

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**MOTION TO SUPPLEMENT
GOVERNMENT APPELLATE
EXHIBIT 1**

v.

Docket No. ARMY 20230319

Private (E-2)

RONALD L. NGUYEN

United States Army

Appellant

Tried at Fort Liberty, North Carolina, on 8 December 2022, 26 January 2023, and 5–7 June 2023, before a general court-martial convened by Commander, XVIII Airborne Corps, Lieutenant Colonel Tyler J. Heiman and Colonel J. Harper Cook, Military Judges, presiding.

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

Pursuant to Rules 13 and 23 of this honorable court’s Rules of Appellate Procedure and 11 December 2024 Order, the undersigned appellate government counsel files this motion to supplement:

1. On 11 December 2024, the court ordered the government to obtain the full audio recording for the entire proceedings and ensure said recordings be audible.
2. On 13 December 2024, undersigned counsel reviewed the court’s physical copy of Government Appellate Exhibit 1.
3. Undersigned counsel identified the following inaudible portions of Government Appellate Exhibit 1:

- a. “7 – Nguyen – 5 June 23 – Trial – 3h 21m 30s.wav”;¹
- b. “8 – Nguyen – 6 June 23 – Trial – 3h 9m 44s.wav” at 03:06:48–03:06:59;
- c. “11 – Nguyen – 7 Jun 23 – Trial – 1h 10m 9s.wav” at 24:12–24:25, 25:10–25:16, and 26:42–27:32; and
- d. Furthermore, the transcript contains two discrete instances of “[inaudible]”:² (i) R. at 434 line 11 whose associated audio timestamp is “8 – Nguyen – 6 June 23 – Trial – 3h 9m 44s.wav” at 03:05:40–03:05:44; and (ii) R. at 595 line 5 whose associated audio timestamp is “12 – Nguyen – 7 Jun 23 – Trial – 1h 26m 28s.wav,” *infra* paragraph 8 at 0:04:30–01:05:25.

4. The Fort Liberty court reporters explained to undersigned counsel that except for arraignment, the trial was recorded using the Eclipse system. For each part of the proceeding, the Eclipse system produced eleven audio files simultaneously: one audio file of all the microphones combined and ten audio files corresponding to individual microphones.

- a. The audio files of all the microphones combined were previously filed with the court as Government Appellate Exhibit 1.

¹ Appellant’s brief referred to a portion of the transcript referring to “[With a raised voice:].” (Appellant’s Br. 14; R. at 297 line 5–8). Although defense counsel’s questions are not audible, the victim’s responses are audible beginning from 03:07:29 on audio file “7 – Nguyen – 5 June 23 – Trial – 3h 21m 30s.wav.”

² Additional instances of “[inaudible]” appear in the record in Defense Exhibit L for ID, Defense Exhibit M for ID, and Exhibit N for ID.

b. The individual microphones were automatically assigned as follows: (1) military judge, (2) trial counsel, (3) defense counsel, (4) accused, (5) witness, (6) assistant trial counsel, (7) assistant defense counsel, (8) civilian defense counsel, (9) special victims' counsel, and (10) members.

5. The Fort Liberty court reporters cannot manipulate the audio files the Eclipse system produced; they cannot clarify the audio files contained in Government Appellate Exhibit 1 or combine the individual microphone audio files into a single audio file. Furthermore, the inaudible portions *supra* paragraph 3b–d are due to recording equipment error and cannot be fixed. However, except for *supra* paragraph 3d, the transcript was complete despite portions of Government Appellate Exhibit 1 being inaudible because the individual microphones were audible.

6. Accordingly, on 13 December 2024, the government obtained recordings of each individual microphone and ensured they were audible.

7. Additionally, during review of the court's physical copy of Government Appellate Exhibit I, undersigned counsel determined the audio file containing findings and pre-sentencing proceedings (R. at 561–606) were unintentionally excluded from Government Appellate Exhibit 1.

8. On 16 December 2024, undersigned counsel obtained audio file “12 – Nguyen – 7 Jun 23 – Trial (Findings) – 1h 26m 28s.wav” from Fort Liberty and

identified the following inaudible portions: 01:04:06–01:04:10, 0:04:30–01:05:25.

9. On 17 December 2024, the government obtained recordings of each individual microphone corresponding with audio file “12 – Nguyen – 7 Jun 23 – Trial (Findings) – 1h 26m 28s.wav” and ensured they were audible.

