

CERTIFIED RECORD OF TRIAL

(and accompanying papers)

of

Allen	Kendall	D		Cpl
(Last Name)	(First Name)	MI	(DoD ID No.)	(Rank)

CLR-27, 2d MLG

USMC

Camp Lejeune, NC

(Unit/Command Name)

(Branch of Service)

(Location)

By

General Court-Martial (GCM)

COURT-MARTIAL

(GCM, SPCM, or SCM)

Convened by

Commanding General

(Title of Convening Authority)

2d Marine Logistics Group

(Unit/Command of Convening Authority)

Tried at

Camp Lejeune, NC

On

28 March, 5 July, 14 August, 15 August, 16 August 2023

(Place or Places of Trial)

(Date or Dates of Trial)

Companion and other cases

None

(Rank, Name, DOD ID No., (if applicable), or enter "None")

CONVENING ORDER



UNITED STATES MARINE CORPS
2D MARINE LOGISTICS GROUP, FMF
II MARINE EXPEDITIONARY FORCE
PSC BOX 20080
CAMP LEJEUNE, NC 28542-0080

IN REPLY REFER TO:
5813
GCMCO 1-20
OCT 02 2020

General Court-Martial Convening Order 1-20

Pursuant to the authority in Article 22(a) of the Uniform Code of Military Justice (UCMJ), Rule for Court-Martial (R.C.M.) 504, and Section 0120a of the Manual of the Judge Advocate General (JAGMAN), a General Court-Martial is hereby convened. It may try such persons as may be properly brought before it. The court shall meet at Marine Corps Base Camp Lejeune, North Carolina, unless otherwise directed. The court will be constituted as follows:

Members

Colonel [REDACTED] U.S. Marine Corps;
Lieutenant Commander [REDACTED], U.S. Navy;
Major [REDACTED] U.S. Marine Corps;
Captain [REDACTED] U.S. Marine Corps;
Lieutenant Junior Grade [REDACTED], U.S. Navy;
First Lieutenant [REDACTED], U.S. Marine Corps;
First Lieutenant [REDACTED], U.S. Marine Corps;
Second Lieutenant [REDACTED], U.S. Marine Corps; and
Warrant Officer [REDACTED], U.S. Marine Corps.

[REDACTED]
F. C. POOLE III
Brigadier General
U.S. Marine Corps
Commanding General

CHARGE SHEET

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) ALLEN, Kendall D.		2. EDIPI [REDACTED]	3. RANK/RATE Cpl	4. PAY GRADE E-4
5. UNIT OR ORGANIZATION Combat Logistics Regiment 27, 2d Marine Logistics Group		6. CURRENT SERVICE a. INITIAL DATE 29 Jul 19 b. TERM 4 Yrs		
7. PAY PER MONTH a. BASIC \$2,914.80 b. SEA/FOREIGN DUTY \$2,652.00		8. NATURE OF RESTRAINT OF ACCUSED EAS: 28 Jul 23 Pre-Trial Confinement Pre-Trial Restriction 9. DATE(S) IMPOSED 20 October 2022 - Present 8 Nov 2022 - 12 April 2023		
c. TOTAL \$2,914.80 \$2,652.00				

II. CHARGES AND SPECIFICATIONS

10. Charge: Violation of the UCMJ, Article 134

Specification (Possession of Child Pornography): In that Corporal Kendall D. ALLEN, U.S. Marine Corps, on active duty, did, at an unknown location, between on or about 29 July 2019 and on or about 13 April 2022, on divers occasions, knowingly and wrongfully possess child pornography on a Google account, to wit: digital images and videos of minors or what appear to be minors, engaging in sexually explicit conduct, and that said conduct was of a nature to bring discredit upon the armed forces.

III PREFERRAL; SERVICE OF CHARGES

11a. NAME OF ACCUSER (Last, First, MI) [REDACTED]	b. GRADE PFC	c. ORGANIZATION OF ACCUSER HqSptBn, MCI-East, MCB, Camp Lejeune, NC
d. SIGNATURE OF ACCUSER [REDACTED]	e. DATE 3 November 2022	

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 3rd day of November, 2022, and signed the foregoing charges and specifications under oath that he is a person subject to the Uniform Code of Military Justice and that he either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his knowledge and belief.

C. C. KIM

Typed Name of Officer

Captain, U.S. Marine Corps

Grade and Service

KIM, CHRISTOPHE.

Digitally signed by
KIM, CHRISTOPHE.C

Date: 2022.11.03 15:12:11 -04'00'

Signature

HqSptBn, MCI-East, MCB, Camp Lejeune, NC

Organization of Officer

Judge Advocate

Official Capacity to Administer Oaths
(See R.C.M. 307(b)—must be commissioned officer)

12. On <u>8 Nov 22</u> , 2022, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me. (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)							
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <div style="border: 1px solid black; height: 1.2em; margin-bottom: 5px;"></div> <div>Typed Name of Immediate Commander</div> <div>Captain, U.S. Marine Corps</div> <div>Grade</div> <div style="border: 1px solid black; height: 1.2em; margin-top: 10px;"></div> <div>Signature</div> </div> <div style="width: 45%;"> <div>CLR-27, 2d MLG, Camp Lejeune, NC</div> <div>Organization of Immediate Commander</div> </div> </div>							
IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY							
13. The sworn charges were received at <u>1700</u> hours, <u>3 Nov 22</u> 2022 at <u>CLR-27, 2d MLG,</u> <u>Camp Lejeune, NC</u>							
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <div>Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)</div> </div> <div style="width: 45%;"> <div>Designation of Command or</div> </div> </div>							
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <div style="border: 1px solid black; height: 1.2em; margin-bottom: 5px;"></div> <div>Typed Name of Officer</div> <div>Captain, U.S. Marine Corps</div> <div>Grade</div> <div style="border: 1px solid black; height: 1.2em; margin-top: 10px;"></div> <div>Signature</div> </div> <div style="width: 45%;"> <div>FOR THE¹ <u>COMMANDING OFFICER</u></div> <div>Legal Officer</div> <div>Official Capacity of Officer Signing</div> </div> </div>							
V. REFERRAL; SERVICE OF CHARGES							
14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY							
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; padding: 2px;">2d Marine Logistics Group</td> <td style="width: 33%; padding: 2px;">b. PLACE</td> <td style="width: 33%; padding: 2px;">c. DATE</td> </tr> <tr> <td colspan="2" style="text-align: center; padding: 2px;">Camp Lejeune, North Carolina</td> <td style="text-align: center; padding: 2px;"><u>MAR 10 2023</u></td> </tr> </table>		2d Marine Logistics Group	b. PLACE	c. DATE	Camp Lejeune, North Carolina		<u>MAR 10 2023</u>
2d Marine Logistics Group	b. PLACE	c. DATE					
Camp Lejeune, North Carolina		<u>MAR 10 2023</u>					
Referred for trial to the <u>General</u> court-martial convened by courts-martial convening order # <u>1-20</u>							
dated <u>2 October</u> 2020, subject to the following instructions: ² <u>None</u>							
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <div>By <u>XXXXXXXXXXXXXXXXXX</u> of</div> <div>Command or Order</div> </div> <div style="width: 45%;"> <div>COMMANDING GENERAL</div> <div>Official Capacity of Officer Signing</div> </div> </div>							
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <div><u>M. E. MCWILLIAMS</u></div> <div>Typed Name of Officer</div> <div><u>Brigadier General, U.S. Marine Corps</u></div> <div style="border: 1px solid black; height: 1.2em; margin-top: 10px;"></div> <div>Signature</div> </div> <div style="width: 45%;"> <div></div> <div></div> <div></div> </div> </div>							
15. On <u>17 March</u> , 2023, I caused a copy hereof to be served on the above named accused.							
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <div><u>F W METZNER</u></div> <div>Typed Name of Trial Counsel</div> <div style="border: 1px solid black; height: 1.2em; margin-top: 10px;"></div> <div>Signature</div> </div> <div style="width: 45%;"> <div><u>Captain, U.S. Marine Corps</u></div> <div>Grade or Rank of Trial Counsel</div> </div> </div>							
FOOTNOTES <u>1 – When an appropriate commander signs personally, inapplicable words are stricken.</u> <u>2 – See R.C.M. 601(e) concerning instructions. If none, so state.</u>							

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI)		2. EDIPI	3. RANK/RATE	4. PAY GRADE
ALLEN, Kendall D.		[REDACTED]	Cpl	E-4
5. UNIT OR ORGANIZATION		6. CURRENT SERVICE		
Combat Logistics Regiment 27, 2d Marine Logistics Group, Marine Corps Base Camp Lejeune, North Carolina		EAS: 28 Jul 23	a. INITIAL DATE	b. TERM
7. PAY PER MONTH		29 Jul 19 4 Yrs		
a. BASIC \$2,774.80	b. SEA/FOREIGN DUTY \$0.00	c. TOTAL \$2,774.00	8. NATURE OF RESTRAINT OF ACCUSED	
		Pre-Trial Confinement Pre-Trial Restriction		9. DATE(S) IMPOSED
				20 Oct 2022 – 8 Nov 2022 8 Nov 2022 - Present 12 APR 23

II. CHARGES AND SPECIFICATIONS

10. Additional Charge: Violation of the UCMJ, Article 134

FOR CA

Specification 1 (Possession of Child Pornography): In that Corporal Kendall D. ALLEN, U.S. Marine Corps, on active duty, did, at Marine Corps Base Camp Lejeune, North Carolina, on or about 20 October 2022, knowingly and wrongfully possess child pornography on an iPhone 11 Pro Max, to wit: digital images and videos of minors, engaging in sexually explicit conduct, and that said conduct was of a nature to bring discredit upon the armed forces.

Specification 2 (Possession of Child Pornography): In that Corporal Kendall D. ALLEN, U.S. Marine Corps, on active duty, did, at Marine Corps Base Camp Lejeune, North Carolina, on or about 20 October 2022, knowingly and wrongfully possess child pornography on a LG Stylo, to wit: digital images and videos of minors, engaging in sexually explicit conduct, and that said conduct was of a nature to bring discredit upon the armed forces.

