

CERTIFIED RECORD OF TRIAL

(and accompanying papers)

of

Goins

Dwayne

A.

GySgt

(Last Name)

(First Name)

MI

(DoD ID No.)

(Rank)

3rd Battalion, 11th Marines

U.S. Marine Corps

MCAGCC Twentynine Palms CA

(Unit/Command Name)

(Branch of Service)

(Location)

By

Special Court-Martial (SPCM)

COURT-MARTIAL

(GCM, SPCM, or SCM)

Convened by

Commanding Officer

(Title of Convening Authority)

11th Marine Regiment

(Unit/Command of Convening Authority)

Tried at

MCAGCC Twentynine Palms

On

16-19 February 2021

(Place or Places of Trial)

(Date or Dates of Trial)

Companion and other cases

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

CONVENING ORDER



UNITED STATES MARINE CORPS
11TH MARINE REGIMENT
BOX 555503
CAMP PENDLETON, CALIFORNIA 92055-5503

5810
SPCMCO #1-20a
9 Feb 21

SPECIAL COURT-MARTIAL CONVENING ORDER #1-20a

Modification to Special Court-Martial Convening Order #1-20 of 16 September 2020. Pursuant to Article 23(a) of the Uniform Code of Military Justice and section 0120, The Manual of the Judge Advocate General (JAGMAN), a Special Court Martial is hereby convened in the case of United States v. Gunnery Sergeant Dwayne A. Goins, USMC only.

DELETE:

Captain [REDACTED] Headquarters Battery, 11th Marines, U. S. Marine Corps
Chief Warrant Officer 2 [REDACTED] Headquarters Battery, 11th Marines, U. S. Marine Corps
Major [REDACTED] 1st Battalion, 11th Marines, U. S. Marine Corps
Capt [REDACTED] 1st Battalion, 11th Marines, U. S. Marine Corps
CWO2 [REDACTED] 1st Battalion, 11th Marines, U. S. Marine Corps
Major [REDACTED] 2d Battalion, 11th Marines, U. S. Marine Corps
Captain [REDACTED] 2d Battalion, 11th Marines, U. S. Marine Corps
Warrant Officer [REDACTED] 2d Battalion, 11th Marines, U. S. Marine Corps
Major [REDACTED] 3d Battalion, 11th Marines, U. S. Marine Corps
Captain [REDACTED] 3d Battalion, 11th Marines, U. S. Marine Corps
Chief Warrant Officer 2 [REDACTED] 3d Battalion, 11th Marines, U. S. Marine Corps
Captain [REDACTED] 5th Battalion, 11th Marines, U. S. Marine Corps
First Lieutenant [REDACTED] 5th Battalion, 11th Marines, U. S. Marine Corps
Chief Warrant Officer 2 [REDACTED] 5th Battalion, 11th Marines, U. S. Marine Corps

ADD:

Major [REDACTED] Headquarters Battery, 11th Marines, U.S. Marine Corps
Master Sergeant [REDACTED] Headquarters Battery, 11th Marines, U. S. Marine Corps
Master Gunnery [REDACTED] Headquarters Battery, 11th Marines, U. S. Marine Corps
First Lieutenant [REDACTED] 1st Battalion, 11th Marines, U. S. Marine Corps
Master Sergeant [REDACTED] 1st Battalion, 11th Marines, U. S. Marine Corps
Chief Warrant Officer 2 [REDACTED] 1st Battalion, 11th Marines, U. S. Marine Corps
Captain [REDACTED] 2nd Battalion, 11th Marines, U. S. Marine Corps
First Lieutenant [REDACTED] 5th Battalion, 11th Marines, U. S. Marine Corps
Gunnery Sergeant [REDACTED] 5th Battalion, 11th Marines, U. S. Marine Corps
Master Gunnery Sergeant [REDACTED] 5th Battalion, 11th Marines, U. S. Marine Corps

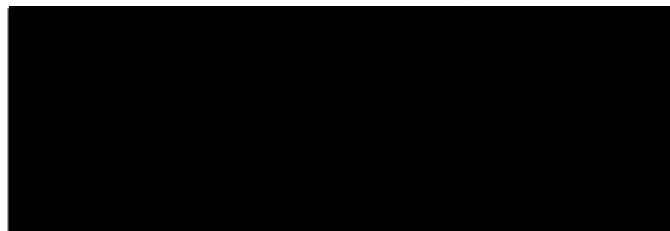
The court-martial is constituted as follows:

MEMBERS:

Captain [REDACTED] Headquarters Battery, 11th Marines, U. S. Marine Corps
Major [REDACTED] Headquarters Battery, 11th Marines, U.S. Marine Corps
Master Sergeant [REDACTED] Headquarters Battery, 11th Marines, U. S. Marine Corps
Master Gunnery Sergeant [REDACTED] Headquarters Battery, 11th Marines, U. S. Marine Corps
First Lieutenant [REDACTED] 1st Battalion, 11th Marines, U. S. Marine Corps
Master Sergeant [REDACTED] 1st Battalion, 11th Marines, U. S. Marine Corps
Chief Warrant Officer 2 [REDACTED] 1st Battalion, 11th Marines, U. S. Marine Corps

