IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES,	Appellee	**BRIEF ON BEHALF OF APPELLEE**
v.		Docket No. ARMY 20240403
Specialist (E-4) **JORDAN A. WARD,** United States Army,	Appellant	Tried at Fort Carson, Colorado, on 23 April 2024, and 19–21 August 2024, before a general court-martial convened by Commander, Headquarters, Fort Carson, Colonel Jacqueline L. Emanuel and Lieutenant Colonel Kenton E. Spiegler, military judges, presiding.

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

Assignment of Error I[1]

WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION WHEN HE FAILED TO RECUSE HIMSELF.

Assignment of Error II

WHETHER THE GOVERNMENT'S FAILURE TO FORWARD A COMPLETE RECORD CAUSED EXCESSIVE POST-TRIAL DELAY.

[1] The government reviewed the matters submitted by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and respectfully submits that they lack merit. Should this court consider any of those matters meritorious, the government requests notice and an opportunity to file a supplemental brief addressing the claimed error.

PANEL NO. 4

Statement of the Case

On 21 August 2024, an enlisted panel sitting as a general court-martial convicted appellant, contrary to his pleas, of one specification of possession of child pornography in violation of Article 134, Uniform Code of Military Justice [UCMJ], 10 U.S.C. § 934.[2] [3] (R. at 501; Charge Sheet; Statement of Trial Results [STR]). The military judge sentenced appellant to be reduced to the grade of E-1, forfeiture of all pay and allowances, confinement for four years, and a dishonorable discharge. (R. at 528; STR). On 23 September 2024, the convening authority took no action on the findings and sentence. (Action). On 8 October 2024, the military judge entered judgment. (Judgment).

Statement of Facts

A. Appellant's investigation and the military judge's involvement.

After receiving a cyber tip from the National Center for Missing & Exploited Children (NCMEC), the U.S. Army Criminal Investigation Division (CID) opened an investigation into appellant on 1 November 2022, confirming his

[2] Unless otherwise stated, all references to the UCMJ and Rules for Courts-Martial [R.C.M.] are to the versions in the Manual for Courts-Martial, United States (2019 ed.) [*MCM*] [with 2020 and 2021 amendments].

[3] The military judge found appellant not guilty of Specifications 2 and 4 of Charge I. (R. at 461; STR). The military judge merged Specifications 1 and 3 of Charge I, "such that [appellant] would remain guilty of Specification 1, but as amended, it would include the language that is otherwise absent from that [S]pecification that is in Specification 3" while Specification 3 was dismissed. (R. at 508–09; STR).

identity through his account holder information relating to an internet protocol (IP) address for an electronic device. (R. at 236, 238–39, 249). Multiple electronic devices were seized from appellant, including his iPhone, iPad, a laptop, a hard drive, and a Samsung tablet. (R. at 209). Appellant's iPhone was sent to the U.S. Army Criminal Investigation Laboratory (USACIL) where a phone extraction was attempted but unsuccessful, as USACIL lacked proper software to get into the device. (R. at 287–88, 290). A second extraction attempt was successfully conducted on 17 April 2023 after the Fort Carson CID office received new software that allowed them to access the phone's contents. (R. at 288–90). During this investigation, CID submitted preservation requests to Google on 22 April 2024 and Apple on 2 May 2024, both Cloud service providers. (R. at 238).

The military judge in appellant's case at trial, Lieutenant Colonel (LTC) Kenton Spiegler, served as the Deputy Staff Judge Advocate (DSJA) for 4th Infantry Division (4ID) at Fort Carson, Colorado, from July 2021 to June 2023, which encompasses both the date of misconduct specified in the charges (10 November 2022) and the date CID successfully extracted appellant's iPhone (17 April 2023). (R. at 19, 290, 333, 340; Charge Sheet). Charges were not preferred until 4 March 2024. (Charge Sheet).

During the last several months of his time as the 4ID DSJA, LTC Spiegler also served as the acting Staff Judge Advocate (SJA) for Fort Carson while the 4ID

SJA (who remained in position) was forward with the division; LTC Spiegler was the acting SJA for the installation only. (R. at 19, 340). The military judge disclosed at the outset of the trial that he had been the DSJA, as well as any current or previous personal or working relationships he had with the attorneys that were involved in this case, and the extent of those relationships. (R. at 19). During his initial disclosures the military judge also candidly stated that he had "no recollection of [appellant's] case at all," that he did not believe he was briefed on the matter, and that he "definitely took no action in the case." (R. at 19). Defense counsel did not challenge the military judge at that time. (R. at 20).