III PREFERRAL; SERVICE OF CHARGES

11a. NAME OF ACCUSER (Last, First, MI)	b. GRADE	c. ORGANIZATION OF ACCUSER
[REDACTED]	Cpl	HqSptBn, MCI-East, MCB, Camp Lejeune, NC
d. SIGNATURE OF ACCUSER	e. DATE	
[REDACTED]	15 February 2023	

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 15th day of February, 2023, and signed the foregoing charges and specifications under oath that he is a person subject to the Uniform Code of Military Justice and that he either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his knowledge and belief.

E. W. MEISSNER

Typed Name of Officer

Captain, U.S. Marine Corps

Grade and Service

MEISSNER.ERIC.W
ILLIAM [REDACTED]

Digitally signed by
MEISSNER.ERIC.WILLIAM [REDACTED]

Date: 2023.02.15 12:40:57 -05'00'

Signature

HqSptBn, MCI-East, MCB, Camp Lejeune, NC

Organization of Officer

Judge Advocate

*Official Capacity to Administer Oaths
(See R.C.M. 307(b)--must be commissioned officer)*

12. On 16 February, 2023, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me. (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

[REDACTED]
Typed Name of Immediate Commander

CLR-27, 2d MLG, Camp Lejeune, NC

Organization of Immediate Commander

Captain, U.S. Marine Corps

Grade

[REDACTED]
Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 0830 hours, 16 Feb 2023 at CLR-27, 2d MLG
Camp Lejeune, NC

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE¹ COMMANDING OFFICER

[REDACTED]
Legal Officer

Official Capacity of Officer Signing

Captain, U.S. Marine Corps

Grade

[REDACTED]
Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE

2d Marine Logistics Group

Camp Lejeune, North Carolina

MAR 10 2023

Referred for trial to the General court-martial convened by courts-martial convening order # 1-20

dated 2 October 2020, subject to the following instructions:² To be tried in conjunction with the charge sheet preferred on 3 November 2022.

By XXXXXXXXXXXXXXXX of
Command or Order

M. E. MCWILLIAMS

Typed Name of Officer

COMMANDING GENERAL

Official Capacity of Officer Signing

Brigadier General, U.S. Marine Corps

Grade

[REDACTED]
Signature

15. On 17 March, 2023, I caused a copy hereof to be served on the above named accused.

E. W. MEISSNER

Typed Name of Trial Counsel

Captain, U.S. Marine Corps

Grade or Rank of Trial Counsel

[REDACTED]
Signature

FOOTNOTES

1 -- When an appropriate commander signs personally, inapplicable words are stricken.

2 -- See R.C.M. 601(e) concerning instructions. If none, so state.

TRIAL COURT MOTIONS & RESPONSES

NAVY-MARINE CORPS TRIAL JUDICIARY
EASTERN JUDICIAL CIRCUIT

UNITED STATES v. Kendall D. Allen Corporal U.S. Marine Corps	GENERAL COURT-MARTIAL JOINT MOTION FOR APPROPRIATE RELIEF (Docketing Request) 21 March 2023
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1. **Nature of Motion.** The Government respectfully moves this Court to docket an Article 39(a) session on **Friday, 24 March 2023** for an arraignment of the subject case.
2. **Justification.** The charges were preferred against the Accused on 3 November 2022 and 15 February 2023. A preliminary hearing was conducted in accordance with Article 32, UCMJ, on 1 February 2023. The charges were subsequently referred to general court-martial by Brigadier General M. E. Williams, 2d Marine Logistics Group, USMC, on 10 March 2023. The referred charges were served on the Accused on 17 March 2023. Docketing the arraignment on 24 March 2023 supports judicial economy and the speedy trial interests of the Accused. The R.C.M 707 clock is on day 82.
3. **Dates and Deadlines.** The Government respectfully requests that the Court docket the Arraignment for **Friday, 24 March 2023**. The proposed Trial Management Order is attached.
4. **Excludable Delay.** The Government requests that the Court find the period of time between the date of this submitted motion and the conduct of the Arraignment is excludable under Rule for Court-Martial 707, Article 10, UCMJ and any other applicable speedy trial authorities.

[REDACTED]
E. W. MEISSNER
Captain, U.S. Marine Corps
Government Trial Counsel

NAVY-MARINE CORPS TRIAL JUDICIARY
EASTERN JUDICIAL CIRCUIT

Certificate of Service

I hereby certify that I electronically served a copy of this motion upon the detailed defense counsel on 21 March 2023.

[REDACTED]
E. W. MEISSNER
Captain, U.S. Marine Corps
Government Trial Counsel

Court Ruling

The request for excludable delay from _____ to _____, 2023 is:
APPROVED / DENIED

It is hereby ordered, all parties shall appear before the Court on:

_____, 2023 for the arraignment.

Date _____, 2023 _____
Military Judge

NAVY- MARINE CORPS TRIAL JUDICIARY
EASTERN JUDICIAL CIRCUIT

UNITED STATES OF AMERICA

v.

Allen, Kendall D
Corporal, U.S. Marine Corps
Combat Logistics Regiment 27
2d Marine Logistics Group
Camp LeJeune, North Carolina

Defense Response to Government
Motion for Appropriate Relief
(Docketing)

26 March 2023

The Defense responds as follows to the Government docketing request.

1. The Court, with the consent of all parties, has scheduled an Article 39(a) session on Tuesday, 28 March 2023 at 1330 at Camp LeJeune, North Carolina. The Defense does not object to the time between the date of the Government motion and 28 March 2023 be marked as excludable delay.
2. The Defense requests the Court take into account the following matters and dates of unavailability of Defense Counsel when completing the Trial Management Order:

a. There is an examination pending under RCM 703.

b. Dates of unavailability of Defense Counsel:

Civilian Defense Counsel (Ms. Kurz)

31 March - 4 April - Military Duty
24 April - 28 April - Military Duty
8 May - 12 May - U.S. v. Dakin (Fort Knox)
15 May - 19 May - Family Leave
22 May - 24 May - In re: [REDACTED] (Fort Meade)
29 May - 2 June - Military Duty
8 June - 16 June - U.S. v. Smalls (Camp Pendleton, CA)
18 June - 24 June - Leave
9 July - 21 July - Leave
31 July - 4 August - U.S. v. Hafen (Fort Bragg, NC)
19 August - 23 August - Military Duty (Retirement)
18 September - 19 September - U.S. v. Robinson (Andrews AFB, MD)

Military Defense Counsel (1LT Michael Tibbits)

April: 3-4, 7, 9, 14, 21, 25

May: 1-5, 8-10, 17

May: 22 May - 7 June

June: 16-18, 26- 30

July: 14-16, 28-30

August: 3-6

Military Defense Counsel (Capt J. Keagan Riley)

3-5 April – Article 39(a) Parris Island

6 April – Medical appointment

15-18 April – Scheduled Leave

20 April - 15 May – Trial & Travel ICO U.S. v. SSgt Smiley

26-29 May – Scheduled Leave

10-19 June – Scheduled Leave

13-17 July – Scheduled Leave

c. The available dates for trial of all counsel are:

14 August - 18 August

28 August - 3 September (preferred)

4 September - 8 September

d. The Defense suggests the following trial markers:

28 Mar 23 - Arraignment (and appointment of victim's designee if applicable)

28 April 23 - Defense request for discovery

5 May 23 - Government disclosure obligations/written response to the Defense request for discovery

15 May 23 Defense reciprocal disclosure obligations/ to compel discovery

1 June 2023 Status Discovery 39(a) (if necessary)

14 April 2023 - Defense expert consultant request

14 April 2023 - Defense expert witness request

14 Apr 23 - Defense witness request (RCM 703) (From any Funding Source)

17 Apr 23 - Government response to Defense expert consultant and witness request (From any Funding Source)

26 Apr 23 - Government notices pursuant to M.R.E. 404(b), 413(b), 414(b)

26 Apr 23 - Notice pursuant to M.R.E. 412

26 April 23 - Responses to expert witness requests

1 June 23 - Motions Due

1 June 23 - Motions to compel expert witnesses

1 Jun 23 - Written notice of certain defenses

10 June 23 - Responses to Motions Due

10 Jun 23 - Responses to motions to compel expert witnesses

5 July 23 - Written notice of pleas and forum

5 July 23 - Article 39(a) Motions

1 August 2023 - Govt Notice of Witnesses

3 August 2023 - Defense Notice of Witnesses (RCM 701)

21 August 23 - Final pretrial matters

28 August - 3 September 2023 - Trial Dates at (Camp Lejeune)

[REDACTED]
MARGARET KURZ
Civilian Defense Counsel

NAVY-MARINE CORPS TRIAL JUDICIARY
EASTERN JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL

UNITED STATES

v.

ALLEN, KENDALL
Corporal, USMC
Camp LeJeune, North Carolina

DEFENSE MOTION TO
COMPEL EXPERT
(FOR TRIAL)
(Digital Forensics)

28 June 2023

MOTION

The Defense requests the Court compel the Government to provide additional time and travel for its Defense Forensics Expert (DFE).

FACTS

In November 2022 and February 2023, the Government preferred a total of three specifications of Article 134 (possession of child pornography). After preferral and well in advance of docketing deadlines, the Defense submitted a request for a Defense Forensic Consultant (DFE), including a request for 32 hours of pre-trial analysis and consultation, along with travel time to advise the Defense and be present during trial. The estimate was a good-faith estimate based on Defense Counsel's prior work on similar cases.

As of the date of filing of this motion, the Defense DFE (Mr. [REDACTED] of [REDACTED] and Associations) has had the opportunity to examine evidence in two of the three charges, but the Government has yet to provide access to the evidence related to a third charge despite requests. To be candid, the Government has shipped the missing evidence, and has authorized additional hours for the DFE to perform his examination.

The Government has provided notice that it intends to call a digital forensic examiner and an NCIS agent specializing in cyber crimes at trial.

If this matter goes to a contested trial, the Defense will need its DFE present with them in the courtroom as an expert consultant to assist if/when the Government presents any digital forensic evidence. The Government has specifically denied any travel or trial time for the DFE, the Defense requests the Court order travel and trial time so that the Defense may have its expert present in court with them during trial, as required for the preparation of an adequate defense.

BURDEN

The burden of proof and persuasion rests on the Defense for this motion. The standard as to any factual issue necessary to resolve this motion is to a preponderance of the evidence. RCM 905(c)(1).

