

**IN THE UNITED STATES ARMY
COURT OF CRIMINAL APPEALS**

UNITED STATES,
Appellee

**APPELLANT’S MOTION TO CITE
SUPPLEMENTAL AUTHORITY**

v.

Docket No. ARMY 20220575

Captain (O-3),
ROSS E. DOWNUM,
United States Army,
Appellant

Tried at Fort Hood, Texas, on 25 July,
19 August, and 7-10 November 2022
before a general court-martial
appointed by Commander,
Headquarters, 1st Cavalry Division,
Colonel Steven Henricks, Lieutenant
Colonel Scott Hughes, military judges,
presiding.

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

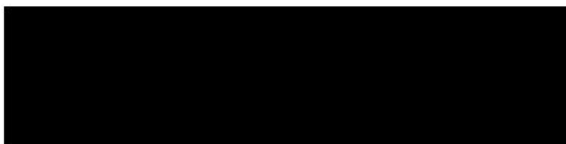
Pursuant to Rule 23.4 of this Court’s Rules of Appellate Procedure,
appellant respectfully moves to cite the following supplemental authorities:

1. *Hewitt-El v. Burgess*, 53 F.4th 969, 980 (6th Cir. 2022). In this case, the Sixth Circuit found trial defense counsel’s “performance was objectively unreasonable when he impeached his own client” with evidence of prior bad acts. This citation is relevant because it deals with a similar subject matter to the present case, impeaching one’s own client at trial.

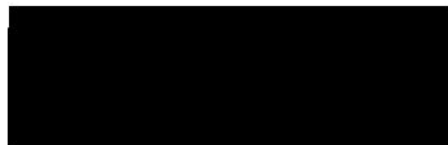
2. *Smith v. Arizona*, __ S.Ct. __, 2023 WL 6319655 (2023) (granting certiorari). This pending Supreme Court case examines the Confrontation Clause implications of a surrogate expert testifying as to the results of laboratory tests.

This citation is relevant because, in the present case, a surrogate expert testified, over defense objection, to the laboratory tests at issue and, depending on the Supreme Court's decision, it may have implications for the present case.¹

WHEREFORE, appellant, through undersigned appellate defense counsel, respectfully request this Court allow citation to these authorities.



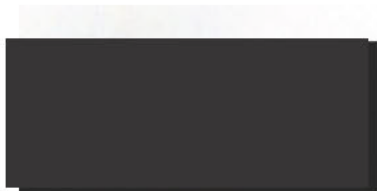
DANIEL CONWAY
Lead Civilian Appellate Defense
Counsel



SCOTT HOCKENBERRY
Assistant Civilian Appellate Defense
Counsel



¹ This issue was raised by appellant in assignment of error III.



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PANEL NO. 2

MOTION TO CITE SUPPLEMENTAL AUTHORITY:

GRANTED: _____

DENIED: _____

DATE: 17 January 2024

Certificate of Service

I certify that a copy of the foregoing was sent via electronic submission to the Army Court of Criminal Appeals and the Government Appellate Division 16 January 2024.



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