B. Appellant's court-martial.

At trial, a CID agent involved in the investigation testified about seizing appellant's phone and sending it to USACIL. (R. at 287). The agent explained it was sent to USACIL because "they were the ones that had the technology, or that we anticipated had the technology, to extract and review these devices." (R. at 288). Following questions by government and defense counsel, and outside the presence of the panel member or witness, the military judge disclosed to counsel that the agent's testimony "rang a bell" for him, stating, "I heard some of the discussion about the process of sending to USACIL, and then the delay, and then an update and technology . . . " (R. at 333). The military judge reiterated that he was the 4ID DSJA at the time of the alleged offenses, but emphasized that he "had

no memory of this case, I still have very little." (R. at 333). Similar to his previous disclosure, LTC Spiegler stated that he was confident that he gave no advice or direction in appellant's case, took no action in the case, and believed that while he may have heard a minimal amount about the case, he still did not have any recollection of it prior to hearing the CID agent's testimony. (R. at 333, 340).

C. Defense's request for recusal under R.C.M. 902(a) and R.C.M. 902(b).

Defense counsel moved for a mistrial upon the military judge's additional disclosures following the CID agent's testimony and asked the military judge to recuse himself from the case. (R. at 334). Defense counsel raised concerns about the military judge's ability to remain impartial and argued that recusal was required in accordance with Rules for Courts-Martial (R.C.M.) 902(a) and 902(b)(2). (R. at 334–37). Defense argued that the military judge's impartiality might reasonably be questioned under R.C.M. 902(a) because he was the DSJA during appellant's investigation, and that under R.C.M. 902(b)(2) a military judge shall disqualify himself where the military judge has acted as the SJA. (R. at 336–37). The military judge again reiterated on the record that during appellant's investigation he was the *Deputy* SJA, and later the *acting* SJA, due to the division being forward at that time. (R. at 340). The 4ID SJA during this entire period was [redacted], not LTC Spiegler. (R. at 340).

The military judge denied defense's motion to disqualify him and denied defense's motion for a mistrial under R.C.M. 915. (R. at 343). The following day, during an Article 39(a) session, the military judge revisited his ruling, acknowledged the objective standard of R.C.M. 902, and informed all parties that his previous ruling on the matter still stood. (R. at 397–98).

Assignment of Error I

WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION WHEN HE FAILED TO RECUSE HIMSELF.

Standard of Review and Law

This court reviews a military judge's disqualification decision for an abuse of discretion. *United States v. Uribe*, 80 M.J. 442, 446 (C.A.A.F. 2021). A ruling is an abuse of discretion if it is arbitrary, fanciful, clearly unreasonable, or clearly erroneous. *Id.* (quotations and additional citations omitted). When there is an abuse of discretion in denying a recusal motion, the *Liljeberg* factors are examined to determine if a reversal is warranted. *Id.* at 449 (citing *United States v. Martinez,* 70 M.J. 154, 159 (C.A.A.F. 2011)); *United States v. Liljeberg,* 486 U.S. 847 (1988). The same standard applies to a military judge's decision not to recuse under R.C.M. 902. *United States v. Brinkman-Coronel*, 85 M.J. 431, 436–37 (C.A.A.F. 2025). There is a strong presumption that military judges are impartial. *United States v. Quintanilla,* 56 M.J. 37, 44 (C.A.A.F. 2001). If a reasonable person

knowing all the circumstances would not conclude that a military judge's impartiality might reasonably be questioned, there is not an appearance of bias that would require recusal. *United States v. Armstrong,* 85 M.J. 31, 34 (C.A.A.F. 2024).

R.C.M. 902 provides two circumstances in which a military judge shall disqualify himself or herself: (1) in any proceeding in which the military judge's impartiality might reasonably be questioned, and (2) specific grounds that require recusal. R.C.M. 902(a)–(b).

Argument

A. The military judge was not required to recuse himself under R.C.M. 902(a) as a reasonable person would not question his impartiality.