EXHIBITS

6 June 2023 - Government denial of DFE for trial.

LAW

Article 46 UCMJ

Rule for Court Martial 701, 703

United States v. Garries, 22 M.J. 288 (1986)

Washington v. Texas, 388 U.S. 14 (1967)

United States v. Gonzalez 39 MJ 459 (CMA, 1994)

ARGUMENT

Article 46 guarantees that [t]rial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe. *Washington v. Texas*, 388 U.S. 14 (1967) holds that "[j]ust as an accused has the right to confront the prosecution's witnesses to challenge their testimony; he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law. The Defense is entitled to expert assistance necessary to prepare an adequate Defense and is entitled to preservation of all evidence such that it may run its own testing and verification on evidence. *United States v. Garries*, 22 MJ 288, 294 (1986). In this case, the Defense requires the physical presence of its expert consultant, at trial for consultation during trial, as matter of due process to ensure the preparation of an adequate Defense.

The Defense requests the Court compel production of its expert consultant, Mr. [REDACTED]. [REDACTED] This case will turn on the expert forensic analysis of multiple devices. No member of the Defense team is an expert in digital forensics, and all lack the understanding, training, and specialized knowledge and equipment to understand how the Government conducted its extractions and the analysis and evidence that resulted from those extractions.

The Defense received notice that the Government will call both NCIS agents who specialize in digital forensics, and the DoD Cyber Crime Center (DC3) analyst who performed work on this case. Defense needs its expert consultant present during trial in order to understand the Government witness testimony. Additionally, the Defense will have the opportunity to cross-examine each of these individuals, and needs the advice and presence of its expert consultant in order to be properly prepared to do so.

The Defense requests the Court compel the remainder of its request. The Government has unlimited access to its forensic analysts, and they are likely to testify at trial. The Government did not authorize the Defense DFE any time or travel related to the trial. Without its own confidential expert present at trial and hearing the Government digital evidence, the Defense counsel - untrained in digital forensics - cannot adequately represent Cpl. Allen in this matter. This case revolves around computers and digital forensics, as of the current date, the Government has all the resources and expertise, the Defense has none.

RELIEF REQUESTED

The Defense requests to Court compel the remainder of its DFE request specifically:

One (1) day pre-trial consultation before trial at Camp LeJeune = \$2500
Five (5) days trial at \$2500 per day = \$12,500.00
Two (2) days travel to and from Camp LeJeune, NC = \$5000.00

The defense requests an Article 39(a), UCMJ, hearing to present additional evidence and argument on this motion.

Respectfully submitted,

Margaret Kurz
Civilian Defense Counsel

NAVY-MARINE CORPS TRIAL JUDICIARY
EASTERN JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL

UNITED STATES

v.
ALLEN, KENDALL
Corporal, USMC
Camp LeJeune, North Carolina

DEFENSE MOTION TO
COMPEL DISCOVERY

28 June 2023

MOTION

The Defense requests the Court compel production of discovery. The Defense does request an Article 39(a), UCMJ, session.

FACTS

Cpl Allen is charged with three specifications of possession of child pornography. The three specifications allege possession over three separate platforms; two mobile devices and on a Google account.

During Defense Counsel's initial review of the case file in April, it reviewed 4-5 excel spreadsheets at the Camp LeJeune NCIS office from the investigation. The excel sheets did not contain any contraband information. Defense counsel requested copies of the excel sheets, as they had not been provided as part of discovery. Government acknowledged, but to date, has not provided copies.

The Government appointed a Defense Forensic Expert to the Defense team on 10 April 2023. Defense immediately requested the Government transfer the evidence to Travis Air Base, Washington, Office of Special Investigations, the military law enforcement office closest to the DFE. This law enforcement to law enforcement transfer allowed the evidence to remain secure within law enforcement channels and save the extensive travel costs required for the DFE to come to Camp LeJeune from Washington State to perform his review and analysis. The Government did ship a portion of the file to Travis AFB received on 16 May 2023 and the DFE was able to review most of the evidence related to two of the charges the next week.

After starting his analysis at Travis AFB, the DFE realized that no evidence had been provided related to a third charge involving the Google account, and the Government had not shipped any of the raw data related to the first two specifications. On 24 May 2023, the Defense spoke with the Government, notifying them of the missing three items and requesting it be shipped to Travis AFB to permit DFE review. Defense followed up by email on 24 May 2023,

AE ✓1
Pg 1 of 2

30 May 2023, 6 June 2023, and 22 June 2023. Each time, the Government responded that it would be shipped by NCIS. On 23 June 2023, the Government provided a tracking number showing a package had shipped from Camp LeJeune on 16 June 2023, as of the time of the filing of this motion, tracking shows that the package has arrived in California. The DFE has not been notified that it is available for his review, or been able to schedule time to review the material.

BURDEN

The burden of proof and persuasion rests on the Defense for this motion. The standard as to any factual issue necessary to resolve this motion is to a preponderance of the evidence. RCM 905(c)(1).

ARGUMENT

Cpl Allen is charged with three specifications across three devices. To date, the Government has made available partial evidence related to two of the charges, and none of the data related to a third charge.

To be clear, the Defense does not believe that the Government Counsel is deliberately withholding evidence, but rather that it has failed to adequately communicate with NCIS and to adequately oversee the prompt shipment of evidence for Defense review, and when it was finally shipped two weeks after being requested, it appears to have been sent regular post rather than express shipment. The Defense files this motion to preserve the issue for a possible future Motion to Continue, as, to date, the Defense has not been able to review what was contained in that most recent shipment.

RELIEF REQUESTED

Provision in hard copy and/or electronically to Defense Counsel all non-contraband evidence collected or compiled in this case, including all excel spreadsheets reviewed by defense counsel at NCIS at Camp LeJeune.

Respectfully submitted,

Márgaret Kurz
Civilian Defense Counsel

NAVY-MARINE CORPS TRIAL JUDICIARY
EASTERN JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL

UNITED STATES

v.
ALLEN, KENDALL
Corporal, USMC
Camp LeJeune, North Carolina

DEFENSE MOTION FOR
BILL OF PARTICULARS

28 June 2023

MOTION

Pursuant to Rule for Courts-Martial 906(b)(6), the Defense requests the Government provide a Bill of Particulars.

FACTS

On 3 November 2022 (the Charge) and on 15 February 2023 (the Additional Charge and Specifications), the Government preferred charges against CPL Allen for possession of child pornography, ostensibly on two devices and in a Google Account.

As part of the NCIS investigation, NCIS examined multiple devices and approximately 1000 images.

In the Charge, the Government alleges that CPL Allen possessed child pornography on "a Google account" over a three-year period with no further specificity as to the identity of that Google account. In the Additional Charge and two Specifications, the Government alleged that Cpl Allen possessed child pornography on "an Iphone 11 Pro Max" and on an "LG Stylo" with no further specificity as to those devices. The Government failed to allege any specificity with regard to what images it was charging, either by description or hashtag.

BURDEN

The burden of proof and persuasion rests on the Defense for this motion. The standard as to any factual issue necessary to resolve this motion is to a preponderance of the evidence. RCM 905(c)(1).

LAW

Rule for Courts-Martial 906(b) requires the Government to plead with specificity the crimes it alleges. Specifically the Rule states:

The purposes of a bill of particulars are to inform the accused of the nature of the charge with sufficient precision to enable the accused to prepare for trial, to avoid or minimize the danger of surprise at the time of trial, and to enable the accused to plead the acquittal or conviction in bar of another prosecution for the same offense when the specification itself is too vague and indefinite for such purposes.

See also: *United States v. Francisco*, 575 F.2d 815, 818 (10th Cir. 1978) (citing *United States v. Haskins*, 345 F. 2d at 114); Rule for Court-Martial (R.C.M.) 906(b)(6) Discussion, Manual for Courts-Martial, United States, (2002 ed.). A bill of particulars is not a part of the indictment or of the charge to the jury. *Francisco*, 575 F.2d at 819. In military practice, the bill of particulars is not a part of the specification. R.C.M. 906(b)(6) Discussion.

ARGUMENT

In the Charge, the Government has alleged that Cpl Allen possessed illegal images in "a Google account." To state an offense in this manner fails to put the Defense on any notice of how to defend this charge. There are well over 1.5 billion Google accounts in the world, to say that evidence of a crime is located in a Google account is akin to saying that a crime occurred "somewhere" in the world. Moreover, even if the Defense were to resort to finding information on the Google accounts in the NCIS investigation (which it is not required to do, nor has it received any of the data related to any of the Google accounts in discovery yet), the investigation involved three separate Google accounts. The Defense is not on notice of what the basis of the charge is with any sufficient precision that it might prepare for trial. The Defense requests the Government provide the specific Google account it alleges contained child pornography, and the hashtags of the images it alleges are illegal contained in that Google account.

In the Additional Charge, the Government alleges possession of child pornography on two separate cell phones, but no other specifics. Both devices contained multiple images and data. The Defense similarly requests the Government articulate what data or images on those two devices it believes to be illegal, along with identifying hashtags such that the Defense may know with specificity what the Government is referring to when it charges Cpl. Allen with possession of illegal images in the Additional Charge.

RELIEF REQUESTED

The Defense requests the Court order the Government to provide a Bill of Particulars with regard to all Charges and their Specifications.

Respectfully submitted,

[REDACTED]
Margaret Kurz
Civilian Defense Counsel

NAVY-MARINE CORPS TRIAL JUDICIARY
EASTERN JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL

UNITED STATES

v.

ALLEN, KENDALL
Corporal, USMC
Camp LeJeune, North Carolina

DEFENSE MOTION TO
DISMISS FOR LACK OF
JURISDICTION

Date: 2 August 2023

MOTION

The Defense moves the Court to dismiss the charges in United States v. Allen for lack of jurisdiction. Cpl. Allen has past his end of active service date (EAS) and has not been properly extended.

The defense does request an Article 39(a), UCMJ, session.

FACTS

On 3 November 2022 and 23 February 2023, the Government preferred a total of three charges against Cpl Allen for possession of child pornography in violation of Article 134, Uniform Code of Military Justice.

Cpl Allen's enlistment contract ended on 28 July 2023. While he is flagged or has a "legal hold" notation on his personnel record, to date, no other affirmative action has been taken to extend him on active duty for the purposes of this court-martial. He has not been issued a DD214.