Captain [REDACTED] 2nd Battalion, 11th Marines, U. S. Marine Corps
First Lieutenant [REDACTED] 5th Battalion, 11th Marines, U. S. Marine Corps
Gunnery Sergeant [REDACTED] 5th Battalion, 11th Marines, U. S. Marine Corps
Master Gunnery Sergeant [REDACTED] 5th Battalion, 11th Marines, U. S. Marine Corps

[REDACTED]
D.J. SKUCE
Colonel
U. S. Marine Corps
Commanding



CHARGE SHEET

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) GOINS, Dwayne A.		2. EDIPI [REDACTED]	3. RANK/RATE GySgt	4. PAY GRADE E-7
5. UNIT OR ORGANIZATION 3rd Battalion, 11th Marine Regiment Marine Corp Air Ground Combat Center Twentynine Palms, CA 92278			6. CURRENT SERVICE a. INITIAL DATE 1 Aug 2016 b. TERM 4yrs	
7. PAY PER MONTH a. BASIC 5,039.10 \$4,892.40		b. SEA/FOREIGN DUTY None	c. TOTAL 5,039.10 \$4,892.40	
8. NATURE OF RESTRAINT OF ACCUSED None			9. DATE(S) IMPOSED None	

II. CHARGES AND SPECIFICATIONS

CHARGE I: VIOLATION OF THE UCMJ, ARTICLE 120

Specification (Abusive Sexual Contact): In that Gunnery Sergeant Dwayne A. GOINS, U.S. Marine Corps, while on active duty, did, at or near Las Vegas, Nevada, on or about 14 November 2019, touch the buttocks of Corporal [REDACTED] U.S. Marine Corps, with his hand with the intent to gratify the sexual desire of the said Gunnery Sergeant GOINS, without the consent of Corporal [REDACTED]

CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 128

Specification (Assault Consummated by a Battery): In that Gunnery Sergeant Dwayne A. GOINS, U.S. Marine Corps, while on active duty, did, at or near Las Vegas, Nevada, on or about 14 November 2019, unlawfully touch Corporal [REDACTED] U.S. Marine Corps, on the buttocks with his hand.

CHARGE III: VIOLATION OF THE UCMJ, ARTICLE 92

Specification 1 (Violation of a Lawful General Regulation): In that Gunnery Sergeant Dwayne A. GOINS, U.S. Marine Corps, while on active duty, did, at or near Las Vegas, Nevada, and on board MCAGCC Twentynine Palms, California, between on or about 14 November 2019 and on or about 29 February 2020, violate a lawful regulation, which was his duty to obey, to wit: Article 1165, U.S. Navy Regulations, dated 14 September 1990, by wrongfully engaging in an unduly familiar relationship with Corporal [REDACTED] U.S. Marine Corps, without respect to differences in grade and rank, to the prejudice of good order and discipline and of a nature to bring discredit upon the naval services.

*General [REDACTED] 20201117

SEE SUPPLEMENTAL PAGE

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) [REDACTED]	b. GRADE E-3	c. ORGANIZATION OF ACCUSER HQBN, MAGTFCTC, 29 Palms, CA 92278
d. SIGNATURE OF ACCUSER [REDACTED]		e. DATE 20200917

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 17 day of Sep, 20 20, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

A. W. HOLTHAUS

Typed Name of Officer

O-3, USMC

Grade and Service

Signature

HQBN, MAGTFCTC, 29 Palms, CA 92278

Organization of Officer

Judge Advocate

Official Capacity to Administer Oaths

(See R.C.M. 307(b)--must be commissioned officer)

ORIGINAL

in file

12. On 23 September 20, the accused was informed of the charge against him/her and of the name(s) of the accuser(s) known to me. (See R.C.M. 308.1). (See R.C.M. 308 if notification cannot be made.)

[REDACTED]
Typed Name of Immediate Commander

3d Battalion 11th Marines
Organization of Immediate Commander

O-4
Grade

[REDACTED]
Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 0741 hours, 23 SEP 20 20 at 11th Marine Regiment
Designation of Command or

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

FOR THE Commanding Officer

[REDACTED]
Typed Name of Officer

Legal Officer
Official Capacity of Officer Signing

O-3

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

11th Marine Regiment

b. PLACE

Twentynine Palms, CA

c. DATE

20201008

Referred for trial to the Special court-martial convened by SPCMCO 1-20

dated 16 September 20 20, subject to the following instructions:² None

By //////////////////// of
Command or Order

[REDACTED]
Typed Name of Officer

Commanding Officer
Official Capacity of Officer Signing

O-6

15. On 29 October 20 20, I (caused to be) served a copy hereof on ~~(each of)~~ the above named accused.

A. W. HOLTHAUS
Typed Name of Trial Counsel

O-3
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.

SUPPLEMENTAL PAGE

Specification 2 (Violation of a Lawful General Order): In that Gunnery Sergeant Dwayne A. GOINS, U.S. Marine Corps, on active duty, did, at or near Las Vegas, Nevada, and on board MCAGCC Twentynine Palms, California, between on or about 14 November 2019 and on or about 29 February 2020, violate a lawful general order which was his duty to obey, to wit: paragraph 010502 of Volume 2 of Marine Corps Order 5354.1E, dated 15 June 2018, by wrongfully sexually harassing Corporal [REDACTED] U.S. Marine Corps.