Under R.C.M. 902(a)'s objective standard, a reasonable person would not believe that there was an appearance of bias in this case, as the military judge stated multiple times on the record that he had no recollection or knowledge of appellant's case or the investigation surrounding it. (R. at 19–20). Even after hearing testimony from a CID agent during the trial that "rang a bell" for him, the military judge disclosed that he still had no substantial knowledge other than hearing of the case and again stated that he "had no memory of this case, [and] still ha[s] very little." (R. at 333). He was confident that he did not provide advice or counsel in appellant's case and, at most, he received factual status information and briefings on investigation developments. (R. at 336, 397–98). These facts do not amount to "institutional entanglement" as appellant contends, as the military judge

had no meaningful involvement with the case in either his role as DSJA or acting SJA. (Appellant's Br. 8).

The military judge's recollection of the investigation during the CID agent's testimony and candor to the parties exemplifies his impartiality, rather than bringing it into question. (R. at 333). His substantial lack of knowledge or involvement, even under an objective standard, renders his recusal under R.C.M. 902(a) inappropriate.

This case is similar to *Brinkman-Coronel,* where the military judge in that case was also candid about his previous position as a special victim prosecutor (SVP) and his lack of any knowledge of the case; however he was further sectioned off to avoid any potential conflicts. 85 M.J. at 435–36. In that case, the court found that the military judge did not abuse his discretion in not recusing himself, in part due to the timing of appellant's offenses not giving rise to concerns about the appearance of bias. *Id.* at 436–37. Also like appellant's case, the appellant in *Brinkman-Coronel* made no claim of actual bias before the court and there was nothing in the record that would compel the military judge to recuse himself. *Id.* Finally, under *Quintanilla*, the military judge is presumed impartial, and appellant points to nothing in the record that would overcome that presumption and require recusal. 56 M.J. at 44.

In determining whether reversal is warranted, the three *Liljeberg* factors that must be examined are: (1) if there is any specific injustice that the appellant suffered, (2) whether granting relief would encourage a judge or litigant to more carefully examine possible grounds for disqualification and to promptly disclose them when discovered, and (3) under an objective standard whether the circumstances of a case will risk undermining the public's confidence in the military justice system. *Uribe*, 80 M.J. at 449; *Liljeberg,* 486 U.S. 847. Assuming arguendo that this was an abuse of discretion, no relief is warranted because appellant has not identified any specific injustice, the military judge had already made prompt disclosures for possible grounds for disqualification when discovered, and an objective person would not have reason to question the military judge's impartiality.

B. The military judge was not required to recuse himself under R.C.M. 902(b)(2) because he was merely the acting SJA.

At the onset of appellant's trial, the military judge made disclosures to all parties regarding the fact that he was the Fort Carson DSJA during appellant's investigation, as well as any personal or professional relationship he had with all parties present or involved in the case. (R. at 19–20). It was clearly articulated that during the investigation, the military judge served as the Fort Carson DSJA for about two years from July 2021 to June 2023. (R. at 19). Once his recollection of the case surfaced during the CID agent's testimony, the military judge also

disclosed that during the last few months of that tenure as DSJA he served as the *acting* SJA for the installation only, while the division was forward. (R. at 340). [redacted] remained the Fort Carson SJA during this time. (R. at 340). The military judge noted that during his time as acting SJA, he "received regular briefings from each division in the [OSJA]….the military justice division included." (R. at 340). However, he was unaware how the cases that were chosen for these briefings were selected, and his boss at the time, [redacted], was also briefed on these cases. (R. at 341).

Most importantly, he distinguished his role while he was the acting SJA between times where he would act on matters in cases that fell in line with the role of an SJA under R.C.M. 902 verses cases that were earlier on in the investigative stage where he may have given an opinion of whether to prefer charges in a case at all. (R. at 341–42). The military judge made it clear that in this case he "did not act as a trial counsel or a staff judge advocate" and notes that the charge in appellant's case was preferred in March of 2024, more than eight months after he left the OSJA. (R. at 342).

R.C.M. 902(b)(2) does not enumerate mandatory recusal for holding the position of DSJA, only "counsel, preliminary hearing officer, investigating officer, legal officer, staff judge advocate, or convening authority as to any offense charge or in the same case generally." Therefore, his minimal involvement or knowledge

in this case as the DSJA and later as *acting* SJA does not require recusal under R.C.M. 902(b)(2).[4]

Assignment of Error II

WHETHER THE GOVERNMENT'S FAILURE TO FORWARD A COMPLETE RECORD CAUSED EXCESSIVE POST-TRIAL DELAY.

