

CERTIFIED RECORD OF TRIAL

(and accompanying papers)

of

Ohu

Thae

(Last Name)

(First Name)

MI

(DoD ID No.)

Cpl/E-4

(Rank)

Marine Corps Intelligence Schools, Training Command

United States Marine Corps

Quantico, VA

(Unit/Command Name)

(Branch of Service)

(Location)

By

Special Court-Martial (SPCM)

COURT-MARTIAL

(GCM, SPCM, or SCM)

Convened by

Commanding General

(Title of Convening Authority)

Training Command

(Unit/Command of Convening Authority)

Tried at

Quantico, VA

On

12 May 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")

This volume contains

CONVENING ORDER



UNITED STATES MARINE CORPS
TRAINING COMMAND
2300 LOUIS ROAD
QUANTICO, VIRGINIA 22134

IN REPLY REFER TO
SPCMCO 1-20
C 472

APR 15 2020

Pursuant to Article 23 of the Uniform Code of Military Justice and JAG Manual, Section 0120, a Special Court-Martial is hereby convened. It may try such persons as may be properly brought before it and shall meet at Marine Corps Base, Quantico, Virginia, unless otherwise directed. The Court will be constituted as follows:

MEMBERS

Colonel [REDACTED] Jr., U.S. Marine Corps, President;
Lieutenant Colonel [REDACTED] U.S. Marine Corps;
Lieutenant Colonel [REDACTED] U.S. Marine Corps;
Major [REDACTED] U.S. Marine Corps;
Major [REDACTED] U.S. Marine Corps;
Major [REDACTED] U.S. Marine Corps;
Major [REDACTED] U.S. Marine Corps;
Major [REDACTED] U.S. Marine Corps;
Captain [REDACTED] U.S. Marine Corps;
Captain [REDACTED] U.S. Marine Corps; and
Lieutenant Junior Grade [REDACTED] U.S. Navy.

All cases referred to a Special Court-Martial convened by this headquarters, in which proceedings have not begun, will be brought to trial before the court-martial hereby convened.

Pursuant to JAG Manual, Section 0136; and R.C.M. 505(c)(1), MCM, I hereby delegate authority to excuse individual members to the Staff Judge Advocate.

[REDACTED]
J. L. MORRIS
Brigadier General
U.S. Marine Corps
Commanding General
Training Command

CHARGE SHEET

CHARGE SHEET

I. PERSONAL DATA

| | | | | |
|--|----------------------------|--|--|---------------------|
| 1. NAME OF ACCUSED (Last, First, Middle Initial) OHU, Thae | | 2. EDIPI [REDACTED] | 3. GRADE OR RANK Cpl | 4. PAY GRADE E-4 |
| 5. UNIT OR ORGANIZATION Marine Corps Intelligence Schools, Training Command | | 6. EAS 30 July 2020 | 6b. CURRENT SERVICE | |
| 7. PAY PER MONTH | | 8. NATURE OF RESTRAINT OF ACCUSED Pre-Trial Confinement | 9. DATE(S) IMPOSED 19 June 2020-Present | |
| a. BASIC \$2746.50 \$2829.00 | b. SEA/FOREIGN DUTY \$0 | TOTAL \$2746.50 \$2829.00 | | |

II. CHARGES AND SPECIFICATIONS

10.

CHARGE I: Violation of the UCMJ, Art. 80

Specification 1: (Attempted Murder - Premeditated) In that Corporal Thae Ohu, U.S. Marine Corps, on active duty, at or near Virginia Beach, Virginia, on or about 5 April 2020, did overt acts with the specific intent to commit premeditated murder, an offense under the UCMJ, Article 118, and said acts amounted to more than mere preparation, and tended to effect the commission of murder, to wit: Corporal Thae Ohu did arm herself with two knives, chase another person, Staff Sergeant [REDACTED] U.S. Marine Corps, while shouting her intent to kill the said Staff Sergeant [REDACTED] and thereafter repeatedly stabbed and damaged a door that physically shielded said person, Staff Sergeant [REDACTED] from injury.

Specification 2: (Attempted Murder - Unpremeditated) In that Corporal Thae Ohu, U.S. Marine Corps, on active duty, at or near Virginia Beach, Virginia, on or about 5 April 2020, did overt acts with the specific intent to commit unpremeditated murder, an offense under the UCMJ, Article 118, and said acts amounted to more than mere preparation, and tended to effect the commission of murder, to wit: Corporal Thae Ohu did arm herself with two knives, chase another person, Staff Sergeant [REDACTED] U.S. Marine Corps, while shouting her intent to kill the said Staff Sergeant [REDACTED] and thereafter repeatedly stabbed and damaged a door that physically shielded said person, Staff Sergeant [REDACTED] from injury.

(See Supplemental Page)

III. PREFERRAL

| | | |
|--|--------------------------------|--|
| 11a. NAME OF ACCUSER (Last, First, Middle Initial) [REDACTED] | b. GRADE E-3 | c. ORGANIZATION OF ACCUSER LSSS-NCR |
| d. SIGNATURE OF ACCUSER [REDACTED] | e. DATE (YYYYMMDD) 20200623 | |

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oath in cases of this character, personally appeared the above named accuser this 23rd day of June, 2020, 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.

Kyle P. Lanning
Typed Name of Officer

Trial Services Office, LSSS-NCR
Organization of Officer

First Lieutenant, U. S. Marine Corps
Grade

Judge Advocate

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

LANNING.KYLE.PA
TRICK. [REDACTED]
Digitally signed by LANNING.KYLE.PATRICK
Date: 2020.06.23 08:00:14 -04'00'

Signature

On 24 June, 2020, 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.)

Organization of Immediate Commander

Grade

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

The sworn charges were received at 0845 hours, 24 June, 2020 at Marine Corps Intelligence
Schools
Designation of Command or
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

Grade

V. REFERRAL; SERVICE OF CHARGES

20210503

Grade

Official Capacity of Officer Signing

On 4 MAY, 2021, I (caused to be) served a copy hereof on ~~(each of)~~ the above named accused.

Grade or Rank of Trial Counsel

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.

CHARGE II: Violation of the UCMJ, Art. 128

Specification: (*Aggravated Assault on Intimate Partner - Dangerous Weapon*) In that Corporal Thae Ohu, U.S. Marine Corps, on active duty, at or near Virginia Beach, Virginia, on or about 5 April 2020, with the intent to inflict bodily harm to another person, Staff Sergeant [REDACTED] U.S. Marine Corps, her intimate partner, did assault Staff Sergeant [REDACTED] by offering to do bodily harm with a dangerous weapon, to wit: a knife.

CHARGE III: Violation of the UCMJ, Art. 115

Specification: (*Communicating a Threat*) In that Corporal Thae Ohu, U.S. Marine Corps, on active duty, at or near Virginia Beach, Virginia, on or about 5 April 2020, did wrongfully communicate to Staff Sergeant [REDACTED] U.S. Marine Corps, a threat to injure Staff Sergeant [REDACTED] by stating "I'm going to kill you, you mother fucker. I'm going to kill you, you son of a bitch, you son of a bitch," or words to that effect.

