

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**MOTION TO EXAMINE SEALED
MATERIALS**

v.

Docket No. ARMY 20250519

Staff Sergeant (E-6)
MAXWELL A. TUBBS,
United States Army,

Appellant

Tried at Fort Benning, Georgia, on
10 November 2025, before a special
court-martial appointed by the
Commander, U.S. Army Maneuver
Center of Excellence and Fort
Benning, Colonel John R. Langley,
military judge, presiding.

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

COMES NOW the undersigned appellate defense counsel, pursuant to Rules 6.9(a) and 23 of this court's Rules of Appellate Procedure, and moves to examine sealed materials contained in the record of *United States v. Tubbs*, which were reviewed by trial counsel and defense counsel both before and during trial and which were subsequently sealed pursuant to Rule for Courts-Martial 1113: Pretrial evidence AR 15-6 investigation – Explicit images of SSG Tubbs and PVT Meng (3 pages), and Prosecution Exhibit 3 – Video of SSG Tubbs and PVT Meng (disc).

Statement of the Case

On 10 November 2025, a military judge alone sitting as a special court-martial convicted appellant, SSG Maxwell A. Tubbs, in accordance with his pleas,

of one specification of violating article 93a, UCMJ.¹ (R. at 205; Charge Sheet).

On 10 November 2025, the military judge sentenced appellant to be reduced to the grade of E-1; and to be discharged from the service with a bad conduct discharge. (R. at 220).

On 08 January 2026, the convening authority approved the findings and adjudged sentence. (Convening Authority Action). On 12 January 2026, the military judge entered Judgment. (Judgment of the Court). This court docketed appellant's case on 26 February 2026. (Referral and Designation of Counsel).

Law

Rule for Court-Martial 1113 discusses the sealing of “exhibits, proceedings, or other materials ordered sealed” during the proceedings of a court-martial. (R.C.M.) 1113(a). Under R.C.M. 1113(b)(3)(B), appellate defense counsel may examine sealed matters when the appellate defense counsel determine that such action is reasonably necessary to the proper fulfillment of their responsibilities.

Conversely, R.C.M. 701(g)(2), a discovery rule, covers the limitation of discovery or inspection of evidence by the military judge and counsel. It discusses review of materials in camera, including that the “military judge shall seal any

¹ In accordance with the plea agreement, the Specification of Charge II, Charge II, the Specification of Charge III and Charge III were dismissed with prejudice to ripen into prejudice upon completion of final appellate review.

materials examined in camera and not disclosed and may seal other materials as appropriate.” R.C.M. 701(g)(2).

Application

During the government’s case in chief, the Trial Counsel admitted Prosecution Exhibit 3 into evidence. Prior to announcing the sentence, the Military Judge inquired with all parties whether Prosecution Exhibit 3 should be sealed under R.C.M 1113. (R. at 217). All parties agreed and the Military Judge issued a ruling under R.C.M 1113 that the materials should be sealed for the “privacy interests of the named trainee.” (R. at 217). Additionally, in his sealing order, the Military Judge ordered that “Pretrial Evidence AR 15-6 Investigation – Explicit images of SSG Tubbs and PVT Meng (3 pages)” also be sealed. As such, all reasonable indication points to the records being sealed pursuant to Rule for Court-Martial [R.C.M.] 1113, but not privileged materials under R.C.M. 701(g)(2).

Appellant now requests to review *only* materials contained in the Military Judge’s sealing order (Pretrial Evidence AR 15-6 Investigation – Explicit images of SSG Tubbs and [REDACTED] (3 pages) and Prosecution Exhibit 3). Because the present request is for materials 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 appellate defense counsel needs to review the sealed materials 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 summary, 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.

WHEREFORE, appellate defense counsel respectfully request this court grant the instant motion.

PANEL NO. 3



MOTION TO EXAMINE SEALED MATERIAL

Seth J. Bahr
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division

GRANTED:  _____

DENIED: _____



DATE: 21 April 2026

Kelsey Mowatt-Larsen
Major, Judge Advocate
Branch Chief
Defense Appellate Division

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army Court and Government Appellate Division on April 17, 2026.



MICHELLE L.W. Surratt
Paralegal Specialist
Defense Appellate Division