Specification 3 (Violation of a Lawful General Order): In that Gunnery Sergeant Dwayne A. GOINS, U.S. Marine Corps, on active duty, did, on board MCAGCC Twentynine Palms, California, between on or about 3 January 2020 and on or about 29 February 2020, violate a lawful general order which was his duty to obey, to wit: paragraph 010502 of Volume 2 of Marine Corps Order 5354.1E, dated 15 June 2018, by wrongfully sexually harassing Corporal [REDACTED] U.S. Marine Corps.

TRIAL COURT MOTIONS & RESPONSES

NAVY-MARINE CORPS TRIAL JUDICIARY
WESTERN JUDICIAL CIRCUIT
SPECIAL COURT MARTIAL

UNITED STATES

v.

Dwayne A. Goins
Gunnery Sergeant
U.S. Marine Corps

MOTION FOR APPROPRIATE RELIEF - TO
COMPEL PRODUCTION OF LAY
WITNESSES

29 DECEMBER 2020

1. Nature of Motion.

Pursuant to Article 46 of the Uniform Code of Military Justice and Rules for Courts-Martial (R.C.M.) 703 and 906, the Defense respectfully requests this Court to compel the production of (1) Sergeant Major [REDACTED] U.S. Marine Corps, Camp Pendleton, CA; (2) Sergeant Major [REDACTED] U.S. Marine Corps, Pasadena, CA; (3) Master Gunnery Sergeant [REDACTED] Camp Pendleton, CA; and (4) Staff Sergeant [REDACTED] U.S. Marine Corps, Twentynine Palms, CA, for trial on the merits and presentencing.

2. Statement of Relevant Facts.

- a. Gunnery Sergeant Goins is charged with violations of the UCMJ, Articles 120, 128, and 92.
- b. Gunnery Sergeant Goins is a Staff Non-Commissioned Officer with over eighteen years of service, including multiple combat deployments.
- c. On 30 November 2020, the Defense requested five character witnesses to speak to Gunnery Sergeant Goins' good military character and relevant pre-sentencing traits.¹

¹ Enclosure (1).

1 d. On 4 December 2020, the Government responded by granting one of the character
2 witnesses, denying three character witnesses as not relevant or necessary, and not responding to
3 one of the requested witnesses.²

4 **3. Discussion of Law.**

5 a. Witness Production. Article 46, UCMJ, 10 USC § 846, provides all parties to a court-martial
6 with "equal opportunity to obtain witnesses and other evidence in accordance with such
7 regulations as the President may prescribe." Similarly, R.C.M. 703(a) states that, "The prosecution
8 and Defense and the court-martial shall have equal opportunity to obtain witnesses and evidence,
9 subject to R.C.M. 701, including the benefit of compulsory process." "Each party is entitled to the
10 production of any witness whose testimony on a matter in issue on the merits or on an
11 interlocutory question would be relevant and necessary."³ Testimony is relevant if it has the
12 tendency to make a fact more or less probable than it would be without the evidence and the fact is
13 of consequence in determining the action.⁴ Testimony is necessary within the meaning of this rule
14 when it is not cumulative and "when it would contribute to a party's presentation of the case in
15 some positive way on a matter in issue."⁵

16 b. Additionally, "[u]nder the Sixth Amendment to the Constitution, one accused of a crime is
17 guaranteed the right to compel the attendance of witnesses. Who these witnesses shall be is a
18 matter for the accused and his counsel. He may not be deprived of the right to summon to his aid
19 witnesses who it is believed may offer proof to negate the Government's evidence or to support
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27 ² Enclosure (2).

28 ³ R.C.M. 703(b).

⁴ R.C.M. 703(b)(1), Discussion; Mil.R.Evid. 401.

⁵ *U.S. v. Reveles*, 41 M.J. 388, 394 (CAAF 1995) (citing R.C.M. 703(b)(1), Discussion.)

1 the Defense.”⁶ This right is not absolute, but the military judge has a duty “to assure to the
2 greatest degree possible...equal treatment for every litigant before the bar.”⁷

3 c. The CAAF “has never fashioned an inelastic rule to determine whether an accused is entitled
4 to the personal attendance of a witness. It has, however, identified some relevant factors, such as:
5 the issues involved in the case and the importance of the requested witness as to those issues;
6 whether the witness is desired on the merits or the sentencing portion of the trial; whether the
7 witness’ testimony would be merely cumulative; and, the availability of alternatives to the
8 personal appearance of the witness, such as deposition, interrogatories or previous testimony.”⁸
9 These factors are not exhaustive nor can any one factor be identified as necessarily determinative
10 of the issue.⁹

