

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**MOTION TO ATTACH
AFFIDAVITS AND ENCLOSURES**

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 move to attach Defense Appellate Exhibits A, B, and C to the record, which are enclosed in the appendices to this motion. Each exhibit 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 A is an affidavit from Appellant's Trial Defense Counsel and four emails. These establish both pretrial and post-trial attempts for relief, a speedy post-trial demand, trial defense counsel's matters that are not included/omitted in the Staff Judge Advocate's clemency advice making it incorrect, and the efforts the defense made to place the government on notice of the

prejudice of the post-trial delay in this case. These are relevant to the first, fourth, and now fifth assignments of error.

Defense Appellate Exhibit B contains an affidavit from the Appellant documenting the prejudice he has experienced from the post-trial delay as well as his efforts to mitigate those issues prior to sentencing. This is relevant to the first, fourth, and now fifth assignments of error.


Defense Appellate Exhibit C contains an affidavit as well as account/payment history and a communication's log indicating the efforts Appellant's wife made to try and mitigate the prejudice caused by the government's post-trial delay and decisions regarding waiver/release of Appellant's vehicle. These are relevant to the first, fourth, and now fifth assignments of error.

Conclusion

WHEREFORE, appellate defense counsel respectfully request that this court grant the instant motion, and attach Defense Appellate Exhibits A, B, and C

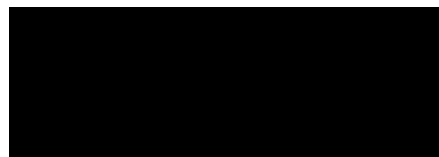
PANEL NO. 4

MOTION TO CONSIDER

GRANTED:  _____

DENIED: _____

DATE: 12 JAN 2024



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

Defense Appellate Exhibit A

AFFIDAVIT

I, CPT [REDACTED], on this 15th day of December, 2023, declare under the penalty of perjury that information contained herein is the truth to the best of my knowledge and belief.

I was the lead detailed defense counsel in United States v. SSG David Hunter. This memorandum specifically discusses the relevant background with post-trial processing and the request to the government regarding SSG Hunter's vehicle which was held by CID.

Attached are 4 emails (with appropriate PII redacted).

The first is on 3 April 2023 after SSG Hunter pled guilty in February 2023, but before the June hearing to conduct the full plea. This email was to the trial counsel attempting to get the truck released due to the financial hardship on the family. There were *multiple* other phone calls related to this email indicating our willingness to stipulate or concede the truck or provide any other evidence that was necessary to help alleviate the financial burden. The end result of this email was me getting them to agree to have CID occasionally start it and let the engine idle to keep it in good condition. I also personally drove over to CID and placed a windshield sunscreen over the dash. (Fort Cavazos can hit 120 degrees in the summer)

The second email was on 5-6 June 2023. This is an attempt that was accompanied by discussions and phone calls, advocating for post-trial relief in the form of waiver due to the financial strain and Mrs. [REDACTED] recovering from surgery from child-birth. In the email and follow-on discussions, I was advocating to the Government that the Military Judge not sentencing SSG Hunter to any adjudged forfeitures sent a very strong signal and the Convening Authority should grant relief. I was actually really surprised the Convening Authority denied this request given the baby and everything else. Mrs. [REDACTED] was unable to work after delivering [REDACTED] and SSG Hunter was confined in prison. The surrounding phone calls noted the truck was still being held and causing additional financial strain on the family and Mrs. [REDACTED].

Regarding the RCM 1106 matters, I handed the matters, including a signed copy of the appropriate funds release/authorization form to the Government Counsel and Special Victim's Prosecutor (SVP) in person, minutes after the court adjourned. Please reference my emails on 5-6 June 2023 for this. Please also note the Trial

Counsel confirms their receipt of the funds authorization form. The RCM 1106 matters were laser focused on Mrs. [REDACTED] and the child-birth ([REDACTED]), and how the Convening Authority had an opportunity to provide relief to a new Mother and her first born child. I also asked the SVP about the truck's release because of the family's finances, and was told he would take that into consideration, but that he wanted to make sure the appellate process did not upset the trial's findings.