CHARGE IV: Violation of the UCMJ, Art. 128b

Specification 1: (*Domestic Violence - Violation of a Protective Order*) In that Corporal Thae Ohu, U.S. Marine Corps, on active duty, at or near Virginia Beach, Virginia, on or about 20 April 2020, at a time separate and distinct from Specification 2, with intent to threaten or intimidate Staff Sergeant [REDACTED] U.S. Marine Corps, her intimate partner, having knowledge of and a duty to obey a protection order issued on 8 April 2020 by Colonel [REDACTED] U.S. Marine Corps, forbidding the accused from contacting Staff Sergeant [REDACTED] directly or indirectly, did violate said protection order by wrongfully arriving at the front door of Staff Sergeant [REDACTED] residence, while he was inside, and thereafter repeatedly ringing the door bell, knocking, and verbally addressing Staff Sergeant [REDACTED]

Specification 2: (*Domestic Violence - Violation of a Protective Order*) In that Corporal Thae Ohu, U.S. Marine Corps, on active duty, at or near Virginia Beach, Virginia, on or about 20 April 2020, at a time separate and distinct from that of Specification 1, with intent to threaten or intimidate Staff Sergeant [REDACTED] U.S. Marine Corps, her intimate partner, having knowledge of and a duty to obey a protection order issued on 8 April 2020 by Colonel [REDACTED] U.S. Marine Corps, forbidding the accused from contacting Staff Sergeant [REDACTED] directly or indirectly, did violate said protection order by wrongfully entering the residence of Staff Sergeant [REDACTED] while Staff Sergeant [REDACTED] was present in said residence.

CHARGE V: Violation of the UCMJ, Art. 129

Specification: (*Burglary*) In that Corporal Thae Ohu, U.S. Marine Corps, on active duty, at or near Virginia Beach, Virginia, on or about 20 April 2020, did unlawfully break and enter the building of Staff Sergeant [REDACTED] U.S. Marine Corps, to wit: his residence, with intent to commit an offense under the Uniform Code of Military Justice therein, to wit: Article 128b, Domestic Violence.

ORIGINAL

CHARGE SHEET

I. PERSONAL DATA

| | | | |
|--|--|--|---------------------|
| 1. NAME OF ACCUSED (Last, First, Middle Initial) OHU, Thae | 2. EDIPI [REDACTED] | 3. GRADE OR RANK Cpl | 4. PAY GRADE E-4 |
| 5. UNIT OR ORGANIZATION Marine Corps Intelligence Schools, Training Command | 6. EAS 30 July 20 | 6b. CURRENT SERVICE | |
| | | a. INITIAL DATE 20 Dec 16 | b. TERM 4 Yrs |
| 7. PAY PER MONTH | 8. NATURE OF RESTRAINT OF ACCUSED Pre-Trial Confinement | 9. DATE(S) IMPOSED 19 June 20-Present | |
| a. BASIC \$2746.50 \$2829.00 | b. SEA/FOREIGN DUTY \$0 | c. TOTAL \$2746.50 \$2829.00 | |

II. CHARGES AND SPECIFICATIONS

10.

Additional Charge I: Violation of the UCMJ, Article 92

Specification: (*Violating a Lawful General Order*): In that Corporal Thae Ohu, U.S. Marine Corps, on active duty, did, at or near Norfolk, Virginia, on divers occasions between on or about 1 May 2019 to on or about 13 December 2019, violate a lawful general order, which was her duty to obey, to wit: paragraph 010402 of Marine Corps Order 5354.1E, Volume 2, Chapter 1, dated 26 March 2018, bullying, by excluding or rejecting junior service members through cruel, abusive, humiliating, oppressive, demeaning or harmful behavior which resulted in diminishing those junior service members' dignity, position or status.

Additional Charge II: Violation of the UCMJ, Article 128 (Assault Consummated by a Battery)

Specification: (*Aggravated Assault*): In that Corporal Thae Ohu, U.S. Marine Corps, on active duty, at or near Naval Health Center Portsmouth, Virginia, on or about 22 July 2020, did commit an assault upon GySgt [REDACTED] U.S. Marine Corps, by breaking a window with her restraints, causing glass to enter the eyes of the said GySgt [REDACTED] and did thereby inflict substantial bodily harm upon her, to wit: temporary impairment of her eyes.

Additional Charge III: Violation of the UCMJ, Article 108

Specification: (*Damaging Military Property*): In that Corporal Thae Ohu, U.S. Marine Corps, on active duty, at or near Naval Medical Center Portsmouth, Virginia, on or about 22 July 2020, did, without proper authority, willfully damage a window by breaking glass, military property of the United States of some value.

(See Supplemental Page)

III. PREFERRAL

| | | |
|--|-----------------|--|
| 11a. NAME OF ACCUSER (Last, First, Middle Initial) [REDACTED] | b. GRADE E-7 | c. ORGANIZATION OF ACCUSER LSSS-NCR |
| d. SIGNATURE OF ACCUSER [REDACTED] | | e. DATE (YYYYMMDD) 20200904 |

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oath in cases of this character, personally appeared the above named accuser this 4th day of September, 2020, 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.

Typed Name of Officer

Trial Services Office, LSSS-NCR
Organization of OfficerCaptain, U. S. Marine Corps
GradeJudge Advocate
Official Capacity to Administer Oath
(See R.C.M. 307 (b) must be commissioned officer)

Signature

12. On 9 September, 2020, 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] Marine Corps Intelligence Schools
Typed Name of Immediate Commander Organization of Immediate Commander

Colonel, U.S. Marine Corps
Grade

[REDACTED]
Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 0900 hours, 9 September, 2020 at Marine Corps Intelligence Schools
Designation of Command or

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

FOR THE 1

[REDACTED] Officer Exercising Summary Court-martial Jurisdiction
Typed Name of Officer Official Capacity of Officer Signing

Colonel, U.S. Marine Corps
Grade

[REDACTED]
Signature

V. REFERRAL; SERVICE OF CHARGES

| | | |
|--|---------------------|---------------------|
| 14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY | b. PLACE | c. DATE (YYYY MMDD) |
| <u>Training Command</u> | <u>Quantico, VA</u> | <u>20210503</u> |

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

Dated, 15 April, 2020, subject to the following instructions: ²

To be tried in conjunction with the charges preferred on 20200623 and 20200908.

By XXXXXXXXXXXXXXXXXX of _____
Command or Order

J. L. MORRIS Commanding General
Typed Name of Officer Official Capacity of Officer Signing

Brigadier General, U.S. Marine Corps
Grade

MORRIS.JASON.L Digitally signed by [REDACTED]
MORRIS.JASON.L
Date: 2021.05.03 13:39:40 -04'00'

[REDACTED]
Signature

15. On 4 MAY, 2021, I (caused to be) served a copy hereof on (each of) the above named accused.

2. A. Phelps MASON, U.S. MARINE CORPS
Grade or Rank of Trial Counsel

[REDACTED]

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.

Additional Charge IV: Violation of the UCMJ, Article 90

Specification 1: (*Willfully disobeying superior commissioned officer*): In that Corporal Thae Ohu, U.S. Marine Corps, on active duty, having received a lawful command from Colonel William Wilburn, U.S. Marine Corps, her superior commissioned officer, then known by the said Cpl Ohu to be her superior commissioned officer, to refrain from initiating any contact or communication with SSgt [REDACTED] U.S. Marine Corps, and remain at least 60 feet away from his residence, did, at or near Virginia Beach, Virginia, on or about 20 April 2020, willfully disobey the same by wrongfully arriving at the front door of SSgt [REDACTED] residence, calling SSgt [REDACTED] by telephone, and verbally addressing him from his doorstep.