10. **Government Appellate Exhibit I-A** is three discs containing individual microphone audio files to supplement the inaudible portions of Government Appellate Exhibit 1 identified *supra* paragraphs 3 and 8 as well as “12 – Nguyen – 7 Jun 23 – Trial (Findings) – 1h 26m 28s.wav.” Microphones 8, 9, and 10 are not included in this motion because they were not used in these portions of the proceeding. The government requests this exhibit be attached to the appellate record.

WHEREFORE, the government prays this honorable court grant this motion.

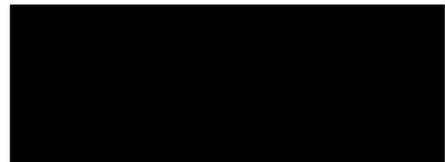
MOTION TO SUPPLEMENT
GOV'T APP. EX. 1

Panel No. 2

GRANTED: _____

DENIED: _____

DATE: _____



VY/T. NGUYEN
CPT, JA
Appellate Attorney, Government
Appellate Division

GOVERNMENT APPELLATE EXHIBIT

1-A

PV2 RONALD L. NGUYEN
U.S. Army / GCM
3-27 FA Reg, 18th FA Bde
Fort Liberty, NC

L. NGUYEN
DM

3-27 FA Reg, 18th FA Bde
Fort Liberty, NC

memorex

DVD+R
16X 4.7GB 120min

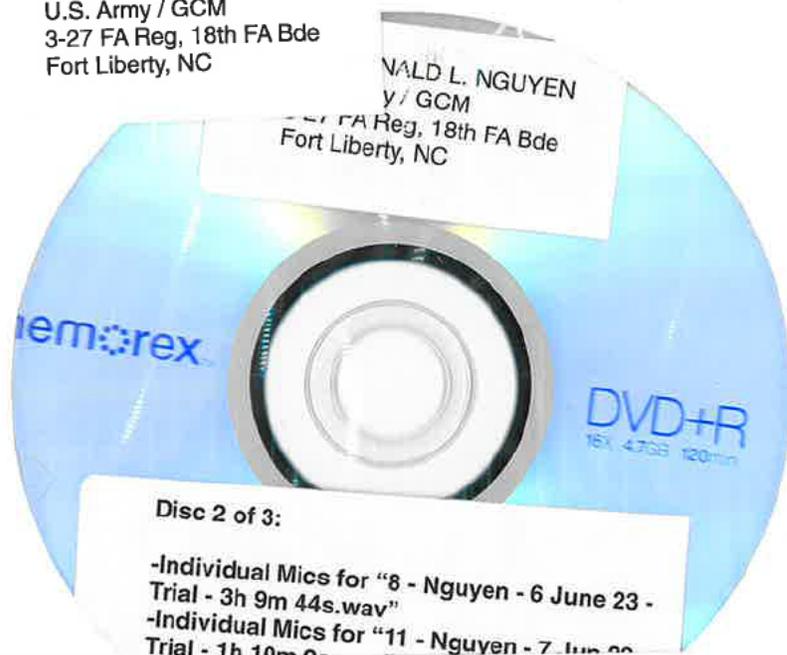
Disc 1 of 3:

Individual Mics for "7 - Nguyen - 5 Jun 23 -

Disc 1 of 3:

Individual Mics for "7 - Nguyen - 5 Jun 23 - Trial -
3h 21m 30s.wav"

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Disc 2 of 3:

-Individual Mics for "8 - Nguyen - 6 June 23 -
Trial - 3h 9m 44s.wav"
-Individual Mics for "11 - Nguyen - 7 Jun 23 -
Trial - 1h 10m 9s.wav"

Disc 2 of 3:

-Individual Mics for "8 - Nguyen - 6 June 23 - Trial -
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-Individual Mics for 11 - Nguyen - 7 Jun 23 - Trial -
1h 10m 9s.wav"

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Disc 3 of 3:

-12 - Nguyen "7 Jun 23 - Trial (Findings) - 1h 26m 28s.wav"

Disc 3 of 3:

-12 - Nguyen "7 Jun 23 - Trial (Findings) - 1h 26m 28s.wav"

-Individual Mics for "12 - Nguyen 7 Jun 23 - Trial (Findings) - 1h 26m 28s wav"

CERTIFICATE OF SERVICE, U.S. v. NGUYEN (20230319)

I certify that a copy of the foregoing was sent via electronic submission to the Defense Appellate Division at [REDACTED] on the 17th day of December, 2024. The physical discs will be hand-carried to the court immediately following the e-filing of this motion.

[REDACTED]

VY/T. NGUYEN
CPT, JA
Appellate Attorney, Government
Appellate Division