The third email (28 June 2023) was touching base with the Government and inquiring about the truck's release. I want to highlight the word "again" in the email since this was one of many times that topic came up post-trial due to both Mrs. [REDACTED] and SSG Hunter reaching out and stressing the need to relieve themselves of the financial burden in this case. The request was again denied.

In an effort to expedite the process, I requested speedy post-trial processing after SSG Hunter asked for me to do that due to the financial strain and the turmoil it was taking on him seeing his Wife in that position. At the time, he asked me about waiving the entire post-trial process just to alleviate the financial burden and get the truck released, but I advised him that I couldn't advise him on that or do that, and he would have to talk to appellate counsel.

As the months went on, I was then moved from TDS and slated as the CJA/OIC of a legal office set to deploy to CENTCOM with 6 subordinate Judge Advocates and Paralegals. I inquired multiple times before I deployed, and then during my deployment, still routinely hearing from Mrs. [REDACTED] inquiring about the vehicle and who the appellate counsel would be. As I write this affidavit I am still deployed with my team.

I called an old contact, MAJ [REDACTED], a branch chief at Defense Appellate Division, who indicated they did not know the specific counsel at the time as the record of trial had only recently arrived. Once he identified MAJ [REDACTED] I emailed MAJ [REDACTED] that same day (and called) which was on 7 November. I talked again with MAJ [REDACTED] on 15 November and forwarded him the prison's point of contact that I had to arrange an expedited phone call with SSG Hunter as SSG Hunter was intending to waive the appellate process from confinement due to the financial strain of his family's situation. I relayed to MAJ [REDACTED] the SVP's contact information and have learned that the two of them talked, and that he may release the vehicle once the appellate brief is submitted.

I have served in TDS for two years and have had hundreds of clients including many who were confined and received punitive discharges. The stress the post-trial

process and decision on whether to release the truck/approve waiver stands out here more than in any other case. I heard from both Mrs. [REDACTED] and SSG Hunter more than any other post-trial client and the stress they indicated they felt was above and beyond the average in my experience to date.

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 15th day of December, 2023.



[REDACTED]

Affiant Signature

[REDACTED]

Printed Name & Rank

[REDACTED]

Witness Signature

[REDACTED]

SSG

Printed Name & Rank

From:

[REDACTED]

Subject:

US v. Hunter - Truck

Date:

Monday, April 3, 2023 10:46:00 PM

[REDACTED],

Can you give me a call whenever possible regarding SSG Hunter's truck?

Thanks!

V/R

[REDACTED]

CPT, JA

Trial Defense Counsel

USATDS, Fort Hood Field Office

[REDACTED]

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From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: US v. Hunter - 1106 Matters
Date: Monday, June 5, 2023 8:50:00 PM

Hey guys,

Just reaching out re: SSG Hunter's RCM 1106 Submission.

As you can see from the request/enclosures – his only intent is to request some financial relief for [REDACTED] and [REDACTED] as she medically cannot work right now and has her hands full with a newborn anyways and he will be confined for the next 9 months.

We think it says a lot that the MJ deliberately chose to not sentence him to any adjudged forfeitures or reductions, which makes his specific 1106 request path much simpler and straightforward. We trust all of these factors (and the nature and context of the defense evidence admitted during pre-sentencing) will be transmitted to the approval authority, we just wanted to touch base as this is such a unique case in so many ways.

I hope that the trial was restorative for the victim's family, and that they're doing OK. Maybe the process last week offered them some solace or comfort. As you can imagine it's uncomfortable for all if we reach out directly, but if you speak with them please feel free to relay our compassion for their loss again.

If you need anything from me or have any questions or concerns, please let me know.

Well done to both of you in the Courtroom, and thanks again.

V/R

[REDACTED]
CPT, JA

Trial Defense Counsel

USATDS, Fort Cavazos Field Office
[REDACTED]

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From:

Subject:

Date:

RE: US v. HUNTER - Evidence Release

Thursday, June 29, 2023 1:05:51 PM

Sorry for the delayed response on this one. I don't think we will be able to release the car until completion of appellate review. Given how smoothly this one went, I don't anticipate a hold up on appeal, but in the event it came back, the car would be critical evidence.

From:

Subject: US v. HUNTER - Evidence Release

Sir,

Good afternoon and hope you are well!

Sir, I wanted to touch base with you again regarding the timeline for the release of SSG Hunter's vehicle back to his family.