On 2 August 2023, Cpl Allen objected to retention on active duty.

Exhibit 1 - Enlistment Contract

Exhibit 2 - Allen, K Cpl - Objection to retention on active duty.

BURDEN

1. The burden of proof and persuasion rests on the Defense for this motion. The standard as to any factual issue necessary to resolve this motion is to a preponderance of the evidence.

AE XIV

Pg 1 of 3

RCM 905(c)(1).

REQUEST TO FILE OUT OF TIME

The Defense requests the Court accept this motion filed out of time. The issue of in personam jurisdiction did not become ripe until after the end of Cpl Allen's enlistment on 28 July 2023, and after Cpl Allen noted his objection to retention on active duty through counsel.

LAW/ARGUMENT

Rule for Courts-Martial 202 governs in personam jurisdiction over military service members. The Discussion to RCM 202 states that a valid enlistment grants jurisdiction over an individual, and jurisdiction terminates when a valid discharge certificate or its equivalent is issued. Completion of a term of service does not "by itself" terminate court-martial jurisdiction, as terms may be adjusted. The Discussion is fairly specific, stating:

Even if such adjustments are considered, court-martial jurisdiction normally continues past the time of scheduled separation until a discharge certificate or its equivalent is delivered or until the Government fails to act within a reasonable time after the person objects to continued retention....Service members may be retained past their scheduled time of separation, over protest, by action with a view to trial while they are still subject to the UCMJ. Thus, if action with a view to trial is initiated before discharge or the effective terminal date of self-executing orders, a person may be retained beyond the date that the period of service would otherwise have expired or the terminal date of such orders. [emphasis added] RCM 202 (discussion)

While the case law in this area is relatively settled, there is no case exactly on point factually to Cpl Allens case.

Courts-martial have been terminated mid-trial due to lack of in personam jurisdiction. In *Smith v. Vanderbush*, 47 M.J. 56 (1997), CAAF held that the receipt of a validly obtained DD214 upon SGT Vanderbush's ETS did in fact sever the jurisdiction of the military, despite the fact that SGT Vanderbush had already been arraigned at court-martial. Key language from the court stated: [t]he discussion accompanying RCM 202 makes it clear that the authority to retain an individual on active duty is **discretionary and not self-executing**. [emphasis added] In other words, the military must take action to hold a service-member on active duty for the purpose of prosecution, it cannot simply rely on Article 2(a) and the "theory" of continuing jurisdiction to maintain jurisdiction after the expiration of their enlistment contract. (See also *United States v. Green*, 2008 U.S. Dist. LEXIS 65386 15-16 (2008) holding that unless the command has the clear intent to prevent a discharge, in other words they take steps, the service member may be discharged, and affirming that retention is discretionary and not self-executing in accordance with *Smith v. Vanderbush*).

Defense is not arguing that the end of Cpl Allen's enlistment contract terminates jurisdiction, as that is not what the law states. MCO 1900.16 (1008(c)) reflects the Manual for Courts-Martial, stating that a Marine may be held on active duty past their EAS with an eye toward trial, but does not give further guidance on the mechanics. However, because Cpl. Allen's has objected to retention on active duty, as the MCM and case law requires, and because

retention on active duty is not self-executing, the U.S. Marine Corps has lost jurisdiction over Cpl Allen.

Jurisdiction is not a moving target, it is not a soft target, it is a hard line. Service members enlist for finite amount of time. Cpl Allen's Common Access Card has expired and the command has no plans to get him new one. The chain of command has done nothing to extend him on active duty other than note a legal hold on his record. The Courts have deliberately held that extension on active duty for legal prosecution purposes is discretionary and not automatic. The Government must do something within a reasonable time after the end of the term of service to continue jurisdiction. By doing nothing, the Government has lost jurisdiction and cannot get it back after the fact.

RELIEF REQUESTED

The Defense requests to Court dismiss the Charges and Specifications for lack of jurisdiction.

[REDACTED]
MARGARET KURZ
Civilian Defense Counsel

NAVY-MARINE CORPS TRIAL JUDICIARY
EASTERN JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL

UNITED STATES

v.
ALLEN, KENDALL
Corporal, USMC
Camp LeJeune, North Carolina

DEFENSE MOTION TO
DISMISS FOR DISCOVERY
VIOLATIONS

10 August 2023

MOTION

The Defense requests the Court dismiss the charges with prejudice for discovery violations.

The Defense understands that this motion is filed out of time, however, the facts giving rise to the motion only occurred within the past weeks and the violation only became apparent within the past days.

FACTS

Cpl Allen is charged with three specifications of possession of child pornography in violation of Article 134, Uniform Code of Military Justice.

Among the images he is accused of possessing are photos and a video in which the Government alleges he appeared. For reference, the photos and videos were those that were the subject of a previous motions hearing.

Within the past week or so, the Defense has learned that NCIS (SA [REDACTED] and FBI Special Agent [REDACTED] along with the trial counsel, Capt. [REDACTED] contacted family members of Cpl Allen, asking questions about that set of photographs and videos. All family members told the FBI that they did not know the person that they were asked to identify. Shortly thereafter, the Defense requested a phone number and contact information for SA [REDACTED] from SA [REDACTED] she provided only his email. Email from the Defense to SA [REDACTED] went unanswered.

When NCIS provided its final report to the Defense on 8 August 2023, no mention of this investigation, NCIS contacts with the family, or of SA [REDACTED] joint investigative efforts with the FBI were contained in the NCIS report. The Defense had expected her investigative activities to be properly reflected in her report, as the trial counsel had acknowledged only a week before that it understood its discovery obligation to be ongoing with regard to investigative activity.

The Defense interviewed SA [REDACTED] on 10 August 2023, and asked for a status of the FBI investigation, background, how many times SA [REDACTED] had spoken with SA [REDACTED] and when that contact began. She refused to answer any of those questions. CPT [REDACTED] the trial counsel, was present with SA [REDACTED] in her office during the Defense phone interview. His presence was disclosed only after Defense counsel directly inquired of SA [REDACTED] if she was alone.

On 21 October 2022, the Defense submitted a discovery request which included "any agency or law enforcement documents and data, made in connection with this case" and "books, papers, documents...in the possession, custody, or control of the government or agents thereof, including closely aligned civilian authorities or entities, and which are necessary for the preparation of the defense...." [Exhibit 1]

BURDEN

The burden of proof and persuasion rests on the Defense for this motion. The standard as to any factual issue necessary to resolve this motion is to a preponderance of the evidence. RCM 905(c)(1).

EXHIBIT

Exhibit 1 - Defense Discovery Request dated 22 October 2022

WITNESSES

SA [REDACTED] - NCIS, Camp LeJeune, North Carolina

LAW/ARGUMENT

United States v. Stellato extends the Government discovery obligation to when "the evidence resides in another agency but was part of a joint investigation." *United States v. Stellato*, 74 MJ 473 at 484-85 (2015). In the *Stellato* case, the military trial counsel was aware of a box of evidence in the possession of the local Sheriff's department related to the military charges, but had refused to disclose its existence to the Defense, and then refused to produce it until ordered to do so by the Court. The trial counsel had also refused to collect evidence brought to his office by the family of the victim, instructing them that if he collected it, "it would have to go to the Defense." Most egregiously, the evidence held by the local Sheriff eventually yielded exculpatory evidence following Defense testing.

The NCIS investigation into Cpl Allen is being conducted jointly with the FBI. The FBI is investigating the same photos and videos charged by the military. The scope of the integrated nature of the investigation only became apparent to the Defense when the FBI, the trial counsel, and NCIS conducted a joint interview of Cpl Allen's family members very recently, with SA

[REDACTED] present on the phone and also forwarding photographs to the family specifically at the request of SA [REDACTED] CPT [REDACTED] was present by phone during some or all of the interviews and contact.

The information contained in the FBI file is both potentially exculpatory and necessary for the preparation of the defense. The Defense is aware that interviews with the family failed to yield the identity of at least one individual, whereas the Government alleged that the individual was known to Cpl. Allen. This is exculpatory. Moreover, the scope and nature of a parallel law enforcement agency is necessary to the preparation of the Defense, and how it might advise Cpl. Allen on this case sub judice. The Government was under an obligation to disclose this information, not only under *Stellato*, but under RCM 703, *Brady vs. Maryland*, and the specific Defense request for discovery sent back in October 2022.

RELIEF REQUESTED

The Defense requests the Court dismiss the charges with prejudice for discovery violations.

[REDACTED]
MARGARET KUZZ
Civilian Defense Counsel

NAVY-MARINE CORPS TRIAL JUDICIARY
EASTERN JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL

UNITED STATES

v.

KENDAL ALLEN
Corporal /E-4
U. S. Marine Corps

**GOVERNTMENT RESPONSE TO
DEFENSE MOTION TO DISMISS FOR
DISCOVERY VIOLATIONS**

12 Aug 23

Nature of the Motion

This is the Government's response to the Defense's Motion to Dismiss for Discovery Violations.

Summary

This Court should deny the Defense's motion. There has been no discovery violation and the Defense is now in possession of the discovery it sought, confirming there is no exculpatory evidence. Additionally, dismissal with prejudice is not warranted under the circumstances. Accordingly, this Court should deny the Defense's motion

Facts

1. Cpl Allen has been charged with three (3) specifications of possession of child pornography in violation of Art 134, UCMJ, one specification each for his google account, his iPhone 11 Pro Max, and his LG Stylo device.
2. A series of 10 National Center for Missing and Exploited Children (NCMEC) cyber tips were generated by Google between 18 April 2022, and 19 May, 2022, in response to dozens of files of apparent child pornography. The tips were all associated with the Google email address of [REDACTED] which NCIS's investigation linked to the Accused in this case through Google account information. [Enclosure 1].

3. The Accused's Google account contained a series of five pictures and two videos of a young African-American male victim who appears to be under the age of 10. One of the videos shows the Accused naked, sexually assaulting the victim. Forensic analysis revealed the photos and videos were created in May 13, 2018, in Clayton county Georgia, prior to the Accused's active duty.