Specification 2: (*Willfully disobeying superior commissioned officer*): In that Corporal Thae Ohu, U.S. Marine Corps, on active duty, having received a lawful command from Colonel William Wilburn, U.S. Marine Corps, her superior commissioned officer, then known by the said Cpl Ohu to be her superior commissioned officer, to refrain from initiating any contact or communication with SSgt [REDACTED] U.S. Marine Corps, and remain at least 60 feet away from his residence, did, at or near Virginia Beach, Virginia, on or about 20 April 2020, at a time separate and distinct from that of Specification 1, willfully disobey the same by wrongfully entering the residence of the said SSgt [REDACTED]

ORIGINAL

CHARGE SHEET

I. PERSONAL DATA

| | | | | | |
|--|----------------------------|-------------------------------------|--|--|---------------------|
| 1. NAME OF ACCUSED (Last, First, Middle Initial) OHU, Thae | | | 2. EDIPI [REDACTED] | 3. GRADE OR RANK Cpl | 4. PAY GRADE E-4 |
| 5. UNIT OR ORGANIZATION Marine Corps Intelligence Schools, Training Command | | | 6. EAS 30 July 20 | 6b. CURRENT SERVICE | |
| 7. PAY PER MONTH | | | 8. NATURE OF RESTRAINT OF ACCUSED Pre-Trial Confinement | 9. DATE(S) IMPOSED 19 June 20-Present | |
| a. BASIC \$2746.50 \$ 2829.00 | b. SEA/FOREIGN DUTY \$0 | c. TOTAL \$2746.50 \$ 2829.00 | | | |

II. CHARGES AND SPECIFICATIONS

10.

Additional Charge V: Violation of the UCMJ, Article 128 (*ASSAULT CONSUMMATED BY A BATTERY*)
 Specification: (*Aggravated Assault*): In that Corporal Thae Ohu, U.S. Marine Corps, on active duty, at or near Naval Health Center Portsmouth, Virginia, on or about 22 July 2020, did commit an assault upon AO1 [REDACTED] U.S. Navy, by breaking a window with her restraints, causing glass to enter the eyes of the said AO1 [REDACTED] and did thereby inflict ~~substantial~~ bodily harm upon her, to wit: ~~temporary impairment of her eyes.~~
STRIKING HER WITH GLASS

III. PREFERRAL

| | | |
|--|-----------------|--|
| 11a. NAME OF ACCUSER (Last, First, Middle Initial) [REDACTED] | b. GRADE E-2 | c. ORGANIZATION OF ACCUSER LSSS-NCR |
| d. SIGNATURE OF ACCUSER [REDACTED] | | e. DATE (YYYYMMDD) 20200908 |

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oath in cases of this character, personally appeared the above named accuser this 8th day of September, 2020, 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.

Kyle P. Lanning
Typed Name of Officer

Trial Services Office, LSSS-NCR
Organization of Officer

First Lieutenant, U. S. Marine Corps
Grade

Judge Advocate

LANNING.KYLE.PA
TRICK.

Digitally signed by
 LANNING.KYLE.PATRICK [REDACTED]
 Date: 2020.09.08 15:55:56 -04'00'

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

Signature

12. On 9 September, 2020, 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

Marine Corps Intelligence Schools

Organization of Immediate Commander

Colonel, U.S. Marine Corps

Grade

[REDACTED]
Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 0900 hours, 9 September, 2020 at Marine Corps Intelligence Schools
Designation of Command or

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

FOR THE 1

Officer Exercising Summary Court-martial Jurisdiction

Official Capacity of Officer Signing

[REDACTED]
Typed Name of Officer

Colonel, U.S. Marine Corps

Grade

[REDACTED]
Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

Training Command

b. PLACE

Quantico, VA

c. DATE (YYYY MMDD)

20210503

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

Dated, 15 April, 2020, subject to the following instructions: ²

To be tried in conjunction with the charges preferred on 20200623 and 20200904.

By of

Command or Order

J. L. MORRIS

Typed Name of Officer

Brigadier General, U.S. Marine Corps

Grade

MORRIS.JASON.L

Digitally signed by

MORRIS.JASON.L

Date: 2021.05.03 13:42:43 -04'00'

Signature

Commanding General

Official Capacity of Officer Signing

15. On 4 MAY, 2021, I (caused to be) served a copy hereof on ~~(each of)~~ the above named accused.

2. A. Phelps

Major, U.S. Marine Corps

Grade or Rank of Trial Counsel

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

**THERE ARE NO TRIAL COURT MOTIONS
AND RESPONSES**

REQUESTS

THERE ARE NO REQUESTS

NOTICES

**NAVY-MARINE CORPS TRIAL
JUDICIARY
NATIONAL CAPITAL REGION**

UNITED STATES

v.

Thae Ohu
Corporal
U.S. Marine Corps

SPECIAL COURT-MARTIAL

VICTIMS' LEGAL COUNSEL
NOTICE OF APPEARANCE

Date: 12 May 2021

1. Pursuant to Rule 36.1 of the Uniform Rules of Practice for the Navy-Marine Corps Trial Judiciary, I, Captain Anthony M. Capasso, USMC, hereby provide notice to the Court of my appearance on behalf of Staff Sergeant [REDACTED]. My office address, phone number, and e-mail address are: [REDACTED] and [REDACTED].

2. I have been detailed as the Victims' Legal Counsel for the above named victim in this case by the Regional Victims' Legal Counsel, Legal Services Support Section East. I am qualified and certified under Article 27(b) and sworn under Article 42(a) of the Uniform Code of Military Justice. I have not acted in any disqualifying manner.

3. I am aware of the standards of professional conduct required of counsel practicing in Navy-Marine Corps courts-martial as contained in JAG Instruction 5803.1E. I certify that I am not now, nor have I ever been, de-certified or suspended from practice in Navy-Marine Corps courts-martial by the Judge Advocate General of the Navy.

4. I have reviewed and am familiar with the Uniform Rules of Practice for the Navy-Marine Corps Trial Judiciary and the National Capital Region Rules of Practice.

5. My client has limited standing as a named victim in this court-martial, and he reserves the right to exercise those rights through counsel as needed.

[REDACTED]

A. M. CAPASSO
Captain, U.S. Marine Corps
Victims' Legal Counsel

Certificate of Service

I hereby attest that a copy of the foregoing notice of appearance was served on the court and opposing counsel via email on 12 May 2021.

[REDACTED]

A. M. CAPASSO
Captain, U.S. Marine Corps
Victims' Legal Counsel

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 |
| Ohu, Thae | Marine Corps | E-4 | |
| 5. CONVENING COMMAND | 6. TYPE OF COURT-MARTIAL | 7. COMPOSITION | 8. DATE SENTENCE ADJUDGED |
| MC Intelligence Schools, Training Command | Special | Judge Alone - MJA16 | May 12, 2021 |

SECTION B - FINDINGS

SEE FINDINGS PAGE

SECTION C - TOTAL ADJUDGED SENTENCE

| | | | | |
|--------------------------------------|---|---|---|---|
| 9. DISCHARGE OR DISMISSAL | 10. CONFINEMENT | 11. FORFEITURES | 12. FINES | 13. FINE PENALTY |
| Bad conduct discharge | 328 days | None | None | N/A |
| 14. REDUCTION | 15. DEATH | 16. REPRIMAND | 17. HARD LABOR | 18. RESTRICTION |
| E-1 | Yes <input type="radio"/> No <input checked="" type="radio"/> | Yes <input type="radio"/> No <input checked="" type="radio"/> | Yes <input type="radio"/> No <input checked="" type="radio"/> | Yes <input type="radio"/> No <input checked="" type="radio"/> |
| 19. HARD LABOR PERIOD | | | | 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 |
| 328 | 0 | 328 days |

SECTION E - PLEA AGREEMENT OR PRE-TRIAL AGREEMENT

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

No limitations on punitive discharge. Confinement adjudged for all offenses is limited to time already served by the Accused. No forfeitures, fines, or other lawful punishments will be adjudged.