Thanks Sir.

V/R

CPT, JA

Trial Defense Counsel

FCTX Field Office



MAJ USARMY HQDA TJAGLCS (USA)

From: [REDACTED]
Sent: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: US v. Hunter - 1106 Matters

Great. No need to worry about the authorization - I passed along the form last night.

From: [REDACTED]
Sent: [REDACTED]
To: Bu [REDACTED]
Cc: [REDACTED]
Subject: RE: US v. Hunter - 1106 Matters

Yes, same submission! Thank you. Ms. [REDACTED] sent me a note about the funds authorization form in SEPCOR so I will also respond to that and CC everyone. She asked me for the form but I gave it to LTC [REDACTED] after the trial.

Thanks!

V/R

[REDACTED]
CPT, JA
Trial Defense Counsel
USATDS, Fort Cavazos Field Office
[REDACTED]

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From: [REDACTED] II CORPS (USA) [REDACTED]
Sent: Monday, June 5, 2023 1:20 PM
To: [REDACTED] I>; [REDACTED]
CORPS (USA) [REDACTED] >
Cc: [REDACTED] mil@army.mil>
Subject: Re: US v. Hunter - 1106 Matters

Jeremy--

Thanks for touching base. We appreciate your hard work and your advocacy, as well.

I don't see anything attached to today's e-mail. Are the enclosures the same as the ones you provided us with after the CM?

We're working with Ms. [REDACTED] and Ms. [REDACTED] to get these to the CG ASAP.

V/R,
[REDACTED]

From: [REDACTED] USARMY 1 CD (USA)

Sent: Monday, June 5, 2023 12:50 PM

To: [REDACTED] III CORPS (USA); [REDACTED] USARMY III CORPS (USA)

Cc: [REDACTED] 1 CD (USA)

Subject: US v. Hunter - 1106 Matters

Hey guys,

Just reaching out re: SSG Hunter's RCM 1106 Submission.

As you can see from the request/enclosures – his only intent is to request some financial relief for [REDACTED] and [REDACTED] as she medically cannot work right now and has her hands full with a newborn anyways and he will be confined for the next 9 months.

We think it says a lot that the MJ deliberately chose to not sentence him to any adjudged forfeitures or reductions, which makes his specific 1106 request path much simpler and straightforward. We trust all of these factors (and the nature and context of the defense evidence admitted during pre-sentencing) will be transmitted to the approval authority, we just wanted to touch base as this is such a unique case in so many ways.

I hope that the trial was restorative for the victim's family, and that they're doing OK. Maybe the process last week offered them some solace or comfort. As you can imagine it's uncomfortable for all if we reach out directly, but if you speak with them please feel free to relay our compassion for their loss again.

If you need anything from me or have any questions or concerns, please let me know.

Well done to both of you in the Courtroom, and thanks again.

V/R

[REDACTED]
CPT, JA

Trial Defense Counsel

USATDS, Fort Cavazos Field Office
[REDACTED]

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Defense Appellate Exhibit B

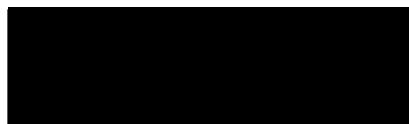
AFFIDAVIT

I, David Hunter, on this 13th day of December, 2023, declare under the penalty of perjury that information contained herein is the truth.

Thank you for consideration in my case. I want to state that I am not trying to get my findings overturned. I take full responsibility of my actions and always have. During the past 15 months, my family and I have been placed under a huge financial burden beyond our control. Since 9 September 2022, my truck has been held at CID. During that time, my wife and I have tried calling and emailing CID, TDS, and anyone who would listen about releasing the truck. All we were given was false hope and empty promises. I have requested a speedy trial and done everything I can to move everything along. All of this has caused great emotional and financial strain on my family and I. We are trying to adjust to losing my whole paycheck, raising our first kid, and paying for a truck we can't sell. Being inside the facility for six months so far has been depressing knowing I can't help my family. I have been constantly stressed out and worried about them daily. In closing, I want to reiterate that I don't want my findings overturned. I don't want to cause the family any more pain. I have been and am willing to stipulate any facts needed to get the trial done. The past 15 months have been hard for my family and any consideration towards my case is greatly appreciated. Thank you for your time.