Additional Facts Relevant to Assignment of Error II

Appellant's court-martial adjourned on 21 August 2024. (R. at 501, 529). On 20 September 2024, appellant submitted post-trial matters related to the military judge's denial of defense's request for a mistrial. (R.C.M. 1106 Matters). On 8 October 2024, the military judge entered judgment. (Judgment). On 19 December 2024, the trial counsel certified the record as complete, and on 20 December 2024, the court reporter certified the record as complete. (Trial Counsel Precertification Review; Court Reporter Certification of Record of Trial and Transcript). The certified record was forwarded to the reviewing authority on 22 January 2025. (Chronology Sheet). Appellate defense counsel for this case was designated on 11 February 2025.

More than five months later, on 31 July 2025, appellate defense counsel notified this court of the omission of Prosecution Exhibits 1 and 2 from the

[4] While an acting SJA can be disqualified under R.C.M. 902(b)(2) if that person was performing SJA duties for the case, merely existing in a role as the acting SJA while the case was being investigated does not automatically require recusal.

certified record. These exhibits are the discs containing child sexual abuse material that the military judge admitted during trial. On 1 August 2025, this court ordered the government to produce these exhibits, on 12 August 2025, the government submitted a motion to attach these exhibits, and on 14 August 2025 this court granted the government's motion.

Standard of Review and Law

Claims of unreasonable post-trial delay are reviewed de novo. *United States v. Anderson,* 82 M.J. 82, 85 (C.A.A.F. 2022) (citing *United States v. Moreno,* 63 M.J. 129, 135 (C.A.A.F. 2006)). The question of "[w]hether a record is complete" is a question of law this court also reviews de novo. *United States v. Davenport*, 73 M.J. 373, 376 (C.A.A.F. 2014).

This court may provide relief for unreasonable post-trial delay under 1) the Due Process Clause of the Fifth Amendment or 2) the statutory basis under Article 66, UCMJ. *United States v. Anderson,* 82 M.J. 82, 85 (C.A.A.F. 2022). Under the Due Process Clause, this court analyzes four factors: (1) length of delay; (2) reasons for the delay; (3) appellant's assertion of the right to timely review and appeal; and (4) prejudice. *Barker v. Wingo*, 407 U.S. 514, 530–33. (1972). However, if no prejudice is found under the fourth factor, a due process violation only occurs when, "in balancing the three other factors, the delay is so egregious that tolerating it would adversely affect the public's perception of the fairness and

integrity of the military justice system." *Anderson,* 82 M.J. at 87 (additional citations omitted).

The length of post-trial delay is measured from the date of final adjournment to appellate docketing, and whether the delay is excessive is determined under a totality-of-the-circumstances analysis rather than a fixed timeline. *United States v. Winfield,* 83 M.J. 662, 665 (Army Ct. Crim. App. 2023).

R.C.M. 1112(b) requires a complete record of trial, including "any evidence or exhibits considered by the court-martial in determining the findings or sentence." This includes "exhibits, or, if permitted by the military judge, copies, photographs, or descriptions of any exhibits that were received in evidence and any appellate exhibits."[5] R.C.M. 1112(b)(6).

Argument

A. Under the circumstances, the post-trial processing time was reasonable.[6]

[5] Appellant's brief incorrectly cites to R.C.M. 1112(b)(5), referencing the 2024 edition of the MCM. (Appellant's Br. 14).

[6] Appellant asserts that the same OSJA that handled appellant's post-trial processing has a pattern of omitting admitted exhibits in their certified records, showing gross negligence in post-trial processing and unreasonable delay. (Appellant's Br. 17). However, appellant's brief cites just one other case – *United States v. Johnson,* 86 M.J. 512 (Army Ct. Crim. App. 5 Sept. 2025) – where omission of admitted exhibits occurred and offered no explanation of how these separate cases showed "gross negligence in post-trial processing" other than stating they came from the same OSJA. (Appellant's Br. 17). The fact that an OSJA erroneously admitted exhibits in one other case does not indicate a pattern of gross negligence.