SECTION F - SUSPENSION OR CLEMENCY RECOMMENDATION

| | | | |
|--|---|---------------------------------|--------------------------|
| 25. DID THE MILITARY JUDGE RECOMMEND SUSPENSION OF THE SENTENCE OR CLEMENCY? | Yes <input checked="" type="radio"/> No <input type="radio"/> | 26. PORTION TO WHICH IT APPLIES | 27. RECOMMENDED DURATION |
| | | Discharge | 6 months |
| 28. FACTS SUPPORTING THE SUSPENSION OR CLEMENCY RECOMMENDATION | | | |
| Accused's significant mental health history/diagnosis serve as weighty extenuation and mitigation when coupled with statements from witnesses admitted by defense which show a Marine who encountered a rapid and significant mental health event. | | | |

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 checked="" type="radio"/> No <input type="radio"/> |
| 32. Does this case trigger a firearm possession prohibition in accordance with 18 U.S.C. § 922? | Yes <input checked="" type="radio"/> No <input type="radio"/> |

SECTION H - NOTES AND SIGNATURE

| | | | | |
|-------------------------------------|-----------------------|--------------|-----------------|-----------------------|
| 33. NAME OF JUDGE (last, first, MI) | 34. BRANCH | 35. PAYGRADE | 36. DATE SIGNED | 38. JUDGE'S SIGNATURE |
| Zimmerman, Michael D. | Marine Corps | O-5 | May 12, 2021 | |
| 37. NOTES | Concurrent Sentencing | | | |

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 I | 80 | Specification 1 | <input type="text" value="Not Guilty"/> | <input type="text" value="W/D"/> | | | <input type="text" value="90Z"/> |
| | | Offense description | <input type="text" value="Attempts - murder (premeditated)"/> | | | | |
| | | Withdrawn and Dismissed | <input type="text"/> | | | | |
| | | Specification 2 | <input type="text" value="Not Guilty"/> | <input type="text" value="W/D"/> | | | <input type="text" value="90Z"/> |
| | | Offense description | <input type="text" value="Attempts - murder (premeditated)"/> | | | | |
| | | Withdrawn and Dismissed | <input type="text"/> | | | | |
| Charge II | 128 | Specification | <input type="text" value="Guilty"/> | <input type="text" value="Guilty"/> | | | <input type="text" value="128-H1"/> |
| | | Offense description | <input type="text" value="Aggravated assault upon an intimate partner with a dangerous weapon"/> | | | | |
| Charge III | 115 | Specification | <input type="text" value="Guilty"/> | <input type="text" value="W/D"/> | | | <input type="text" value="134-X2"/> |
| | | Offense description | <input type="text" value="Communicating a threat"/> | | | | |
| | | Withdrawn and Dismissed | <input type="text" value="without prejudice"/> | | | | |
| Charge IV | 128b | Specification 1 | <input type="text" value="Not Guilty"/> | <input type="text" value="W/D"/> | | | <input type="text" value="128B1D"/> |
| | | Offense description | <input type="text" value="Violation of a protection order"/> | | | | |
| | | Withdrawn and Dismissed | <input type="text"/> | | | | |
| | | Specification 2 | <input type="text" value="Not Guilty"/> | <input type="text" value="W/D"/> | | | <input type="text" value="128B1D"/> |
| | | Offense description | <input type="text" value="Violation of a protection order"/> | | | | |
| | | Withdrawn and Dismissed | <input type="text"/> | | | | |
| Charge V | 129 | Specification | <input type="text" value="Not Guilty"/> | <input type="text" value="W/D"/> | | | <input type="text" value="129---"/> |
| | | Offense description | <input type="text" value="Burglary"/> | | | | |
| | | Withdrawn and Dismissed | <input type="text"/> | | | | |
| Additional Charge I | 92 | Specification | <input type="text" value="Not Guilty"/> | <input type="text" value="W/D"/> | | | <input type="text" value="092-A0"/> |
| | | Offense description | <input type="text" value="Violation of a lawful general order"/> | | | | |
| | | Withdrawn and Dismissed | <input type="text"/> | | | | |
| Additional Charge II | 128 | Specification | <input type="text" value="Guilty"/> | <input type="text" value="Guilty"/> | | | <input type="text" value="128-B-"/> |
| | | Offense description | <input type="text" value="Assault consummated by battery"/> | | | | |

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 |
|-----------------------|---------|---------------------|---|-------------------------------------|------------------------------|---------------------------------|-------------------------------------|
| Additional Charge III | 108 | Specification | <input type="text" value="Guilty"/> | <input type="text" value="Guilty"/> | | | <input type="text" value="108-C1"/> |
| | | Offense description | <input type="text" value="Damaging military property"/> | | | | |
| Additional Charge IV | 90 | Specification 1 | <input type="text" value="Guilty"/> | <input type="text" value="Guilty"/> | | | <input type="text" value="090-B1"/> |
| | | Offense description | <input type="text" value="Willfully disobeying a superior commissioned officer"/> | | | | |
| | | Specification 2 | <input type="text" value="Guilty"/> | <input type="text" value="Guilty"/> | | | <input type="text" value="090-B1"/> |
| | | Offense description | <input type="text" value="Willfully disobeying a superior commissioned officer"/> | | | | |
| Additional Charge V | 128 | Specification | <input type="text" value="Guilty"/> | <input type="text" value="Guilty"/> | | | <input type="text" value="128-B-"/> |
| | | Offense description | <input type="text" value="Assault consummated by battery"/> | | | | |

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 |
| Olu, Thae | | E4 | |
| 4. UNIT OR ORGANIZATION | | 5. CURRENT ENLISTMENT | 6. TERM |
| Marine Corps Intelligence Schools, Training Command | | 20 December 2016 | 4 yrs. |
| 7. CONVENING AUTHORITY (UNIT/ORGANIZATION) | 8. COURT-MARTIAL TYPE | 9. COMPOSITION | 10. DATE SENTENCE ADJUDGED |
| Training Command | Special | Judge Alone - MJA16 | 12 May 2021 |
| 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 checked="" type="radio"/> Yes | <input 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 checked="" type="radio"/> Yes | <input 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. | | | |
| <p>On 13 May 2021, the victim in this case submitted matters for your consideration, specifically requesting you suspend the Bad-Conduct Discharge and administratively separate the accused. You are required to consider these matters in determining the action you take on the findings of guilty or on the sentence.</p> <p>On 14 May 2021, detailed defense counsel submitted matters for your consideration, specifically requesting you suspend the Bad-Conduct Discharge and administratively separate the accused. You are required to consider these matters in determining the action you take on the findings of guilty or on the sentence.</p> <p>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 (2019 Ed.)</p> | | | |
| 24. Convening Authority Name/Title | | 25. SJA Name | |
| J.D. ALFORD/ Commanding General | | | |
| 26. SJA signature | | 27. Date | |
| | | Aug 25, 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.]