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 13th day of December (month), 2023 (year).



Signature

David Hunter

Printed Name

WITH THE ARMED FORCES OF THE UNITED STATES
At Joint Base Lewis-McChord, Washington

Subscribed, sworn to and acknowledged before me by David Hunter, who is known to me to be eligible for Legal Assistance under the provisions of 10 USC section 1044a or regulation of the Department of Defense, on 18 December 2003. This acknowledgment is executed in my official capacity under the authority granted by Title 10, United States Code, Section 1044a, which also states that no seal is required on this acknowledgment.



Notary Public: [Redacted]
Printed Name: [Redacted]
Position: Paralegal Specialist
Grade and Branch of Service: E-4 / Army
Command or Organization: MWSRCF

Defense Appellate Exhibit C

AFFIDAVIT

I, [REDACTED], on this 21 day of December, 2023, declare under the penalty of perjury that information contained herein is the truth.

I am writing this letter to document the extra hardship my son and I have endured due to the extended timeline based on the Fort Cavazos' leadership choices. At the date of this Court Marshall, I was 11 days post-birth of our son. As a result of complications during labor, I delivered our son via Cesarean section surgery, for which the recovery is significant.

Under the circumstances of my husband's assignment to Fort Cavazos, I am in Texas away from family and friends and needed physical support to assist with our son. After the surgery, not only am I void of physical assistance, I was forced to return my own employment sooner than physically able and medically recommended due to the need to provide financially for our household; primarily due to the retention and inaccessibility to my husband's vehicle which we are still responsible for payment on and would have otherwise sold to relieve ourselves of payment.

This vehicle has been held as evidence, in possession of Fort Cavazos CID, since the date of the accident in question in September 2022; for a total of 15 months. At which time my husband took over my vehicle to enable him to transport to work prior to confinement as he had his own medical appointments and was still committed to the Army, his unit, and his Soldiers.

Months later, we had to purchase a third vehicle to ensure transportation to appointments of a high-risk pregnancy, completion of typical daily needs while David was at work, and general safety given I am away from all family and friends.

Though we were able to sell the third vehicle upon confinement, we continued to be responsible for the truck's vehicle payment as we have been unable to sell the vehicle due it being held as evidence; in addition to having to manage typical living expenses for which I am now solely responsible for such as rent, utilities, groceries, etc. along with payment for a vehicle for myself; without David's pay which was forfeited as a result of the Court Marshall.

Although we have continued to make payments on the vehicle, we have been penalized due to needs to defer payments on multiple months for lack of funds.

The Leadership has refused to release the truck citing it as needed evidence, despite a plea agreement being completed and a plethora of additional physical evidence in their possession and the fact that David has always admitted and taken responsibility for his tragic mistake. My husband and I have been nothing but cooperative throughout the investigation, and had the Government released the vehicle, we were willing to agree, conceded, or stipulate to anything in order to alleviate this burden.

Since the day the trial was complete on June 1st, I have made multiple attempts to determine a timeline for the assignment of appellate counsel and regain access to the vehicle, by calling Fort Cavazos CID, Fort Cavazos TDS, and our assigned TDS Counsel CPT [REDACTED] who is now out of the country. In each of these calls, I repeatedly stressed the financial burden this has caused our family and additional mental stress it puts on me as the current sole provider of a household and young baby.

David and I indicated we would waive the appellate process in its entirety if we could gain access to the vehicle to decrease the financial burden it has been so bad. David, besides being unable to support me and away from our only child, has felt guilt and shame for not being able to provide to help the financial burden, but also that the Army would leave me and our son Jack, in a situation like this. He loves the Army and understands he must be punished, but it has hurt him to see his son and me treated this way since CPT [REDACTED] indicated we were a good candidate for waiver of David's pay.

No one intended for that tragic day to happen and it was a mistake. I cannot stress how much knowing David hurt those Mrs. A [REDACTED] loved has hurt him. However, why the vehicle could not be released or General [REDACTED] would not allow for some financial relief for a new mother recovering from surgery is beyond my understanding; I just know it has strained our household.

Attached are the record of payments, and emails from Captain [REDACTED] showing his attempts to reach out regarding the vehicle. Below are the contacts/attempts regarding the release of the vehicle:

Excerpts attached as example. The rest are available upon request.

