulfill his appellate responsibilities and cannot explain Appellant's assignments of error without discussing the evidence of the alleged victim's other sexual behavior, which, if discussed at trial, would have been subject to the sealing requirements of Mil. R. of Evid. 412.

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

PANEL NO. 2

MOTION TO FILE BRIEF
UNDER SEAL

GRANTED: _____

DENIED: _____ With leave to file unsealed

DATE: 6 December 2023



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



MITCHELL D. HERNIAK
Major, Judge Advocate
Branch Chief
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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. SURRETT
Paralegal Specialist
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