11
12 d. In *Allen*, the Navy-Marine Corps Court of Criminal Appeals, in accordance with *Tangpuz*,
13 cemented the minimum seven factors that the military judge, in exercising his discretion, must
14 balance in determining whether a material witness must be produced. Those seven factors are: (1)
15 the issues involved in the case and the importance of the requested witness to those issues; (2)
16 whether the witness was desired on the merits or on sentencing; (3) whether the witness’ testimony
17 would be “merely cumulative;” (4) the availability of alternatives to the personal appearance of
18 the witness such as depositions, interrogatories, or previous testimony; (5) the unavailability of the
19 witness, such as that occasioned by non-amenability to the court’s process; (6) whether or not the
20 requested witness is in the armed forces and/or subject to military orders; (7) the effect that a
21 military witness’ absence will have on his or her unit and whether that absence will adversely
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26 ⁶ *U.S. v. Sweeney*, 14 U.S.C.M.A. 599, 602 (C.M.A. 1964) (citing *U.S. v. Seeger*, 180 F Supp 467 (SD
27 NY) (1960); *U.S. v. McGaha*, 205 F Supp 949 (ED Tenn) (1962).

28 ⁷ *U.S. v. Manos*, 17 U.S.C.M.A. 10, 15-16 (C.M.A. 1967) (citing *Coppedge v. United States*, 369 U.S.
438, 446 (1962).

⁸ *U.S. v. Tangpuz*, 5 M.J. 426, 429 (C.M.A. 1978).

⁹ *Tangpuz* at 429.

1 affect the accomplishment of an important military mission or cause manifest injury to the
2 service.¹⁰ Additionally, the *Allen* court stated that considerations other than materiality, such as
3 distance, inconvenience, and cost, have no role in determining whether the Government must
4 produce the requested witness. *Id.*

5
6 **4. Analysis of the Law**

7 The Defense needs to have the requested witnesses present and available to testify during the
8 trial and pre-sentencing, if necessary. The requested witnesses are available and are material to
9 the presentation of the defense's case and Gunnery Sergeant Goins' due process rights.

10 a. Sergeant Major [REDACTED] U.S. Marine Corps, Camp Pendleton, CA. This witness is
11 relevant and necessary because good military character evidence is an essential element of a
12 complete defense. Sergeant Major [REDACTED] is the former Battalion Sergeant Major at 3/11 where
13 he had daily interaction with Gunnery Sergeant Goins from 2018 to 2020. On the merits, Sergeant
14 Major [REDACTED] will testify as to Gunnery Sergeant Goins' good military character from the
15 perspective of a senior enlisted Marine. Should presentencing be necessary, Sergeant Major
16 [REDACTED] will also testify as to Gunnery Sergeant Goins' rehabilitative potential. The testimony of a
17 senior enlisted who had daily contact with Gunnery Sergeant Goins for approximately two years is
18 a matter of substantial significance to a determination of an appropriate sentence.
19

20 b. Sergeant Major [REDACTED] U.S. Marine Corps, Pasadena, CA. This witness is relevant
21 and necessary because good military character evidence is an essential element of a complete
22 defense. Sergeant Major [REDACTED] is the former H&S Battery First Sergeant and [REDACTED] First
23 Sergeant at 3/11 where he had daily contact with Gunnery Sergeant Goins from 2016 to 2018.
24 Based on these interactions, Sergeant Major [REDACTED] will testify on the merits as to Gunnery
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¹⁰ *U.S. v. Allen*, 31 M.J. 572, 610-611 (N.M.C.M.R. 1990).

1 Sergeant Goins' good military character. The defense will consent to this witness testifying
2 telephonically.

3 c. Master Gunnery Sergeant [REDACTED] U.S. Marine Corps, Camp Pendleton, CA. The
4 Government did not provide a response for this requested witness. This witness is relevant and
5 necessary because good military character evidence is an essential element of a complete defense.
6 Master Gunnery Sergeant [REDACTED] is the current Communications Chief for 11th Marine Regiment.
7 He has observed Gunnery Sergeant Goins regularly for the last two years. Based on these
8 observations, Master Gunnery Sergeant [REDACTED] will testify as to Gunnery Sergeant Goins' good
9 military character from the perspective of a peer. The testimony of a senior enlisted who had
10 daily contact with Gunnery Sergeant Goins for approximately two years is a matter of substantial
11 significance to a determination of an appropriate sentence.
12

13 d. Staff Sergeant [REDACTED] U.S. Marine Corps, Twentynine Palms, CA. This witness
14 is relevant and necessary because good military character evidence is an essential element of a
15 complete defense. Staff Sergeant [REDACTED] has known Gunnery Sergeant Goins since June 2018.
16 Staff Sergeant [REDACTED] works as the Transmissions Chief at 3/11 while Gunnery Sergeant Goins
17 has been the Communications Chief. Staff Sergeant [REDACTED] and Gunnery Sergeant Goins have
18 daily contact with each other. On the merits, Staff Sergeant [REDACTED] will testify as to Gunnery
19 Sergeant Goins' good military character from the perspective of a senior Staff NCO. Should
20 presentencing be necessary, he will also testify to GySgt Goins' resiliency and rehabilitative
21 potential. The testimony of a subordinate who has had daily interaction for over two years with
22 Gunnery Sergeant Goins is a matter of substantial significance to a determination of an
23 appropriate sentence.
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25
26 The testimony of the requested character witnesses would also not be cumulative as they
27 all worked with Gunnery Sergeant Goins in different capacities, at different times in his career.
28 They all offer a unique perspective during each one of those time periods. For a Marine with as

1 many years of service as Gunnery Sergeant Goins, facing charges that are primarily of a military
2 nature, it is especially vital that he be allowed to present a substantial good military character
3 defense.