Action.

In the case of U.S. v. Corporal Thae Ohu, U.S. Marine Corps, the action taken by me on 12 July 2021 is withdrawn and the following substituted therefor:

In the Special Court-Martial case of United States v. Corporal Thae Ohu, U.S. Marine Corps, the sentence is approved and, except for the part of the sentence extending to a Bad-Conduct Discharge, will be executed. The Naval Consolidated Brig, Chesapeake, Virginia is designated as the initial place of confinement. I have considered the recommendation of the Military Judge to suspend the Bad-Conduct Discharge for a period of six months and have decided to take no action with regard to the recommendation.

Confinement Credit.

The accused will be credited with having served 328 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

20210825

32. Date con _____ to PTPD or Review Shop.

26 AUG 21

POST-TRIAL ACTION

SECTION A - STAFF JUDGE ADVOCATE REVIEW

| | | | |
|--|----------------------------------|---------------------------------------|---|
| 1. NAME OF ACCUSED (LAST, FIRST, MI) Ohu, Thae | | 2. PAYGRADE/RANK E4 | 3. DoD ID NUMBER [REDACTED] |
| 4. UNIT OR ORGANIZATION Marine Corps Intelligence Schools, Training Command | | 5. CURRENT ENLISTMENT 20-Dec-16 | 6. TERM 4 Yrs |
| 7. CONVENING AUTHORITY (UNIT/ORGANIZATION) MCIS, TRNG CMD, | 8. COURT-MARTIAL TYPE Special | 9. COMPOSITION Judge Alone - MJA16 | 10. DATE SENTENCE ADJUDGED 12-May-2021 |

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 checked="" type="radio"/> Yes | <input 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 checked="" type="radio"/> Yes | <input 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.

- SJA consulted with the Convening Authority and explained his clemency authority under Article 60, UCMJ.

- The victim submitted matters pursuant to R.C.M. 1106A.

- On 14 May 2021, Individual Military Counsel submitted letter 5814 DSO/krs of 14 May 2021, requesting that the Convening Authority suspend the adjudged BCD for six months and discharge the accused administratively with a characterization that affords her proper medical benefits, in accordance with the military judge's recommendation.

| | |
|---|---|
| 24. Convening Authority Name/Title J.D. ALFORD Commanding General | 25. SJA Name Lieutenant Colonel [REDACTED] |
| 26. SJA signature [REDACTED] | 27. Date 12 July 2021 |

Convening Authority's Action -

Ohu, Thae

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.]

I have considered all matters submitted by the accused.

On 14 May 2021, Individual Military Counsel submitted letter 5814 DSO/krs of 14 May 2021, requesting that the Convening Authority suspend the adjudged BCD for six months and discharge the accused administratively with a characterization that affords her proper medical benefits, in accordance with the military judge's recommendation.

The request to suspend the Bad Conduct Discharge is denied. Pursuant to a recommendation by the military judge, 109 days of the remaining period of adjudged confinement for specification 1 of the charge is hereby suspended for a period of 12 months from the entry of judgment, at which time, unless the suspension is sooner vacated, the suspended confinement will be remitted without further action. The remainder of 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:

30. Convening Authority's signature

31. Date

JUL 12 2021

D or Review Shop.

12 Jul 21

ENTRY OF JUDGMENT

ENTRY OF JUDGMENT**SECTION A - ADMINISTRATIVE**

| | | | |
|--|----------------------------------|---|--|
| 1. NAME OF ACCUSED (LAST, FIRST, MI) Ohu, Thae | | 2. PAYGRADE/RANK E4 | 3. DoD ID NUMBER [REDACTED] |
| 4. UNIT OR ORGANIZATION Marine Corps Intelligence Schools, Training Command | | 5. CURRENT ENLISTMENT 20 December 2016 | 6. TERM 4 yrs. |
| 7. CONVENING AUTHORITY (UNIT/ORGANIZATION) Training Command | 8. COURT-MARTIAL TYPE Special | 9. COMPOSITION Judge Alone - MJA16 | 10. DATE COURT-MARTIAL ADJOURNED 12 May 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 Article 80, UCMJ.

Plea: Not Guilty. Finding: Dismissed without prejudice, to ripen into prejudice upon completion of appellate review in which the findings and sentence are affirmed.

Specification 1: On or about 5 April 2020, did overt acts with the specific intent to commit premeditated murder, an offense under the UCMJ, Article 118, and said acts amounted to more than mere preparation, and tended to effect the commission of murder, to wit: Cpl Ohu did arm herself with two knives, chase another person, SSgt [REDACTED] USMC, while shouting her intent to kill the said SSgt [REDACTED] and thereafter repeatedly stabbed and damaged a door that physically shielded said person, SSgt [REDACTED] from injury. Plea: Not Guilty.

Finding: Dismissed without prejudice, to ripen into prejudice upon completion of appellate review in which the findings and sentence are affirmed.

Specification 2: On or about 5 April 2020, did overt acts with the specific intent to commit unpremeditated murder, an offense under the UCMJ, Article 118, and said acts amounted to more than mere preparation, and tended to effect the commission of murder, to wit: Cpl Ohu did arm herself with two knives, chase another person, SSgt [REDACTED] USMC, while shouting her intent to kill the said SSgt [REDACTED] and thereafter repeatedly stabbed and damaged a door that physically shielded said person, SSgt [REDACTED] from injury. Plea: Not Guilty.

Finding: Dismissed without prejudice, to ripen into prejudice upon completion of appellate review in which the findings and sentence are affirmed.

Charge II: Violation of Article 128, UCMJ.

Plea: Guilty. Finding: Guilty.

Specification: On or about 5 April 2020, with the intent to inflict bodily harm to another person, SSgt [REDACTED] USMC, her intimate partner, did assault SSgt [REDACTED] by offering to do bodily harm with a dangerous weapon, to wit: a knife. Plea: Guilty. Finding: Guilty.

Charge III: Violation of Article 115, UCMJ.

Plea: Guilty. Finding: Dismissed without prejudice.

Specification: On or about 5 April 2020, did wrongfully communicate to SSgt [REDACTED] USMC, a threat to injure SSgt [REDACTED] by stating, "I'm going to kill you, you mother fucker. I'm going to kill you, you son of a bitch, you son of a bitch," or words to that effect. Plea: Guilty.

Finding: Dismissed without prejudice.

See addendum page.

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: Bad-Conduct Discharge, reduction to pay grade E-1 and;

Charge II: Violation of Article 128, UCMJ.

Specification: 328 days confinement.

Additional Charge II: Violation of Article 128, UCMJ.

Specification: 140 days confinement.

Additional Charge III: Violation of Article 108, UCMJ.

Specification: 60 days confinement.

Additional Charge IV: Violation of Article 90, UCMJ.

Specification 1: 30 days confinement.

Specification 2: 30 days confinement.

Additional Charge V: Violation of Article 128, UCMJ.

Specification: 30 days confinement.

All confinement is to be served concurrently for a total of 328 days.

The accused is credited with having served 328 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:

The convening authority elected to take no action on the recommendation of the military judge to suspend the Bad Conduct Discharge for a period of six months.