4. The accused made statements in his interrogation indicating he had taken at least some of the pictures of the young male, though he denied possessing CSAM. During his interrogation, the Accused was shown one of the pictures of the young male, whom he identified as [REDACTED] and told the agents [REDACTED] is [REDACTED] He was then confronted about the veracity of those statements, and he admitted the young male was not his friend [REDACTED] explaining that he was [REDACTED] when he took the photo of the young male, and admitting that he pulled the young male's pants down. When confronted with the totality of his actions in the videos and photos of the young male, the Accused conceded [REDACTED] [REDACTED] or words to that effect. However, the Accused did not fully admit to the assault, nor did he admit he was not actually a minor, but approximately [REDACTED] years and [REDACTED] months old.

5. Because the sexual assault of the minor and the production of child pornography occurred pre-service, NCIS and the Marine Corps do not have jurisdiction over Cpl Allen for that misconduct, and the FBI initiated its own investigation into the identity of the victim after being informed of the pre-service misconduct by NCIS.

6. The FBI's investigation consisted of (1) observing the NCIS interrogation of the Cpl Allen and the search of his barracks room, (2) unsuccessfully attempting to make contact with Cpl Allen's [REDACTED], in April 2023, and (3) contacting Cpl Allen's [REDACTED] and his [REDACTED] The contact with Mr. and Ms. [REDACTED] occurred after Defense

Counsel provided their contact information to the Government, and trial counsel were able to make positive contact on 19 July 2023, with both Mr. and Ms. [REDACTED] as part of trial preparation in this case.

7. Trial Counsel's contact with Mr. and Ms. [REDACTED] was made without any participation or observation by either NCIS or FBI agents. It consisted of (1) confirming Defense Counsel's summary of their expected testimony, (2) confirming that Cpl Allen had never reported being sexually assaulted as a child to either witness, and (3) asking if they would be willing to identify the child victim the FBI had not been able to identify—which both witnesses agreed to do. NCIS SA [REDACTED] emailed Mr. and Ms. [REDACTED] the photo of the minor victim she had shown to Cpl Allen, and then FBI SA [REDACTED] subsequently contacted both Mr. and Ms. [REDACTED] himself, without Trial Counsel or NCIS agents on the call. Neither witness identified the minor victim.

8. On 11 August 2023, the Defense was provided all 8 pages of the FBI investigation confirming the minor victim continues to be unidentified on the same day the Government received it.

Burden

9. As the moving party, the Defense has the burden of persuasion. R.C.M. 905(c)(2). The burden of proof is by a preponderance of the evidence. R.C.M. 905(c)(1).

Law

10. The Rules for Courts-Martial define a trial counsel's obligations under Article 46, UCMJ. See *United States v. Pomarleau*, 57 M.J. 351, 359 & n.9 (C.A.A.F. 2002). Three provisions are of particular relevance. First, “[e]ach party shall have . . . equal opportunity to interview witnesses and inspect evidence.” R.C.M. 701(e). Second, “trial counsel shall, as soon as practicable, disclose to the defense the existence of [exculpatory] evidence known to the trial

counsel." R.C.M. 701(a)(6); see *United States v. Garlick*, 61 M.J. 346, 349-50 (C.A.A.F. 2005). Third, the Government must permit the defense to inspect "[a]ny books, papers, documents, photographs, tangible objects, . . . or copies of portions thereof, which are within the possession, custody, or control of military authorities, and which are material to the preparation of the defense." R.C.M. 701(a)(2)(A). These discovery rules "ensure compliance with the equal-access-to-evidence mandate in Article 46." *United States v. Williams*, 50 M.J. 436, 440 (C.A.A.F. 1999). In doing so, the rules "aid the preparation of the defense and enhance the orderly administration of military justice." *United States v. Roberts*, 59 M.J. 323, 325 (2004). We further note that "[t]he parties to a court-martial should evaluate pretrial discovery and disclosure issues in light of this liberal mandate." *Id.*

United States v. Stellato, added additional clarity to Trial counsel discovery obligations:

Under R.C.M. 701(a)(6), trial counsel are required to review certain files, documents, or evidence for exculpatory information. . . . Trial counsel must review their own case files and must also exercise due diligence and good faith in learning about any evidence favorable to the defense 'known to the others acting on the government's behalf in the case, including the police.' In regard to the latter point, a trial counsel's duty to search beyond his or her own prosecution files is generally limited to: (1) the files of law enforcement authorities that have participated in the investigation of the subject matter of the charged offenses; (2) investigative files in a related case maintained by an entity closely aligned with the prosecution; and (3) other files, as designated in a defense discovery request, that involved a specified type of information within a specified entity.

2015 CAAF LEXIS 725, *34-35.

11. Where a remedy must be fashioned for a violation of a discovery mandate, the facts of each case must be individually evaluated. *Stellato*, at *41. Prejudice can arise from discovery violations when those violations interfere with an accused's ability to mount a defense. *Id.* at *47. If an error can be rendered harmless, dismissal is not an appropriate remedy. *Id.* At 42. Nevertheless, dismissal of charges may be appropriate if a military judge determines that the

effects of the Government's discovery violations have prejudiced the accused and no lesser sanction will remedy this prejudice. *Id.*

Analysis

I. The First Three MRE 414 Threshold Requirements are Met in This Case

12. There is no discovery violation in this case as alleged by the Defense as the basis for dismissal. The Defense's argument on page 2 of its motion regarding the application of relevant factual circumstances in *United States v. Stellato* and its remedy in its argument as to this case is as follows:

1. the military trial counsel was aware of a box of evidence in the possession of the local Sheriff's department related to the military charges, but had refused to disclose its existence to the Defense, and then refused to produce it until ordered to do so by the Court.
2. The trial counsel had also refused to collect evidence brought to his office by the family of the victim, instructing them that if he collected it, "it would have to go to the Defense."
3. Most egregiously, the evidence held by the local Sheriff eventually yielded exculpatory evidence following Defense testing.

None of the same circumstances exist in this case. First, Trial Counsel in this case (1) were not made aware by the FBI of any new evidence that had not been disclosed to the Defense, and (2) did not refuse to collect or receive any evidence for any reason, let alone to explicitly avoid disclosure. Second, there is simply no exculpatory evidence from the FBI investigation. The FBI investigation revealed only two facts, (1) that the FBI initially could not make positive contact with Mr. [REDACTED] and (2) that the victim still has not been identified even after contact with Mr.

and Ms. [REDACTED] Neither of those facts provides any exculpatory evidence at all, let alone to the extent repeatedly present in *Stellato*.

13. The Defense's argument that "interviews with the family fail[ing] to yield the identity of at least one individual, whereas the Government alleged that the individual was known to Cpl. Allen . . . is exculpatory" should be rejected. First, Cpl Allen's father and mother figure's inability to, or refusal to identify the minor victim has no bearing on whether Cpl Allen should have known just by the objectively very young appearance of the victim that the victim was a minor when Cpl Allen was creating the pictures and videos. The fact that Mr. and Ms. [REDACTED] did not affirmatively identify him or provide a name does not impact the victim's appearance or make it more or less likely that he was a minor at the time. Second, the continued lack of identification of the victim was not new information and did not change the evidence in the case in any way. The pictures and videos created by the Accused were the subject of litigation in this case, and the Defense was already aware through that litigation that nothing was known about the identity of the victim beyond the statements by the Accused. Mr. and Ms. [REDACTED] did not provide information contradicting or changing the state of any of that evidence, they simply had nothing exculpatory or inculpatory to provide. The Defense was by its own admission already aware of that as Mr. and Ms. [REDACTED]—defense witnesses whose contact information was provided by the Defense Counsel—apparently reached out to the Defense to alert the Defense to their contact with the FBI and the fact that they did not identify the victim. Finally, the existence, scope, and nature of a parallel law enforcement agency investigation itself does not affect the Defense of the Accused, either in this case or in any potential future case by any other jurisdiction, absent that investigation containing additional evidence or information (which does not exist in the FBI investigation in this case). That is because the jeopardy he faces either in

this jurisdiction, or any other jurisdiction, is based on the evidence and the applicable laws of each jurisdiction, not on the decision of any agency to investigate—which can change at any time for any number of reasons. The facts in this case do not amount to the number, scope, or nature of the violations found in *Stellato*, and this Court should therefore deny the Defense's motion to dismiss.

II The remedy of dismissal with prejudice is not warranted.

14. Even if this Court find that the Defense should have been discovered the FBI investigation as it was being documented, dismissal with prejudice is not appropriate under these facts. The facts in *Stellato* revealed repeated, intentional failures to disclose or produce exculpatory evidence to the Defense, which created prejudice to the *Stellato* Accused in several identifiable ways including the loss of a witness. *Stellato*, 2015 CAAF LEXIS 725, at 51. (“trial counsel committed a series of discovery violations, that these discovery violations prejudiced the accused, and that no remedy short of dismissal with prejudice would adequately address this prejudice.”). The Defense witnesses were interviewed in this case one month before trial regarding the identity of a victim, who they did not identify. The Defense has not articulated any actual prejudice from that information, nor can it do so now that it has the FBI casefile that serves only to confirm that there was no exculpatory evidence in that investigation that the Government needed to discover. Moreover, trial counsel in this case (1) were not made aware by the FBI of any new evidence that had not been disclosed to the Defense, and (2) did not refuse to collect or receive any evidence for any reason, let alone to explicitly avoid disclosure. Therefore, analogizing to *Stellato* and a request for the same same drastic remedy should be rejected, and a lesser remedy like a continuance would be the appropriate remedy.

Evidence Offered

15. The Government requests the Court reference the enclosures and testimony of the witnesses in support of its MRE 414 motion, with the addition of the FBI investigation file, included as Enclosure 1 to this motion.

Relief Requested.

16. The Government respectfully requests that this Court deny the Defense's motion.

Oral Argument.

16. The Government requests oral argument on this matter.

[REDACTED]
M. E. Blackburn
Captain, U.S. Marine Corps
Government Trial Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was served on the Court and opposing counsel via electronic mail on 12 Aug 23.

[REDACTED]
M. E. Blackburn
Captain, U.S. Marine Corps
Government Trial Counsel

NAVY-MARINE CORPS TRIAL JUDICIARY
EASTERN JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL

UNITED STATES

v.

KENDALL D. ALLEN
Corporal/E-4
U.S. Marine Corps

GOVERNMENT RESPONSE TO
DEFENSE MOTION TO DISMISS FOR
LACK OF JURISDICTION

4 August 2023

MOTION

On 2 August 2023, the Defense filed a motion to dismiss for lack of jurisdiction. This is the Government's response to the Defense's motion. For the reasons below, the Government respectfully requests that this Court **DENY** the Defense's motion to dismiss.