4 **5. Evidence Offered.**

5 a. The defense submits the following evidence in support of this motion:

6 Encl 1: Defense Request for Production of Witnesses dtd 30 November 2020

7 Encl 2: Government Response to Production of Witnesses dtd 4 December 2020

8 b. Pursuant to R.C.M. 703(b)(1) and Article 46, UCMJ, the defense requests the following
9 witnesses, telephonically, for this motion:

10 1. Sergeant Major [REDACTED] U.S. Marine Corps;

11 2. Sergeant Major [REDACTED] U.S. Marine Corps;

12 3. Master Gunnery Sergeant [REDACTED] U.S. Marine Corps;

13 4. Staff Sergeant [REDACTED] U.S. Marine Corps.

14 **6. Burden of Proof:** As the moving party, the Defense bears the burden of proof by
15 preponderance of the evidence.

16 **7. Relief Requested.** The Defense respectfully requests the Court order the Government to
17 produce the aforementioned witnesses in person for trial on the merits and presentencing.

18 **8. Argument.** The Defense requests oral argument.

19 Dated this 29th day of December, 2020

20 [REDACTED]
21 A. C. FLEMING
22 Captain, U.S. Marine Corps
23 Detailed Defense Counsel

1 *****

2 A true copy of this motion was served on the court and trial counsel.

3 Dated this 29th day of December, 2020

4 [REDACTED]

5 A. C. FLEMING
6 Captain, U.S. Marine Corps
7 Detailed Defense Counsel
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NAVY-MARINE CORPS TRIAL JUDICIARY
WESTERN JUDICIAL CIRCUIT
SPECIAL COURT-MARTIAL

UNITED STATES

v.

DWAYNE A. GOINS
GUNNERY SERGEANT
U.S. MARINE CORPS

GOVERNMENT RESPONSE
TO DEFENSE
MOTION FOR
APPROPRIATE RELIEF

(Compel Lay Witness)

7 January 2021

1. Nature of Response.

In response to the Accused's Motion for Appropriate Relief Pursuant to R.C.M. 703 and 906 to Compel Witnesses, dated 29 December 2020, the Government respectfully requests this court deny the Accused's motion.

2. Summary of Facts.

The Accused, is charged with violating Article 120 (abusive sexual contact), Article 128 (assault consummated by a battery), and Article 92 (violation of a lawful general order).

3. Discussion.

Each party is entitled to the production of any witness whose testimony on a matter in issue on the merits would be relevant and necessary. *See* R.C.M. 703(b)(1). "Relevant testimony is necessary when it is not cumulative and when it would contribute to a party's presentation of the case in some positive way on a matter at issue." *See* R.C.M. 703(b)(1) discussion. *See also United States v. Bard*, 2018 CCA LEXIS 195, *16 (A.F. Ct. Crim. App. April 18, 2018) (holding that the defense's requested witness was neither relevant nor necessary, because said witness's testimony would not have made a fact

US. V. GOINS
GOVERNMENT RESPONSE TO DEFENSE MOTION FOR APPROPRIATE RELIEF
(Compel Witnesses)

more probable than not). Factors to be weighed to determine whether personal production of a witness is necessary include: the issues involved in the case and the importance of the requested witness to those issues; whether the witness is desired on the merits or the sentencing portion of the case; whether the witness' testimony would be merely cumulative; and the availability of alternatives to the personal appearance of the witness, such as depositions, interrogatories, or previous testimony. *United States v. McElhaney*, 54 M.J. 120, 126 (C.A.A.F. 2000) (citing *United States v. Tangpuz*, 5 M.J. 426, 429 (C.M.A. 1978)). When determining whether the requested witness is cumulative, the court may consider the following:

(1) Is the credibility and demeanor of the requested witness greater than that of the attending witness? (2) Is the testimony of the requested witness relevant to the accused with respect to character traits or other material evidence observed during periods of time different than that of attending witnesses? (3) Will any benefit accrue to the accused from an additional witness saying the same thing that other witnesses have already said?

United States v. Allen, 31 M.J. 572, 611 (C.M.R. 1990). "A defendant has no constitutional right, under a claim of due process, to a witness whose testimony would be merely cumulative to the testimony of other witnesses." *United States v. Willaims*, 3 M.J. 239 (C.M.A. 1977) citing *Wagner v. United States*, 416 F.2d 558 (9th Cir. 1969).

An accused is not entitled to a good military character witness for every aspect and period of his career. *United States v. Breeding*, 44 M.J. 345, 347, 351-52 (C.A.A.F. 1996) (Military judge did not abuse his discretion in denying three good military character witnesses); *United States v. Wade*, 2014 CCA LEXIS 350, *8-10 (A. F. Ct. Crim. App. 2014) (Military judge did not abuse his discretion in denying the production of the appellant's commander because the Government called the appellant's previous commander).