CONTINUATION SHEET - ENTRY OF JUDGMENT

11. Findings (Continued)

Charge IV: Violation of Article 128b, UCMJ.

Plea: Not Guilty. Finding: Dismissed without prejudice, to ripen into prejudice upon completion of appellate review in which the findings and sentence are affirmed.

Specification 1: On or about 20 April 2020, at a time separate and distinct from Specification 2, with intent to threaten or intimidate SSgt [REDACTED], USMC, her intimate partner, having knowledge of and a duty to obey a protection order issued on 8 April 2020 by Col W.T. Wilburn, USMC, forbidding the accused from contacting SSgt [REDACTED], directly or indirectly, did violate said protection order by wrongfully arriving at the front door of SSgt [REDACTED]'s residence, while he was inside, and thereafter repeatedly ringing the door bell, knocking, and verbally addressing SSgt [REDACTED]. Plea: Not Guilty. Finding: Dismissed without prejudice, to ripen into prejudice upon completion of appellate review in which the findings and sentence are affirmed.

Specification 2: On or about 20 April 2020, at a time separate and distinct from Specification 1, with intent to threaten or intimidate SSgt [REDACTED], USMC, her intimate partner, having knowledge of and a duty to obey a protection order issued on 8 April 2020 by Col [REDACTED] USMC, forbidding the accused from contacting SSgt [REDACTED], directly or indirectly, did violate said protection order by wrongfully entering the residence of SSgt [REDACTED] while SSgt [REDACTED] was present in said residence. Plea: Not Guilty. Finding: Dismissed without prejudice, to ripen into prejudice upon completion of appellate review in which the findings and sentence are affirmed.

Charge V: Violation of Article 129, UCMJ.

Plea: Not Guilty. Finding: Dismissed without prejudice, to ripen into prejudice upon completion of appellate review in which the findings and sentence are affirmed.

Specification: On or about 20 April 2020, did unlawfully break and enter the building of SSgt [REDACTED] USMC, to wit: his residence, with intent to commit an offense under the UCMJ therein, to wit: Article 128b, Domestic Violence. Plea: Not Guilty. Finding: Dismissed without prejudice, to ripen into prejudice upon completion of appellate review in which the findings and sentence are affirmed.

Additional Charge I: Violation of Article 92, UCMJ.

Plea: Not Guilty. Finding: Dismissed without prejudice, to ripen into prejudice upon completion of appellate review in which the findings and sentence are affirmed.

Specification: Did, on divers occasions between on or about 1 May 2019 to on or about 13 December 2019, violate a lawful general order, which was her duty to obey, to wit: Para 010402 of MCO 5354.1E, Vol 2, Chap 1, dated 26 March 2018, bullying, by excluding or rejecting junior service members through cruel, abusive, humiliating, oppressive, demeaning or harmful behavior which resulted in diminishing those junior service members' dignity, position or status. Plea: Not Guilty. Finding: Dismissed without prejudice, to ripen into prejudice upon completion of appellate review in which the findings and sentence are affirmed.

Additional Charge II: Violation of Article 128, UCMJ.

Plea: Guilty. Finding: Guilty.

Specification: On or about 22 July 2020, did commit an assault upon GySgt [REDACTED] USMC, by breaking a window with her restraints, causing glass to enter the eyes of the said GySgt [REDACTED] and did thereby inflict bodily harm upon her, to wit: temporary impairment of her eyes. Plea: Guilty. Finding: Guilty.

Additional Charge III: Violation Article 108, UCMJ.

Plea: Guilty. Finding: Guilty.

Specification: On or about 22 July 2020, did, without proper authority, willfully damage a window by breaking glass, military property of the United States of some value. Plea: Guilty. Finding: Guilty.

See addendum page 2.

Additional Charge IV: Violation of Article 90, UCMJ.

Plea: Guilty. Finding: Guilty.

Specification 1: Having received a lawful command from Col [REDACTED] USMC, her superior commissioned officer, then known by the said Cpl Ohu to be her superior commissioned officer, to refrain from initiating any contact or communication with SSgt [REDACTED], USMC, and remain at least 60 feet away from his residence, did, on or about 20 April 2020, willfully disobey the same by wrongfully arriving at the front door of SSgt [REDACTED] residence, calling SSgt [REDACTED] by telephone, and verbally addressing him from his doorstep. Plea: Guilty. Finding: Guilty.

Specification 2: Having received a lawful command from Col [REDACTED] USMC, her superior commissioned officer, then known by the said Cpl Ohu to be her superior commissioned officer, to refrain from initiating any contact or communication with SSgt [REDACTED], USMC, and remain at least 60 feet away from his residence, did, on or about 20 April 2020, at a time separate and distinct from Specification 1, willfully disobey the same by wrongfully entering the residence of the said SSgt [REDACTED]. Plea: Guilty. Finding: Guilty.

Additional Charge V: Violation of Article 128, UCMJ.

Plea: Guilty. Finding: Guilty.

Specification: On or about 22 July 2020, did commit an assault upon AO1 [REDACTED] USN, by breaking a window with her restraints, causing glass to enter the eyes of the said AO [REDACTED], and did thereby inflict bodily harm upon her, to wit: striking her with glass. Plea: Guilty. Finding: Guilty.

| | |
|--|---|
| <p>15. Judge's signature:</p> <p>ZIMMERMAN.MICH AEL.D. [REDACTED]</p> <p>Digitally signed by ZIMMERMAN.MICHAEL.D [REDACTED] Date: 2021.08.26 11:10:40 -04'00'</p> | <p>16. Date judgment entered:</p> <p>Aug 26, 2021</p> |
| <p>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.</p> <div style="border: 1px solid black; height: 200px; width: 100%;"></div> | |
| <p>18. Judge's signature:</p> <div style="border: 1px solid black; height: 50px; width: 100%;"></div> | <p>19. Date judgment entered:</p> <div style="border: 1px solid black; height: 50px; width: 100%;"></div> |

APPELLATE INFORMATION

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

Before Panel No. 2

UNITED STATES

Appellee

v.

**Thae OHU
Corporal (E-4)
U.S. Marine Corps**

Appellant

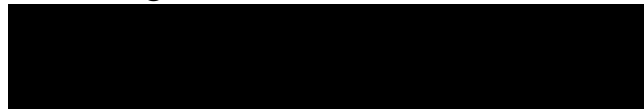
) **APPELLANT’S MOTION FOR**
) **FOR FIRST ENLARGEMENT**
) **OF TIME**

) NMCCA No. 202100266

) Tried at Marine Corps Base Quantico,
) Virginia, on May 12, 2021 before a
) Special Court-Martial convened by
) The Commanding General, Training
) Command; LtCol M.D. Zimmerman,
) USMC, presiding

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

Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity
1254 Charles Morris St., SE
Bldg 58, Ste 100
Washington, DC 20005



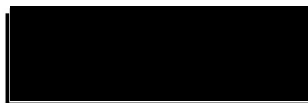
COMES NOW the undersigned and respectfully moves for a first enlargement of time to file a brief and assignments of error. The current due date is 10 December 2021. The number of days requested is 30. The requested due date is 9 January 2021. Cpl Ohu has been consulted and consents to this motion.

