IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES	Appellee	**SECOND MOTION TO ATTACH AFFIDAVIT**
v.		Docket No. ARMY 20230313
Staff Sergeant (E-6) **DAVID L. HUNTER** United States Army,	Appellant	Tried at Fort Cavazos, Texas, on 16 February and 1 June 2023, before a general court-martial appointed by the Commander, III Corps and Fort Cavazos, Colonel Maureen A. Kohn, military judge, presiding.

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

COME NOW the undersigned appellate defense counsel, under Rule 23 of this court's Rules of Appellate Procedure, and moves to attach Defense Appellate Exhibit D to the record, which is enclosed in the appendices to this motion. This exhibit is a "complete-the-record" filing for Def. App. Ex. C. (filed 22 December 2023) to provide this Court appropriate context and is relevant to Appellant's assignment of error, but specifically the sentence severity (1st), post-trial delay (4th), and the Staff Judge Advocate's incorrect/misleading clemency advice (5th).

Defense Appellate Exhibit D is an affidavit from Appellant's spouse completing-the-record that after Appellant's Brief was submitted and Def. App. Ex. C. offered, Appellant's spouse eventually was able to obtain the vehicle from CID/the Government. The vehicle being held during the pendency of the appeal

was the subject of a significant portion of the financial strain Appellant alleges was caused, in part, by the post-trial delay. Since Appellant's counsel submitted three Affidavits with enclosures in a separate motion that discussed the vehicle and surrounding circumstances, Appellant, his spouse, and the undersigned counsel wanted to be transparent with the Court that the vehicle has now been released to Appellant's wife. This is relevant to the first, fourth, and fifth assignments of error, and illustrates that the truck/financial strain was likely never needed in the first place.

Conclusion

WHEREFORE, appellate defense counsel respectfully request that this court grant the instant motion, and attach Defense Appellate Exhibits D.

PANEL NO. 4

MOTION TO CONSIDER

GRANTED: [redacted]___

DENIED: _____

DATE: 12 JAN 2024

[redacted]
Robert D. Luyties
Major, Judge Advocate
Branch Chief
Defense Appellate Division

Defense Appellate Exhibit D - Spouse's Second Affidavit and Enclosures.

AFFIDAVIT

I, [redacted] on this 5th day of January, 2024, declare under the penalty of perjury that information contained herein is the truth.

I am writing this letter to complete the record regarding the vehicle which was held by CID and not previously released. The prosecutors have now signed the release paperwork and provided it to CID, so I was able to obtain the truck.

Major [redacted] spoke with the prosecutor and after David authorized him, Major [redacted] provided a copy of his brief to the prosecutor. My understanding was that the prosecutor would not release the vehicle until the process was complete.

Afterwards, the prosecutor was out of the country for the holidays, so I was unable to obtain the vehicle immediately. I had called CID daily and attempted the prosecutor's phone, but he was out of town and CID could not do anything without the paperwork.

Major [redacted] talked to two prosecutors that the original prosecutor worked with and provided the email traffic regarding the vehicle and its' release. They were able to sign the paperwork once they verified everything, and CID contacted me to pick up the vehicle at the end of the week that I signed my first affidavit.

Upon seeing the vehicle, the battery was dead, at least one tire was warped due to time sitting unmoved (noticeable when driving), and there was noticeable hail damage. After having the vehicle jumped, I was able to obtain the vehicle. We are attempting to trade it in for a more affordable vehicle now that David was released, in order for him to seek employment. To date, we have not done that as the holidays were not opportune with David being released on January 2nd, 2024.

It was important to me to be accurate and keep everyone up to date with the information which is the purpose for this affidavit.

In accordance with 28 U.S. Code §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 5th day of January (month), 2024 (year).

[redacted]

Signature

[redacted]

Printed Name

State of: Texas

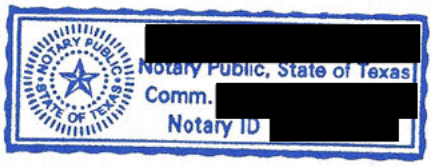
County of: Bell

The foregoing instrument was acknowledged before me 5 day of January, 2024

[redacted]

Your Name Here, Notary Public

My Commission Expires 09-19-2027



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 9, 2024.

[redacted]
MELINDA J. JOHNSON
Paralegal Specialist
Defense Appellate Division