US. V. GOINS
GOVERNMENT RESPONSE TO DEFENSE MOTION FOR APPROPRIATE RELIEF
(Compel Witnesses)

1 SgtMaj Travis [REDACTED] SgtMaj [REDACTED] MGySgt [REDACTED] and
2 SSgt [REDACTED] were properly denied because their testimony is not
3 relevant or necessary, and they are cumulative to a granted witness' testimony.
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5 Each party is entitled to production of any witness whose testimony on a matter at
6 issue when their testimony would be relevant and necessary. The Accused has requested
7 multiple witnesses whose testimony will be neither relevant nor necessary.

8 The witnesses' testimony will not be relevant because it is not capable of making
9 a fact at issue more or less probable. None of the requested witnesses were present to
10 witness any of the incidents around which this case revolves. The Defense does not
11 contend that their testimony will address any portion of the charges and specifications,
12 including any elements thereunder. With no further evidence that any of the requested
13 witnesses are able to provide relevant testimony, the Defense has failed to meet its
14 burden under R.C.M. 703(b)(1).

15 The witnesses' testimony is not necessary. Defense offered nearly identical
16 reasoning for each witness they requested. Defense argues that each witness is necessary
17 in order to put forth a "complete defense." The Government has granted 1stSgt [REDACTED]
18 who had daily contact with the Accused during the timeframe at issue in this case. 1stSgt
19 [REDACTED] will testify to the Accused's integrity, proficiency, trustworthiness, and general
20 good military character. 1stSgt [REDACTED] testimony sufficiently covers the Accused's
21 good military character; the Accused is not entitled to a good military character witness
22 for every aspect of his career. *Breeding*, 44 M.J. 345, 351-52 (C.A.A.F. 1996).

23 Not only is the Accused not entitled to a good military character witness for every
24 aspect of his career, the addition of another four witnesses for good military character
25 would be cumulative. Applying the *McElhany* factors: (1) None of the requested

US. V. GOINS
GOVERNMENT RESPONSE TO DEFENSE MOTION FOR APPROPRIATE RELIEF
(Compel Witnesses)

witnesses carry greater credibility or demeanor than 1stSgt [REDACTED] Defense has not provided the Court with material for consideration of this factor, (2) the requested witnesses will testify to character traits observed during periods other than the period 1stSgt [REDACTED] will testify to, however, those periods are not relevant to this case, and (3) there will not be any accrued benefit from an additional witness saying the same thing that 1stSgt [REDACTED] said because their testimony will not address any facts pertinent to this case.

4. **Relief Requested.** The Government respectfully requests the Court deny the Accused's Motion for Appropriate Relief.

5. **Burden of Proof.** Per Mil. R. Evid. 905(e), the burden of proof is on the Accused by a preponderance of the evidence.

6. **Oral Argument.** The Government respectfully requests oral argument.

[REDACTED]
E. S. PRICE
Captain, USMC
Trial Counsel

I certify that I caused a copy of this document to be served on the court and opposing counsel this 7th day of January 2021.

[REDACTED]
E. S. PRICE
Captain, USMC
Trial Counsel

REQUESTS

THERE ARE NO REQUESTS

NOTICES

**U.S. Marine Corps
Western Judicial Circuit
Special Court-Martial**

UNITED STATES

v.

Dwayne A. Goins
Gunnery Sergeant
U.S. Marine Corps

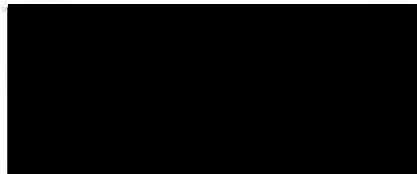
)
) CIVILIAN COUNSEL
) COURT-MARTIAL NOTICE
) OF APPEARANCE
)
)
)

1. I, Phillip Stackhouse, admitted to practice law, currently in good standing before the bar of the highest court of the State(s) of Massachusetts, North Carolina, District of Columbia, Colorado, and Wyoming, and, having appeared as counsel in United States military courts-martial on over 400 occasions during my legal career, military or civilian, hereby enter appearance as attorney on behalf of the accused in the above captioned court-martial to do all that is necessary in connection therewith. I certify that I am not now de-certified or suspended from practice in Navy-Marine Corps courts-martial by the Judge Advocate General of the Navy.

2. I hereby certify that I have obtained a copy and agree to abide by: (1) the Rules for Courts-Martial and the Military Rules of Evidence set forth in the current editions of the Manual Courts-Martial; (2) United States, JAG INSTRUCTION 5803.1 series (Professional Conduct of Attorneys Practicing Under the Supervision of the Judge Advocate General); (3) NAVMARCORTRIJUDIC INSTRUCTION 5813.4, Appendix B (Uniform Rules of Practice Before Navy-Marine Corps Courts-Martial); (4) Local Circuit Court Rules; and, (5) if published, the local District Rules of Practice for the Judicial District within which the above-captioned is currently pending. I further certify and agree to provide, upon request by the Circuit Military Judge or designee, a copy of the professional responsibility rules applicable to the Bar of the State in which I am licensed to practice law.