There is no bright-line time limit for post-trial processing: "[S]ome cases justifiably take longer than 150 days to process for appellate review. Others should take significantly less time." *Winfield,* 83 M.J. at 665. "[I]n considering whether a delay is excessive this court will broadly focus on the totality of the circumstances surrounding the post-trial processing timeline for each case, balancing the interplay between factors such as chronology, complexity, and unavailability, as well as the unit's memorialized justifications for any delay." *Id.* at 666.

B. The government's certification of the record was made in good faith, and missing exhibits were promptly attached.

The government's certification of the record and submission to ACCA was made in good faith in accordance with R.C.M. 1112(b), (b)(6). The government admitted Prosecution Exhibits 1 and 2 during appellant's court-martial, however, they were erroneously omitted from the certified record. (Pros. Exs. 1–2; R. at 352). Upon notification that the exhibits were missing, and in accordance with this court's order dated 1 August 2025, the government expeditiously submitted the exhibits to be attached to the record. (Pros. Exs. 1–2; Govt. App. Exs. 1–2; R. at 352).

C. *Barker* factors weigh in favor of the government.

Appellant calculates the period between entry of judgment on 8 October 2024 and the date the record was ultimately complete for appellate review on 14 August 2025 as the delay (310-days total) and argues the post judgment period of

incompleteness is "facially unreasonable." (Appellant's Br. 16). However, under *Winfield,* the length of post-trial delay is measured from the date final adjournment to appellate docketing. 83 M.J. at 665. Here, the date of final adjournment on 8 October 2024 and appellate docketing on 11 February 2025 results in a post-trial processing time of 126 days. (Judgment; Referral).

An analysis under the four *Barker* factors weighs strongly in the government's favor. First, the post-trial processing in this case was only 126 days--a reasonable amount of time to process an 886-page record that included a 529-page transcript. However, the absence in the record of an explanation for any delay weighs the second factor in favor of appellant.[7] Appellant did not assert his right to timely appeal, therefore, the third factor weighs in favor of the government. *United States v. Abdullah*, 85 M.J. at *16 ("[B]ecause appellant did not assert his right to a timely review and appeal, this factor weighs in favor of the government.").

Fourth, there is no due process violation as there was no prejudice to appellant regarding post-trial processing. The omitted exhibits that were expeditiously attached to the record for completeness were ultimately not relevant to any assignments of error raised on appeal, rendering any argument for prejudice

[7] The Fort Carson Chief of Justice submitted a memorandum that the government moved to attach. (Motion to Attach Government Appellate Exhibit 1, dated 28 April 2026). This court has not ruled on the motion as of the filing date of this brief.

moot. Furthermore, appellant possessed a substantially complete record for more than five months, having the ability to bring to the government and court's attention the missing exhibits that were supposedly so critical to be deemed "principal digital exhibits" that "stop[ped] meaningful appellate review." (Appellant's Br. 17).

D. No sentence relief is warranted under Article 66(d)(2), UCMJ because there was no excessive delay in post-trial processing.

Even if this court finds excessive delay, the sentence is appropriate under the present facts; no relief is warranted. *See, e.g., Winfield,* 83 M.J. at 664, 666 (finding post-trial processing of nearly 500 days was excessive but determining the sentence was appropriate, therefore declining to set it aside). "Article 66(d)(2) leaves the determination as to whether relief is provided, and what type of relief is appropriate, to this court's discretion." *Abdullah,* 85 M.J. at *21.

Appellant possessed multiple images and videos of child pornography on his personal devices that depicted a minor, or what appeared to be a minor, engaging in sexually explicit conduct. (R. at 309–12; STR). He received only four years of confinement for this serious offense, compared to the maximum of ten years' confinement that he faced, in addition to a dishonorable discharge, grade reduction and total forfeitures. (R. at 528; STR). Appellant received an appropriate sentence and based on the circumstances of his offense any sentence relief for post-trial delay is inappropriate.

Conclusion

WHEREFORE, the government respectfully requests This Honorable Court affirm the findings and sentence.

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CERTIFICATE OF SERVICE

UNITED STATES v. JORDAN A. WARD, ARMY 20240403

I certify that a copy of the foregoing was sent via electronic submission to the Defense Appellate Division at [redacted] [redacted] on the 7th day of July, 2026.

[redacted]

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