SUMMARY

The Defense moved the Court to dismiss the charges in the case at bar for lack of jurisdiction over the Accused. The Defense has incorrectly asserted that the Accused passed his end of active service (EAS) date and has not been properly extended.

FACTS

1. On 18 July 2023, the Accused was placed on legal hold pursuant to direction by the Accused's Regimental Commanding Officer. (Government Enclosure 1).
2. The Accused's Basic Individual Record (BIR) reflects that the Accused was placed on legal hold and currently has an EAS date of 99999999. (Government Enclosure 2).

AE XXIV

Pg 1 of 6

BURDEN

The burden of proof and persuasion rests on the Defense for this motion. The standard as to any factual issue necessary to resolve this motion is to a preponderance of the evidence. RCM 905(c)(1).

LAW

Rule for Courts-Martial (RCM) 202. Persons subject to the jurisdiction of courts-martial.

RCM 202 governs in personam jurisdiction over military service members. The Discussion to RCM 202 states that a valid enlistment grants jurisdiction over an individual, and jurisdiction terminates when a valid discharge certificate or its equivalent is issued. *Completion of a term of service does not "by itself" terminate court-martial jurisdiction, as terms may be adjusted.* The Discussion is fairly specific, stating:

Even if such adjustments are considered, court-martial jurisdiction normally continues past the time of scheduled separation until a discharge certificate or its equivalent is delivered or until the Government fails to act within a reasonable time after the person objects to continued retention....*Service members may be retained past their scheduled time of separation, over protest, by action with a view to trial while they are still subject to the UCMJ.* Thus, if action with a view to trial is initiated before discharge or the effective terminal date of self-executing orders, a person may be retained beyond the date that the period of service would otherwise have expired or the terminal date of such orders. [emphasis added] RCM 202 (discussion).

10 USC § 1168(a)

10 U.S.C.S. § 1168(a) provides that a member of an armed force may not be discharged or released from active duty until his discharge certificate or certificate of release from active duty, respectively, and his final pay or a substantial part of that pay, are ready for delivery to him or his next of kin or legal representative. 10 U.S.C.S. § 1169 further provides that no regular enlisted member of an armed force may be discharged before his term of service expires, except

-- (1) as prescribed by the Secretary concerned; (2) by sentence of a general or special court martial; or (3) as otherwise provided by law.

United States v. Nettles

The United States Court of Appeals for the Armed Forces has held that a discharge terminates in personam court-martial jurisdiction after there is (1) a delivery of a valid discharge certificate, (2) a final accounting of pay, and (3) the undergoing of a clearing process as required under appropriate service regulations to separate the member from military service. This is based on a civil personnel statute, 10 U.S.C.S. § 1168(a), which provides that a member of an armed force may not be discharged or released from active duty until his discharge certificate or certificate of release from active duty, respectively, and his final pay or a substantial part of that pay, are ready for delivery to him or his next of kin or legal representative. *United States v. Nettles*, 74 M.J. 289, 290 (C.A.A.F. 2015) (quoting *United States v. Harmon*, 63 M.J. 98, 101 (C.A.A.F. 2006)).

United States v. Engle

In *Engle*, "the appellant's commanding officer took deliberate action to prevent the appellant's discharge when he signed the legal hold request on 3 May 2004, seven days prior to the appellant's original separation date. The fact that the appellant had been under investigation for nearly two months when the commanding officer signed the legal hold request, that the command's executive officer telephoned the appellant to cancel his terminal leave and ordered him to return to Camp Lejeune because he was under investigation, and that the legal hold request specifically stated the appellant was to be "processed for a general court-martial, [*12] " all clearly indicate the DPAC delivered the discharge certificate to the appellant without an informed exercise of discretion. Therefore, we find that in personam jurisdiction over the

appellant did not terminate upon delivery of his discharge certificate." *United States v. Engle*, 2006 CCA LEXIS 115.

ARGUMENT

The Court has jurisdiction over the Accused.

The Defense's motion to dismiss for lack of jurisdiction should be denied, as RCM 202 and the relevant case law provided clearly support that jurisdiction over the Accused remains through these court-martial proceedings.

Pursuant to RCM 202, completion of a term of service does not "by itself" terminate court-martial jurisdiction, as terms may be adjusted. Here, the Regimental Commanding Officer of the Accused ordered the adjustment of the Accused's EAS and it has been adjusted. (Government Enclosure 1 and 2). In that letter directing the Accused be placed on legal hold, the Commanding Officer clearly states that the Accused, "is currently pending a general court-martial. Corporal Allen will be on legal hold until all legal action has been adjudicated." (Government Enclosure 1).

Further, both 10 U.S.C.S. § 1168(a) and *United States v. Nettles*, articulate that in personam court-martial jurisdiction is terminated only after there is (1) a delivery of a valid discharge certificate, (2) a final accounting of pay, and (3) the undergoing of a clearing process as required under appropriate service regulations to separate the member from military service. The Accused in this case has not had a delivery of a valid discharge certificate, there has been no final accounting of pay, and has not executed the clearing process required by the Marine Corps regulations. In personam court-martial jurisdiction has *not* terminated for the Accused.

Lastly, even in cases where discharge certificates have been issued, appellate courts have held that those may be invalid if a Commander intends to keep those service members on active

duty and have a view towards trial. *United States v. Engle*, 2006 CCA LEXIS 115. As previously discussed, RCM 202 permits service members to be retained past their scheduled time of separation, over protest, by action with a view to trial while they are still subject to the UCMJ. As was the case in *Engle*, the Commanding Officer and Commanding General of the Accused in this case have take action – placing the Marine on legal hold – to ensure that the Accused remains on active duty for the purposes of effectuating the general court-martial at bar – and squarely within the limits of RCM 202.

EVIDENCE

Enclosures: The Government is providing the following as enclosures to support its motion.

Enclosure 1. Regimental Commanding Officer Legal Hold ltr dtd 18 Jul 23

Enclosure 2. The Accused's Basic Individual Record – Up to date as of 1 Aug 23

RELIEF REQUESTED

Based on the foregoing, the Defense's motion to dismiss based on lack of jurisdiction is inconsistent with RCM 202 and case law. Therefore, the Government respectfully requests that this Court **DENY** the Defense's motion to dismiss. The Government requests the opportunity to orally litigate in response to any granted oral argument for the Defense.

EHRHARDT.MCKENZIE.BLAINE [REDACTED] Digitally signed by
IE.BLAINE. [REDACTED] EHRHARDT.MCKENZIE.BLAINE [REDACTED]
[REDACTED] Date: 2023.08.04 12:21 15 -04'00'

M.B. EHRHARDT
Major, U.S. Marine Corps
Government Trial Counsel

Certificate of Service

I hereby attest that a copy of the foregoing motion was served on the court and opposing counsel electronically on 4 August 2023.

EHRHARDT.MCKEN

Digitally signed by

ZIE.BLAIN

EHRHARDT.MCKENZIE.BLAIN

Date: 2023.08.04 12:21:30 -04'00'

M.B. EHRHARDT

Major, U.S. Marine Corps

Government Trial Counsel

REQUESTS

NAVY-MARINE CORPS TRIAL JUDICIARY
EASTERN JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL

UNITED STATES

v.

ALLEN, KENDALL
Corporal, USMC
Camp LeJeune, North Carolina

DEFENSE REQUEST FOR
DISCOVERY (NCIS emails)
12 August 2023

MOTION

The Defense requests the Court compel production of emails exchanged between trial counsel and Government witnesses in United States v. Allen.

FACTS

On 3 November 2022 and 15 February 2023, the Government preferred charges against Cpl Allen related to possession of child pornography. As part of pre-trial matters, the Government listed as witnesses, SA [REDACTED] Mr. [REDACTED] and Ms. [REDACTED]

[REDACTED] All are government employees.

On 10 August 2023, Defense Counsel telephonically interviewed SA [REDACTED] in preparation for trial. Capt [REDACTED] trial counsel, was present in SA [REDACTED] office during the interview. As part of the interview, SA [REDACTED] disclosed that she had exchanged approximately 40 emails with Capt [REDACTED] and had also exchanged emails with multiple other prosecutors related to the investigation and the case of U.S. v. Allen. During the phone call, SA [REDACTED] was able to access all of the emails from her work computer within minutes. She agreed to provide them to the Defense while over the phone, but later emailed the Defense informing them she would not, but that they had to be requested through the discovery process. Defense made a discovery request to the Government for the emails on 10 August 2023, the request was specific as to the emails requested. The request was denied in toto on 11 August 2023. [Exhibit 1, 2]

BURDEN

The burden of proof and persuasion rests on the Defense for this motion. The standard as to any factual issue necessary to resolve this motion is to a preponderance of the evidence. RCM 905(c)(1).

LAW / ARGUMENT

a. Discovery

RCM 701(a)(2)(A) requires the Government to produce, upon Defense request, matters that are relevant to defense preparation. Unlike RCM 701(a)(6) and *Brady*, this matter does not have to be favorable – just relevant to defense preparation. Unfavorable matters can be disclosable under RCM 701(a)(2)(A). *See United States v. Adens*, 56 M.J. 724 (Army Ct. Crim. App. 2002). Other potential categories of RCM 701(a)(2)(A) information include: Inadmissible information that is nonetheless relevant to defense preparation. *United States v. Luke*, 69 M.J. 309 (C.A.A.F. 2011).

The Government reason for denying the request was a blanket statement that it was overbroad. However, the request was very specific, requesting emails between named individuals and only related to the case of *United States v. Allen*. The Government also denied the request based on its evaluation that the emails were "not necessary for Defense preparation." Such an arbitrary determination is inappropriate from the Government. *Alderman v. United States*, 394 U.S. 165 (1969) states Courts should broad when considering this standard:

"An apparently innocent phrase, a chance remark, a reference to what appears to be a neutral person or event, the identity of a caller or the individual on the other end of a telephone, or even the manner of speaking or using words may have special significance to one who knows the more intimate facts of an accused's life. And yet that information may be wholly colorless and devoid of meaning to one less well acquainted with all relevant circumstances."