3. Unless indicated otherwise by the accused, all post-trial matters, including the staff judge advocate's or legal officer's recommendation and the accused's copy of the record of trial should be served on the detailed trial counsel. For purposes of this trial and all subsequent review matters, notice to and service upon the undersigned may be affected at the address of the detailed trial counsel.

4. I swear or affirm all information on this notice of appearance is true, correct and complete, to the best of my knowledge and belief. Signed this date, Friday, January 15, 2021.



Signature

Phillip Stackhouse

Printed full name under which licensed to practice law



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) Goins, Dwayne, A.	2. BRANCH Marine Corps	3. PAYGRADE E-7	4. DoD ID NUMBER [REDACTED]
5. CONVENING COMMAND 11th Marine Regiment	6. TYPE OF COURT-MARTIAL Special	7. COMPOSITION Enlisted Members	8. DATE SENTENCE ADJUDGED Feb 19, 2021

SECTION B - FINDINGS

SEE FINDINGS PAGE

SECTION C - SENTENCE

9. DISCHARGE OR DISMISSAL Not adjudged	10. CONFINEMENT none	11. FORFEITURES none	12. FINES none	13. FINE PENALTY none
14. REDUCTION E-3	15. DEATH Yes <input type="radio"/> No <input checked="" type="radio"/>	16. REPRIMAND Yes <input type="radio"/> No <input checked="" type="radio"/>	17. HARD LABOR Yes <input type="radio"/> No <input checked="" type="radio"/>	18. RESTRICTION Yes <input type="radio"/> No <input checked="" type="radio"/>
19. HARD LABOR PERIOD N/A				
20. PERIOD AND LIMITS OF RESTRICTION 60 days, restricted to the limits of billeting, messing, place of work, fitness center, and worship.				

SECTION D - CONFINEMENT CREDIT

21. DAYS OF PRETRIAL CONFINEMENT CREDIT 0	22. DAYS OF JUDICIALLY ORDERED CREDIT 0	23. TOTAL DAYS OF CREDIT 0 days
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SECTION E - PLEA AGREEMENT

24. LIMITATIONS ON PUNISHMENT CONTAINED IN THE PLEA AGREEMENT There was no plea agreement.

SECTION F - SUSPENSION RECOMMENDATION

25. DOES THE MILITARY JUDGE RECOMMEND A SUSPENSION OF ANY PORTION OF THE SENTENCE? Yes <input type="radio"/> No <input checked="" type="radio"/>	26. PORTION TO WHICH IT APPLIES [REDACTED]	27. RECOMMENDED DURATION [REDACTED]
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28. FACTS SUPPORTING THE SUSPENSION RECOMMENDATION [REDACTED]
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SECTION G - NOTIFICATIONS

29. Is sex offender registration required in accordance with appendix 4 to enclosure 2 of DoDI 1325.07?	Yes <input type="radio"/> No <input checked="" type="radio"/>
30. Is DNA collection and submission required in accordance with 10 U.S.C. § 1565 and DoDI 5505.14?	Yes <input checked="" type="radio"/> No <input type="radio"/>
31. Did this case involve a crime of domestic violence as defined in enclosure 2 of DoDI 6400.06?	Yes <input type="radio"/> No <input checked="" type="radio"/>
32. Does this case trigger a firearm possession prohibition in accordance with 18 U.S.C. § 922?	Yes <input type="radio"/> No <input checked="" type="radio"/>

SECTION H - NOTES AND SIGNATURE

33. NAME OF JUDGE (last, first, MI) Goode, Andrea, C.	34. BRANCH Marine Corps	35. PAYGRADE O-5	36. DATE SIGNED Feb 19, 2021	38. JUDGE'S SIGNATURE GOODE, ANDREA CHAMPAGNE Digitally signed by GOODE, ANDREA CHAMPAGNE Date: 2021.02.19 11:29:14 -08'00'
37. NOTES The Accused elected to be sentenced by military judge alone				

STATEMENT OF TRIAL RESULTS - FINDINGS

CHARGE	ARTICLE	SPECIFICATION	PLEA	FINDING	ORDER OR REGULATION VIOLATED	LIO OR INCHOATE OFFENSE ARTICLE	DIBRS
Charge I:	120	Specification:	Not Guilty	Not Guilty	N/A		120AA4
		Offense description	Abusive sexual contact without the consent of the other person				
Charge II:	128	Specification:	Not Guilty	Guilty	N/A		128-B-
		Offense description	Battery				
Charge III:	92	Specification 1:	Not Guilty	Not Guilty	Art 1165 Nav Reg		092-A0
		Offense description	Violation of a lawful general order				
	Specification 2:	Not Guilty	Not Guilty	MCO 5354		092-A0	
		Offense description	Violation of a lawful general order				
	Specification 3:	Not Guilty	Not Guilty	MCO 5354		092-A0	
		Offense description	Violation of a lawful general order				

CONVENING AUTHORITY'S ACTIONS

POST-TRIAL ACTION

SECTION A - STAFF JUDGE ADVOCATE REVIEW

1. NAME OF ACCUSED (LAST, FIRST, MI) Goins, Dwayne A.		2. PAYGRADE/RANK E7	3. DoD ID NUMBER [REDACTED]
4. UNIT OR ORGANIZATION 3d Bn, 11th MarReg, MCAGCC		5. CURRENT ENLISTMENT 1-Aug-2016	6. TERM 4 yrs
7. CONVENING AUTHORITY (UNIT/ORGANIZATION) 11th MarReg	8. COURT-MARTIAL TYPE Special	9. COMPOSITION Enlisted Members	10. DATE SENTENCE ADJUDGED 19-Feb-2021

Post-Trial Matters to Consider

11. Has the accused made a request for deferment of reduction in grade?	<input checked="" type="radio"/> Yes	<input 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.

