

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee

v.

Sergeant (E-5)

**TREVAR D. TINSLEY**

United States Army,

Appellant

MOTION TO PHOTOCOPY  
SEALED MATERIALS

Docket No. ARMY 20200337

Tried at Fort Bragg, North Carolina, on  
14 April, 22-24 June, and 1 July 2020,  
before a general court-martial  
appointed by Commander, United  
States Army John F. Kennedy Special  
Warfare Center and School, Colonel  
Charles Pritchard and Lieutenant  
Colonel Christopher Martin, Military  
Judges, presiding.

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

COME NOW the undersigned appellate defense counsel, pursuant to Rules 6.9, 6.11, 23, and 32.1 of this court's Rules of Appellate Procedure, on behalf of appellant, and move for leave to photocopy and transmit one copy of selected sealed material in this case to the undersigned civilian appellate defense counsel. Undersigned counsel contemporaneously submit a motion for civilian appellate defense counsel to examine the requested sealed materials.

Both appellate defense counsel must review this information to properly represent the interests of our client in this case. The record contains, among others, the following sealed material: pages 19-81 of the Record of Trial (containing an

Article 39(a) hearing closed under the provisions of Military Rule of Evidence (Mil. R. Evid.) 412/513); Appellate Exhibits I, III, IV, V, VI, XVI, and XVII, reviewed in pre-trial hearings by the government and the defense, which were subsequently sealed pursuant to Military Rule of Evidence (Mil. R. Evid.) 412 and Rule for Court-Martial (R.C.M.) 1113.

Counsel move for leave to photocopy and transmit the above listed material only, not all sealed material in the record.

At trial, the military judge and the parties to the trial reviewed all of the sealed material discussed in this motion. The military judge, trial counsel, and trial defense counsel were present in the courtroom during the closed session. As such, all reasonable indication point to the records being sealed pursuant to Rule for Court-Martial [R.C.M.] 1113, and not as privileged materials under R.C.M. 701(g)(2). Appellant now requests to review only materials created by the parties at trial, materials explicitly released to the parties at trial, and transcripts of closed hearings at trial where the parties were represented by physically present counsel (R. at 19-81).

Because the present request is for “exhibits” and “proceedings” contained in the record, and sealed pursuant to R.C.M. 1113, no reasoned reading of the rules results in the conclusion that any material contained within the requested documents is “colorably privileged,” as discussed in Rule 6.9(d). As such, Rule

6.9(d) does not apply. Undersigned civilian appellate defense counsel needs to review the sealed transcript and appellate exhibits in order to adequately determine whether there are grounds to raise an Assignment of Error related to any of the sealed material. In the present case, review of the sealed materials is consistent with appellate defense counsel's obligations under Army Reg. 27-26, Rules of Professional Conduct for Lawyers, and is reasonably necessary for appellant, through counsel, to determine whether issues exist that merit presentation to this honorable court for consideration as part of its Article 66, UCMJ, review.

In short, undersigned counsel do not seek to review *privileged* materials, which would trigger the requirements of Rule 6.9(d), but rather only the sealed portions of the record concerning the litigation on whether parties could obtain privileged materials.

Michael Millios' office is located in [REDACTED] (b) (6) and he currently has no planned trips to the Washington D.C. area. Requiring counsel to travel to Fort Belvoir to view the sealed records in person would cause an undue hardship on counsel and appellant, particularly given the increased risk to the community during the COVID-19 pandemic. Both undersigned counsel acknowledge our professional and ethical obligations to protect the sealed materials, as well as the prohibition on disclosure listed in R.C.M. 1113(b)(3).

WHEREFORE, appellant respectfully requests that the Court grant this motion.

PANEL NO. 3

MOTION TO PHOTOCOPY  
SEALED MATERIALS

GRANTED: (b) (6) SEE ORDER

DENIED: \_\_\_\_\_

DATE: 15 January 2021

(b) (6)

FOR  
Michael Millios  
Civilian Appellate Defense Counsel

(b) (6)

(b) (6)

LAUREN M. TEEL  
CPT, JA  
Appellate Defense Counsel

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was electronically submitted to Army Court and Government Appellate Division on January 11, 2021.

(b) (6)

MELINDA J. JOHNSON  
Paralegal Specialist  
Defense Appellate Division

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