Certainly the Government is not the arbiter of what is necessary for Defense preparation, nor would it ever be appropriate for them to be. The emails should be disclosed.

b. RCM 701(a)(6)/*Brady* and Witness Preparation

RCM 701(a)(6) requires the Government to produce:

Evidence favorable to the defense. Trial counsel shall, as soon as practicable, disclose to the defense the existence of evidence known to trial counsel which reasonably tends to—
(A) Negate the guilt of the accused of an offense charged;
(B) Reduce the degree of guilt of the accused of an offense charged;
(C) Reduce the punishment; or
(D) Adversely affect the credibility of any prosecution witness or evidence.

Any actions taken, not taken, concerns, questions, guidance given to a Government investigator during the course of investigations would be clearly relevant to the credibility of a witness and should be disclosed. Moreover, the communications would also reflect investigative activity, a disclosable matter, which at present is being deliberately hidden from the Defense by the refusal to disclose investigative dialogue between the prosecutor and law enforcement. Communication between the trial counsel and NCIS is not privileged, Capt [REDACTED] is not SA [REDACTED] attorney, a fact she acknowledged during the interview.

The Defense is not claiming that the Government must reduce to writing every verbal conversation had with law enforcement to writing in at Defense request. But when law enforcement does exchange written communication with the Government concerning a case, it is discoverable and must be disclosed.

RELIEF REQUESTED

The Defense requests the Court order disclosure of emails between all trial counsel and all Government witnesses, including SA [REDACTED] Mr. [REDACTED] and Ms. [REDACTED]

If the Court finds it appropriate, the Defense is amenable to in camera review of all emails prior to disclosure. RCM 701(g)(2).

[REDACTED]
MARGARET KURZ
Civilian Defense Counsel

NOTICES

NAVY-MARINE CORPS TRIAL JUDICIARY
EASTERN JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL

UNITED STATES

v.
ALLEN, KENDALL
Corporal, USMC
Camp LeJeune, North Carolina

NOTICE OF FORUM and
PLEA

1 AUGUST 2023

Pursuant Rule for Courts-Martial 910, the Accused, Corporal Kendall Allen, enters pleas as follows:

To All Charges and their Specifications: Not Guilty.

Pursuant Rule for Courts-Martial 903, Corporal Kendall Allen elects to be tried by Military Judge.

[REDACTED]
Margaret V. Kurz /
Civilian Defense Counsel
[REDACTED]

UNITED STATES NAVY-MARINE CORPS TRIAL JUDICIARY
EASTERN JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL

UNITED STATES OF AMERICA

v.

Kendall Allen
Corporal
United States Marine Corps

NOTICE OF APPEARANCE
CIVILIAN DEFENSE COUNSEL

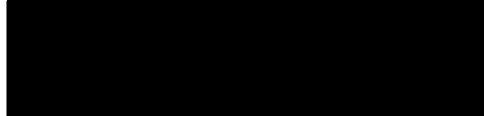
15 August 2023

NOTICE OF APPEARANCE
of
Civilian Defense Counsel.

Joseph M. Owens of the Office of Owens & Kurz, LLC has been retained by Corporal Kendall Allen.

The undersigned is a member in Good Standing of the highest Court in the State of Maryland.

The undersigned has not acted in any manner that might tend to disqualify him in this court-martial.


✓Civilian Defense Counsel
Joseph M. Owens


COURT RULINGS & ORDERS

**THERE ARE NO COURT RULINGS
AND ORDERS**

STATEMENT OF TRIAL RESULTS

STATEMENT OF TRIAL RESULTS

SECTION A - ADMINISTRATIVE

1. NAME OF ACCUSED (last, first, MI)	2. BRANCH	3. PAYGRADE	4. DoD ID NUMBER
Allen, Kendall, D	Marine Corps	E-4	
5. CONVENING COMMAND	6. TYPE OF COURT-MARTIAL	7. COMPOSITION	8. DATE SENTENCE ADJUDGED
2d Marine Logistics Group	General	Judge Alone - MJA16	Aug 16, 2023

SECTION B - FINDINGS

SEE FINDINGS PAGE

SECTION C - TOTAL ADJUDGED SENTENCE

9. DISCHARGE OR DISMISSAL	10. CONFINEMENT	11. FORFEITURES	12. FINES	13. FINE PENALTY	
Dishonorable discharge	58 months	N/A	N/A	N/A	
14. REDUCTION	15. DEATH	16. REPRIMAND	17. HARD LABOR	18. RESTRICTION	19. HARD LABOR PERIOD
E-1	Yes <input type="radio"/> No <input checked="" type="radio"/>	Yes <input type="radio"/> No <input checked="" type="radio"/>	Yes <input checked="" type="radio"/> No <input type="radio"/>	Yes <input type="radio"/> No <input checked="" type="radio"/>	N/A

20. PERIOD AND LIMITS OF RESTRICTION

N/A

SECTION D - CONFINEMENT CREDIT

21. DAYS OF PRETRIAL CONFINEMENT CREDIT	22. DAYS OF JUDICIALLY ORDERED CREDIT	23. TOTAL DAYS OF CREDIT
20	0	20 days

SECTION E - PLEA AGREEMENT OR PRE-TRIAL AGREEMENT

24. LIMITATIONS ON PUNISHMENT CONTAINED IN THE PLEA AGREEMENT OR PRE-TRIAL AGREEMENT

A DD shall be adjudged; For all specifications a minimum of 48 months and a maximum of 60 months of confinement shall be adjudged, all confinement to run concurrently; No forfeitures shall be adjudged; No fines will be adjudged; Reduction in to the grade of E-1; No other lawful punishments shall be adjudged.

SECTION F - SUSPENSION OR CLEMENCY RECOMMENDATION

25. DID THE MILITARY JUDGE RECOMMEND SUSPENSION OF THE SENTENCE OR CLEMENCY?	Yes <input type="radio"/> No <input checked="" type="radio"/>	26. PORTION TO WHICH IT APPLIES
27. RECOMMENDED DURATION		

28. FACTS SUPPORTING THE SUSPENSION OR CLEMENCY RECOMMENDATION

--

SECTION G - NOTIFICATIONS

29. Is sex offender registration required in accordance with appendix 4 to enclosure 2 of DoDI 1325.07? Yes No

30. Is DNA collection and submission required in accordance with 10 U.S.C. § 1565 and DoDI 5505.14? Yes No

31. Did this case involve a crime of domestic violence as defined in enclosure 2 of DoDI 6400.06? Yes No

32. Does this case trigger a firearm possession prohibition in accordance with 18 U.S.C. § 922? Yes No

SECTION H - NOTES AND SIGNATURE

33. NAME OF JUDGE (last, first, MI)	34. BRANCH	35. PAYGRADE	36. DATE SIGNED	38. JUDGE'S SIGNATURE
ROBLES, Benjamin A.	Marine Corps	O-5	Aug 16, 2023	ROBLES.BE N.JAMIN.A. Digitally signed by ROBLES.BENJAMI N.JAMIN.A. Date: 2023.08.16 16:25:48 -04'00'
37. NOTES				

STATEMENT OF TRIAL RESULTS - FINDINGS

SECTION I - LIST OF FINDINGS

CHARGE	ARTICLE	SPECIFICATION	PLEA	FINDING	ORDER OR REGULATION VIOLATED	LIO OR INCHOATE OFFENSE ARTICLE	DIBRS
Charge: Plea: Guilty Finding: Guilty	134	Specification: Offense description	Guilty Child pornography: possessing or receiving or viewing	Guilty			None
Additional Charge: Plea: Guilty Finding:Guilty	134	Specification 1. Offense description Withdrawn and Dismissed	Not Guilty Child pornography: possessing or receiving or viewing w/o prejudice to ripen into prejudice upon completion of appellate review.	W/D			None
		Specification 2. Offense description	Guilty Child pornography: possessing or receiving or viewing	Guilty			None

MILITARY JUDGE ALONE SEGMENTED SENTENCE

SECTION J - SENTENCING

CHARGE	SPECIFICATION	CONFINEMENT	CONCURRENT WITH	CONSECUTIVE WITH	FINE
Charge: Plea: Guilty Finding: Guilty	Specification:	58 mos	All others	N/A	
Additional Charge: Plea: Guilty Finding: Guilty	Specification 1:	N/A	N/A	N/A	
	Specification 2:	58 mos	All others	N/A	

CONVENING AUTHORITY'S ACTIONS

POST-TRIAL ACTION

SECTION A - STAFF JUDGE ADVOCATE REVIEW

1. NAME OF ACCUSED (LAST, FIRST, MI)	2. PAYGRADE/RANK	3. DoD ID NUMBER	
Allen, Kendall D.	E4	[REDACTED]	
4. UNIT OR ORGANIZATION	5. CURRENT ENLISTMENT	6. TERM	
CLR-27, 2d MLG	29 July 2019	4 yrs	
7. CONVENING AUTHORITY (UNIT/ORGANIZATION)	8. COURT-MARTIAL TYPE	9. COMPOSITION	10. DATE SENTENCE ADJUDGED
2d MLG	General	Judge Alone - MJA16	16 August 2023

Post-Trial Matters to Consider

11. Has the accused made a request for deferment of reduction in grade?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
12. Has the accused made a request for deferment of confinement?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
13. Has the accused made a request for deferment of adjudged forfeitures?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
14. Has the accused made a request for deferment of automatic forfeitures?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
15. Has the accused made a request for waiver of automatic forfeitures?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
16. Has the accused submitted necessary information for transferring forfeitures for benefit of dependents?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
17. Has the accused submitted matters for convening authority's review?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
18. Has the victim(s) submitted matters for convening authority's review?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
19. Has the accused submitted any rebuttal matters?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
20. Has the military judge made a suspension or clemency recommendation?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
21. Has the trial counsel made a recommendation to suspend any part of the sentence?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
22. Did the court-martial sentence the accused to a reprimand issued by the convening authority?	<input type="radio"/> Yes	<input checked="" type="radio"/> No

23. Summary of Clemency/Deferment Requested by Accused and/or Crime Victim, if applicable.

On 21 August 2023, detailed defense counsel submitted matters for your consideration, specifically requesting that you suspend the reduction to E-1 and allow him to exit the Marine Corps as a Corporal (E-4). You are required to consider these matters in determining the action you take on the findings of guilty or on the sentence.