- The SJA consulted with the Convening Authority, and explained his clemency authority under Article 60, UCMJ.
- The accused submitted matters pursuant to R.C.M. 1106. The accused requested that the convening authority defer the reduction in rank until the Convening Authority takes action. The accused also requested that the Convening Authority set aside the reduction in rank or accept a post-trial agreement to set aside the conviction and resolve this matter at a lower forum.
- You addressed the request for deferment via correspondence on 4 Mar 2021.
- The victim did not submit any matters pursuant to R.C.M. 1106A.

24. Convening Authority Name/Title Colonel [REDACTED] Commanding Officer	25. SJA Name Lieutenant Colonel [REDACTED]
26. SJA signature [REDACTED]	27. Date Mar 8, 2021

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.]

After reviewing the accused's request for deferment and clemency, the requests are denied. I responded to the the deferment request in a separate writing on 4 Mar 2021, as required by R.C.M. 1103(d)(2), but my response is replicated here for clarity. The accused failed to satisfy his burden under R.C.M. 1103(d)(2) that the deferment of the adjudged reduction in rank would outweigh the community's interest in the imposition of the reduction. Further, I specifically considered the request and the recitation of the accused's behavior prior to and after the incident which led to the conviction, and have concluded that despite the fact that you have alleged that the sentence is excessively severe, deferment or suspension of the adjudged reduction will have an adverse effect on good order and discipline; especially considering the nature of the crime of which the accused has been convicted, the disparity in rank between the accused and the victim, and the effect such a deferment or suspension would have on the accused's victim. Therefore, I determined deferment of the adjudged reduction in rank would be inappropriate. For the same reason, the request for the reduction in rank to be set aside or for the case to be resolved via a post-trial agreement at a lower forum is denied.

The sentence is approved as adjudged.

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

Mar 8, 2021

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

Mar 9, 2021

Major
U.S. Marine Corps
Regional Review Officer

ENTRY OF JUDGMENT

ENTRY OF JUDGMENT

SECTION A - ADMINISTRATIVE

1. NAME OF ACCUSED (LAST, FIRST, MI) Goins, Dwayne A.		2. PAYGRADE/RANK E7	3. DoD ID NUMBER [REDACTED]
4. UNIT OR ORGANIZATION 3d Bn, 11th MarReg, MCAGCC		5. CURRENT ENLISTMENT 1-Aug-2016	6. TERM 4 yrs
7. CONVENING AUTHORITY (UNIT/ORGANIZATION) 11th MarReg	8. COURT-MARTIAL TYPE Special	9. COMPOSITION Enlisted Members	10. DATE COURT-MARTIAL ADJOURNED 19-Feb-2021

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 I: Violation of the UCMJ, Article 120
Plea: Not Guilty Finding: Not Guilty
Spec: Abusive sexual contact without the consent of the other person
Plea: Not Guilty Finding: Not Guilty

Charge II: Violation of the UCMJ, Article 128
Plea: Not Guilty Finding: Guilty
Spec: Battery
Plea: Not Guilty Finding: Guilty

Charge III: Violation of the UCMJ, Article 92
Plea: Not Guilty Finding: Not Guilty
Spec 1: Violation of a lawful general order
Plea: Not Guilty Finding: Not Guilty
Spec 2: Violation of a lawful general order
Plea: Not Guilty Finding: Not Guilty
Spec 3: Violation of a lawful general order
Plea: Not Guilty Finding: Not 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.

The Military Judge adjudged the following sentence:

- Reduction in rank to E-3 and 60 days restriction to the limits of billeting, messing, place of work, fitness center, and worship.

Plea Agreement:

- There was no Plea Agreement in this case.

Convening Authority:

- The sentence is approved as adjudged.

No confinement credit awarded.

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)

The accused requested that the convening authority defer the reduction in rank until the Convening Authority takes action. The request was denied.

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

N/A

15. Judge's signature:

[Redacted Signature]

16. Date judgment entered:

Apr 2, 2021

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.

[Empty box for modifications]

18. Judge's signature:

[Empty Signature Box]

19. Date judgment entered:

[Empty Date Box]

APPELLATE MOTIONS

**THERE ARE NO APPELLATE MOTIONS
AT THIS TIME**

APPELLATE BRIEFS

**THERE ARE NO APPELLATE BRIEFS
AT THIS TIME**

REMAND

THERE WERE NO REMANDS

**NOTICE OF COMPLETION OF
APPELLATE REVIEW**