The current status of the case:

1. The Record was docketed on 29 September 2021.
2. The Moreno date is 29 March 2023.
3. Cpl Ohu is not currently in confinement.
4. The Record consists of 318 transcribed pages and a total of 1430 pages.
5. Counsel has not completed review of the record of trial.


Good cause exists for granting this motion. This is a contested general court-martial case involving sexual assault allegations. Additional time is necessary for the undersigned to complete a thorough review of the record of trial, research potential issues, and coordinate an appropriate appellate strategy with Appellant.

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




Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity

1254 Charles Morris St., SE
Bldg 58, Ste 100
Washington, DC 20005




CERTIFICATE OF FILING AND SERVICE

I certify that the original of the foregoing was electronically delivered to the Court via email, that a copy was uploaded into the Court's case management system, and that a copy of the foregoing was delivered to Appellate Government (Code 46) on December 9, 2021.



Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity
1254 Charles Morris St., SE
Bldg 58, Ste 100
Washington, DC 20005



Subject: RECEIPT - Filing - Panel 2- U.S. v. OHU - 202100266 - D - 1EOT (GRZINCIC)
Signed By: [REDACTED]

RECEIVED
Dec 09 2021
United States Navy-Marine Corps
Court of Criminal Appeals

[REDACTED]
Panel Paralegal
Navy-Marine Corps Court of Criminal Appeals
1254 Charles Morris St SE, Ste 320
Washington Navy Yard, DC 20374
[REDACTED]

Subject: Filing - Panel 2- U.S. v. OHU - 202100266 - D - 1EOT (GRZINCIC)

To this Honorable Court,

Please see the attached filing.

VR,

Anthony Grzincic
Major, U.S. Marine Corps
Appellate Defense Counsel
Code 45, Navy and Marine Corps Appellate Review Activity

Washington Navy Yard

[REDACTED]

Subject: RULING - Filing - Panel 2- U.S. v. OHU - 202100266 - D - 1EOT (GRZINCIC)
Signed By: [REDACTED]

MOTION GRANTED
9 DEC 2021
United States Navy-Marine Corps
Court of Criminal Appeals

[REDACTED]
Panel Paralegal
Navy-Marine Corps Court of Criminal Appeals
1254 Charles Morris St SE, Ste 320
Washington Navy Yard, DC 20374

[REDACTED]

[REDACTED]

Subject: Filing - Panel 2- U.S. v. OHU - 202100266 - D - 1EOT (GRZINCIC)

To this Honorable Court,

Please see the attached filing.

VR,

Anthony Grzincic
Major, U.S. Marine Corps
Appellate Defense Counsel
Code 45, Navy and Marine Corps Appellate Review Activity

Washington Navy Yard

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

Before Panel No. 2

UNITED STATES

Appellee

v.

**Thae OHU
Corporal (E-4)
U.S. Marine Corps**

Appellant

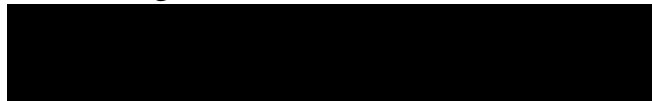
) **APPELLANT’S MOTION FOR
) FOR SECOND ENLARGEMENT
) OF TIME**

)
) NMCCA No. 202100266

)
) Tried at Marine Corps Base Quantico,
) Virginia, on May 12, 2021 before a
) Special Court-Martial convened by
) The Commanding General, Training
) Command; LtCol M.D. Zimmerman,
) USMC, presiding

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

Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity
1254 Charles Morris St., SE
Bldg 58, Ste 100
Washington, DC 20005



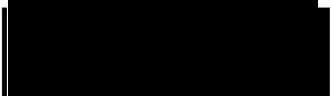
COMES NOW the undersigned and respectfully moves for an enlargement of time to file a brief and assignments of error. The current due date is 9 January 2021. The number of days requested is 30. The requested due date is 8 February 2021. Cpl Ohu has been consulted and consents to this motion.

The current status of the case:


1. The Record was docketed on 29 September 2021.
2. The Moreno date is 29 March 2023.
3. Cpl Ohu is not currently in confinement.
4. The Record consists of 318 transcribed pages and a total of 1430 pages.
5. Counsel has not completed review of the record of trial.

Good cause exists for granting this motion. This is a contested general court-martial case involving sexual assault allegations. Additional time is necessary for the undersigned to complete a thorough review of the record of trial, research potential issues, and coordinate an appropriate appellate strategy with Appellant.

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

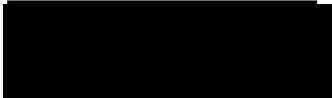

Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity

1254 Charles Morris St., SE
Bldg 58, Ste 100
Washington, DC 20005

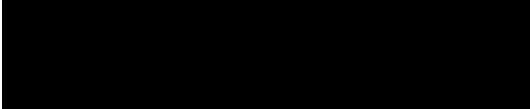


CERTIFICATE OF FILING AND SERVICE

I certify that the original of the foregoing was electronically delivered to the Court via email, that a copy was uploaded into the Court's case management system, and that a copy of the foregoing was delivered to Appellate Government (Code 46) on January 3, 2021.



Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity
1254 Charles Morris St., SE
Bldg 58, Ste 100
Washington, DC 20005



Subject: RECEIPT - Filing - Panel 2 - U.S. v. OHU - 202100266 - D - 2 EOT (GRZINCIC)
Signed By: [REDACTED]

RECEIVED
Jan 4 2022
United States Navy-Marine Corps
Court of Criminal Appeals

[REDACTED]
Panel Paralegal
Navy-Marine Corps Court of Criminal Appeals
1254 Charles Morris St SE, Ste 320
Washington Navy Yard, DC 20374
[REDACTED]

Subject: Filing - Panel 2 - U.S. v. OHU - 202100266 - D - 2 EOT (GRZINCIC)

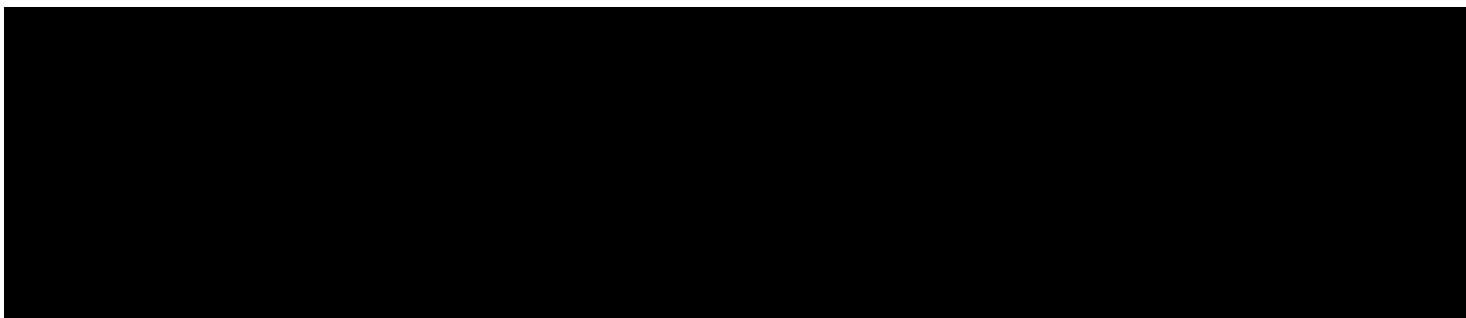
To this Honorable Court,

Please see the attached filing.