I have advised the Convening Authority of clemency authority based on the earliest findings of guilty for an offense committed on or after 1 January 2019 pursuant to R.C.M. 1109, MCM (2023 Ed.)

24. Convening Authority Name/Title	25. SJA Name
M.E. MCWILLIAMS/Brigadier General	[REDACTED]
26. SJA signature	27. Date
[REDACTED]	Nov 5, 2023

Convening Authority's Action -

Allen, Kendall D.

SECTION B - CONVENING AUTHORITY ACTION

28. Having reviewed all matters submitted by the accused and the victim(s) pursuant to R.C.M. 1106/1106A, and after being advised by the staff judge advocate or legal officer, I take the following action in this case: [If deferring or waiving any punishment, indicate the date the deferment/waiver will end. Attach signed reprimand if applicable. Indicate what action, if any, taken on suspension recommendation(s) or clemency recommendations from the judge.]

General Court-Martial Order No. G23-03

Action.

In the General Court-Martial case of United States v. Corporal Kendall D. Allen, U.S. Marine Corps, the sentence is approved and, except for the part of the sentence extending to a Dishonorable Discharge, will be executed. The Marine Corps Installations East Regional Brig, Camp Lejeune, North Carolina is designated as the initial place of confinement.

Confinement Credit.

The accused will be credited with having served 20 days of confinement.

Disposition.

Pursuant to Article 66, Uniform Code of Military Justice, the record of trial will be forwarded to the Navy-Marine Corps Appellate Review Activity (Code 40), Office of the Judge Advocate General, Washington Navy Yard, Washington, D.C. 20374 for appellate review.

29. Convening authority's written explanation of the reasons for taking action on offenses with mandatory minimum punishments or offenses for which the maximum sentence to confinement that may be adjudged exceeds two years, or offenses where the adjudged sentence includes a punitive discharge (Dismissal, DD, BCD) or confinement for more than six months, or a violation of Art. 120(a) or 120(b) or 120b:

N/A.

30. Convening Authority's signature

31. Date

7 Nov 23

32. Date convening authority action was forwarded to PTPD or Review Shop.

Convening Authority's Action -

Allen, Kendall D.

ENTRY OF JUDGMENT

ENTRY OF JUDGMENT

SECTION A - ADMINISTRATIVE

1. NAME OF ACCUSED (LAST, FIRST, MI)	2. PAYGRADE/RANK	3. DoD ID NUMBER	
Allen, Kendall D.	E4		
4. UNIT OR ORGANIZATION	5. CURRENT ENLISTMENT	6. TERM	
CLR-27, 2d MLG	29 July 2019	4 yrs	
7. CONVENING AUTHORITY (UNIT/ORGANIZATION)	8. COURT-MARTIAL TYPE	9. COMPOSITION	10. DATE COURT-MARTIAL ADJOURNED
2d MLG	General	Judge Alone - MJA16	16 August 2023

SECTION B - ENTRY OF JUDGMENT

****MUST be signed by the Military Judge (or Circuit Military Judge) within 20 days of receipt****

11. **Findings of each charge and specification referred to trial.** [Summary of each charge and specification (include at a minimum the gravamen of the offense), the plea of the accused, the findings or other disposition accounting for any exceptions and substitutions, any modifications made by the convening authority or any post-trial ruling, order, or other determination by the military judge. R.C.M. 1111(b)(1)]

Charge: Violation of Article 134, UCMJ.

Plea: Guilty. Finding: Guilty.

Specification: Did, between on or about 29 July 2019 and on or about 13 April 2022, on divers occasions, knowingly and wrongfully possess child pornography on a Google account, to wit: digital images and videos of minors or what appear to be minors, engaging in sexually explicit conduct, and that said conduct was of a nature to bring discredit upon the armed forces. Plea: Guilty. Finding: Guilty.

Additional Charge: Violation of Article 134, UCMJ.

Plea: Guilty. Finding: Guilty.

Specification 1: Did, on or about 20 October 2022, knowingly and wrongfully possess child pornography on an iPhone 11 Pro Max, to wit: digital images and videos of minors, engaging in sexually explicit conduct, and that said conduct was of a nature to bring discredit upon the armed forces. Plea: Not Guilty. Finding: Withdrawn and dismissed without prejudice, to ripen into prejudice upon completion of appellate review in which the findings and sentence are affirmed.

Specification 2: Did, on or about 20 October 2022, knowingly and wrongfully possess child pornography on a LG Stylo, to wit: digital images and videos of minors, engaging in sexually explicit conduct, and that said conduct was of a nature to bring discredit upon the armed forces. Plea: Guilty. Finding: Guilty.

12. Sentence to be Entered. Account for any modifications made by reason of any post-trial action by the convening authority (including any action taken based on a suspension recommendation), confinement credit, or any post-trial rule, order, or other determination by the military judge. R.C.M. 1111(b)(2). If the sentence was determined by a military judge, ensure confinement and fines are segmented as well as if a sentence shall run concurrently or consecutively.

Military Judge: Dishonorable Discharge, reduction to pay grade E-1 and;

Charge 1: Violation of Article 134, UCMJ.

Specification: 58 months confinement.

Additional Charge: Violation of Article 134, UCMJ.

Specification 2: 58 months confinement.

All confinement is to be served concurrently for a total of 58 months.

The accused is credit with having served 20 days of confinement.

13. Deferment and Waiver. Include the nature of the request, the CA's Action, the effective date of the deferment, and date the deferment ended. For waivers, include the effective date and the length of the waiver. RCM 1111(b)(3)

N/A.

14. Action convening authority took on any suspension recommendation from the military judge:

N/A.

15. Judge's signature:

ROBLES.BENJAMI
N.A.

Digitally signed by

ROBLES.BENJAMIN.A

Date: 2023.11.29 14:07:42 -05'00'

16. Date judgment entered:

Nov 29, 2023

17. In accordance with RCM 1111(c)(1), the military judge who entered a judgment may modify the judgment to correct computational or clerical errors within 14 days after the judgment was initially entered. Include any modifications here and resign the Entry of Judgment.

18. Judge's signature:

19. Date judgment entered:

APPELLATE INFORMATION

**IN UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS**

Before Panel No. 2

UNITED STATES

Appellee

v.

Kendall D. ALLEN
Corporal (E-4)
U.S. Marine Corps

Appellant

NMCCA No. 202300325

**APPELLANT'S MOTION FOR
FIRST ENLARGEMENT OF TIME**

Tried at Camp Lejune, North Carolina, on 28 March, 5 July, and 14-16 August 2023, before a General Court-Martial convened by Commanding General 2d Marine Logistics Group, Lieutenant Colonel B.A. Robles, U.S. Marine Corps, Military Judge presiding

**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES
NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS**

COMES NOW the undersigned and respectfully moves for a first enlargement of time to file a brief and assignments of error. The current due date is 9 March 2024. The number of days requested is thirty. The requested due date is 8 April 2024.

Status of the case:

1. The Record of Trial was docketed on 9 January 2024.
2. The Moreno date is 9 July 2025.
3. Corporal Allen is currently confined. His expected release date is 7 August 2027.
4. The record consists of 326 transcribed pages and 1270 total pages.
5. Counsel has not reviewed the record.

Good cause exists in this case because this Court has yet to rule on Appellant's motion to compel and stay proceedings.¹ Counsel will require further time to review the requested missing exhibits upon delivery, consult with his client, and draft a brief if necessary. Appellant has been consulted and concurs with the enlargement request.

WHEREFORE, Appellant respectfully requests that this Court grant this motion for a 30-day enlargement of time to file his brief.

¹ Appellant's Mot. to Compel, February 23, 2024

[REDACTED]

Jesse B. Neumann
LT, JAGC, USN
Appellate Defense Counsel
1254 Charles Morris Street, SE
Building 58, Suite 100
Washington, DC 20374

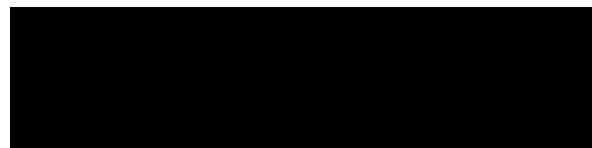
[REDACTED]

CERTIFICATE OF FILING AND SERVICE

I certify that the foregoing was electronically filed with the Court on 5 March 2024, that a copy was uploaded into the Court's case management system on 5 March 2024, *and* that a copy of the foregoing was delivered by electronic means to Appellate Government Division (DACCCode46@navy.mil) on 5 March 2024.



LT, JAGC, USN
Appellate Defense Counsel
1254 Charles Morris Street, SE
Building 58, Suite 100



From:
To:
Cc:

Subject: RULING: CORRECTED FILING - Panel 2 - US v. Allen - NMCCA 202300325 - Motion for 1st Enlargement
Date: Wednesday, March 6, 2024 9:14:44 AM

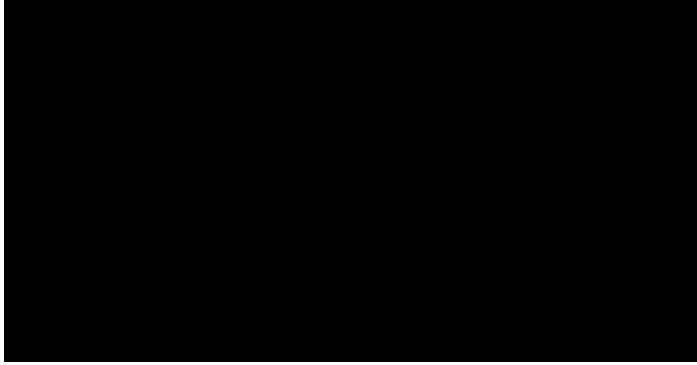
MOTION GRANTED
MAR 6 2024
UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS

CUI

Very Respectfully,

Navy-Marine Corps Court of Criminal Appeals (NMCCA)
Code-51
1254 Charles Morris St. SE, Bldg. 58
Navy Yard, Washington DC 20374-5124

LT Jesse Neumann, JAGC, USN
Navy-Marine Corps Appellate Review Activity
Appellate Defense Division (Code 45)
Washington Navy Yard, DC



REMAND

THERE WERE NO REMANDS

**NOTICE OF COMPLETION OF
APPELLATE REVIEW**