9/11/23 TDS via Phone

9/13/23 TDS & CID via Phone

9/25/23 TDS via Phone (unreachable)

9/26/23 TDS via Phone (unreachable)

9/27/23 TDS via Phone (redirected to [REDACTED])
9/28/23 [REDACTED] via Email
10/5/23 [REDACTED] via Email
10/27/23 [REDACTED] via Email
11/2/23 [REDACTED] via Email
11/2/23 TDS via Phone
11/12/23 [REDACTED] via Email
11/16/23 [REDACTED] via Email
11/16/23 MAJ [REDACTED] via Email immediately after being given information by
CPT [REDACTED] (I told he had to talk to David first)

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 21 day of December (month), 2023 (year).

[REDACTED]

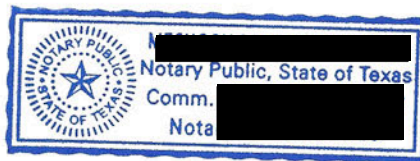
Signature

[REDACTED]

Printed Name

State of: Texas
County of: Bell
The foregoing instrument was acknowledged
before me 21 day of December 2023
[REDACTED]

Your Name Here, Notary Public
My Commission Expires 09-19-2027



4:13



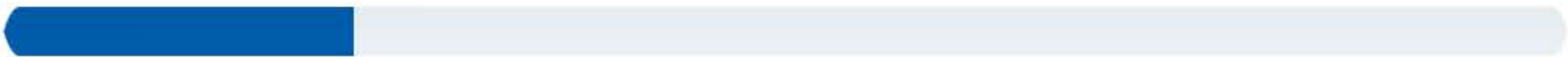
PAYMENT HISTORY



2022 GMC Sierra Limited

Account #: [REDACTED]

65 of 84 Payments Remaining



Payment History

Note: Below are all the MyAccount payments you've made. Payments that may have later been returned or declined will still be displayed. Payments made over the phone, by mail, through Western Union or MoneyGram, or using My GM Rewards points will not be displayed.

September 16, 2023

PROCESSED

\$892.64 >

August 16, 2023

PROCESSED

\$892.64 >

July 14, 2023

PROCESSED

\$892.64 >

June 15, 2023

PROCESSED

\$892.64 >

May 12, 2023

PROCESSED

\$892.64 >

April 13, 2023

PROCESSED

\$892.64 >

January 16, 2023

PROCESSED

\$892.64 >

December 16, 2022

PROCESSED

\$892.64 >



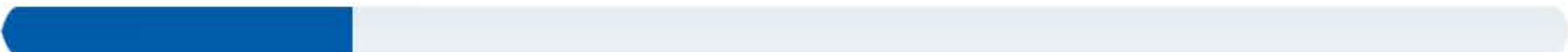
PAYMENT HISTORY



2022 GMC Sierra Limited

Account #: [REDACTED]

65 of 84 Payments Remaining



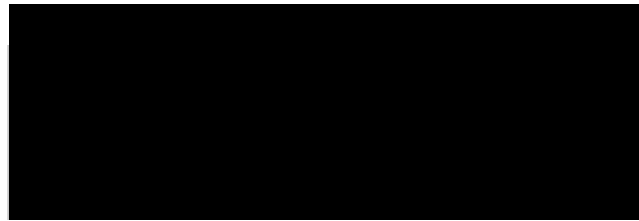
Payment History

Note: Below are all the MyAccount payments you've made. Payments that may have later been returned or declined will still be displayed. Payments made over the phone, by mail, through Western Union or MoneyGram, or using My GM Rewards points will not be displayed.

✓ PROCESSED	\$892.64	>
May 12, 2023		
✓ PROCESSED	\$892.64	>
April 13, 2023		
✓ PROCESSED	\$892.64	>
January 16, 2023		
✓ PROCESSED	\$892.64	>
December 16, 2022		
✓ PROCESSED	\$892.64	>
November 16, 2022		
✓ PROCESSED	\$892.64	>
October 16, 2022		
✓ PROCESSED	\$892.64	>
September 16, 2022		
✓ PROCESSED	\$892.64	>

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army
Court and Government Appellate Division on December 22, 2023.



MICHELLE L.W. SURRATT
Paralegal Specialist
Defense Appellate Division