VR,

Anthony Grzincic
Major, U.S. Marine Corps
Appellate Defense Counsel
Code 45, Navy and Marine Corps Appellate Review Activity

Washington Navy Yard



Subject: RULING - Filing - Panel 2 - U.S. v. OHU - 202100266 - D - 2 EOT (GRZINCIC)
Signed By: [REDACTED]

MOTION GRANTED
4 JAN 2022
United States Navy-Marine Corps
Court of Criminal Appeals

[REDACTED]
Panel Paralegal
Navy-Marine Corps Court of Criminal Appeals
1254 Charles Morris St SE, Ste 320
Washington Navy Yard, DC 20374
[REDACTED]

Subject: Filing - Panel 2 - U.S. v. OHU - 202100266 - D - 2 EOT (GRZINCIC)

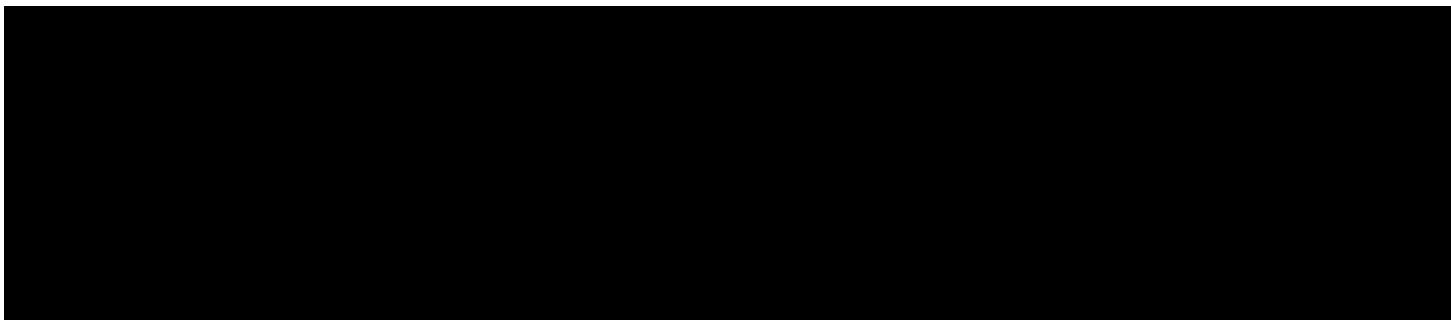
To this Honorable Court,

Please see the attached filing.

VR,

Anthony Grzincic
Major, U.S. Marine Corps
Appellate Defense Counsel
Code 45, Navy and Marine Corps Appellate Review Activity

Washington Navy Yard



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

Before Panel No. 2

UNITED STATES

Appellee

v.

**Thae OHU
Corporal (E-4)
U.S. Marine Corps**

Appellant

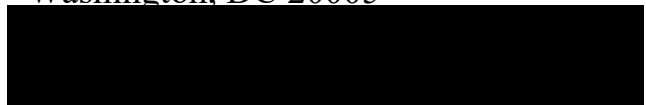
) **APPELLANT’S MOTION FOR
) FOR THIRD ENLARGEMENT
) OF TIME**

)
) NMCCA No. 202100266

)
) Tried at Marine Corps Base Quantico,
) Virginia, on May 12, 2021 before a
) Special Court-Martial convened by
) The Commanding General, Training
) Command; LtCol M.D. Zimmerman,
) USMC, presiding

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

Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity
1254 Charles Morris St., SE
Bldg 58, Ste 100
Washington, DC 20005



COMES NOW the undersigned and respectfully moves for an enlargement of time to file a brief and assignments of error. The current due date is 8 February 2022. The number of days requested is 30. The requested due date is 10 March 2022. Cpl Ohu has been consulted and consents to this motion.

The current status of the case:

1. The Record was docketed on 29 September 2021.
2. The Moreno date is 29 March 2023.
3. Cpl Ohu is not currently in confinement.
4. The Record consists of 318 transcribed pages and a total of 1430 pages.
5. Counsel is in the process of reviewing the record of trial, but has not yet completed his review.

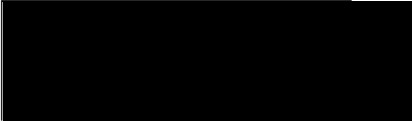
Good cause exists for granting this motion. This is a special court-martial case that began as a premeditated murder allegation.¹ Counsel is in the process of

¹ With apologies to the Court, Counsel notes that his previous enlargement motion was based on an incorrect template. It incorrectly stated that the case was a contested general court-martial involving sexual assault. Those statements were incorrect. Counsel is hereby respectfully notifying the Court of the mistake in order to correct any misunderstanding. The case status information was not incorrect.

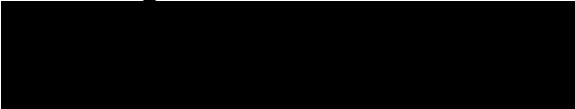
reviewing the record and formulating an appellate strategy with the appellant. Additional time is necessary for the undersigned to complete his review of the record, and draft assignments of error.

Additionally, Counsel's current workload has contributed to the need for this enlargement. During the current period of enlargement, Counsel drafted and submitted a petition for grant of review in *United States v. Jeter*, and is in the process of completing an AOE Brief before this Court in the case of *United States v. Cabrera*. Counsel has also helped support three peer appellate counsel prepare for oral argument through the moot court process for the cases *United States v. Mellette*, *United States v. Nelson*, and *United States v. Tucker*. As such, Counsel needs additional time in this Case.

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

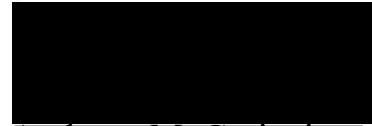


Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity
1254 Charles Morris St., SE
Bldg 58, Ste 100
Washington, DC 20005

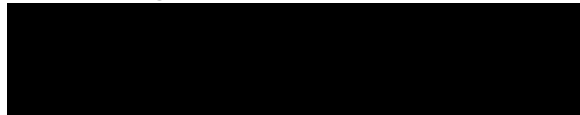


CERTIFICATE OF FILING AND SERVICE

I certify that the original of the foregoing was electronically delivered to the Court via email, that a copy was uploaded into the Court's case management system, and that a copy of the foregoing was delivered to Appellate Government (Code 46) on February 4, 2022.



Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity
1254 Charles Morris St., SE
Bldg 58, Ste 100
Washington, DC 20005



RECEIPT -Filing - Panel 2 - U.S. v. OHU - 202100266 - D - 3EOT (GRZINCIC)

RECEIVED

Feb 4 2022

United States Navy-Marine Corps
Court of Criminal Appeals

Subject: Filing - Panel 2 - U.S. v. OHU - 202100266 - D - 3EOT (GRZINCIC)

To this Honorable Court,

Please see the attached filing. Please note the motion to file the supplemental reply is still pending decision.

VR,

Anthony Grzincic
Major, U.S. Marine Corps
Appellate Defense Counsel
Code 45, Navy and Marine Corps Appellate Review Activity
Washington Navy Yard

[REDACTED]

RULING - Filing - Panel 2 - U.S. v. OHU - 202100266 - D - 3EOT (GRZINCIC)

[REDACTED]

MOTION GRANTED

8 FEB 2022

United States Navy-Marine Corps
Court of Criminal Appeals

[REDACTED]

Panel Paralegal
Navy-Marine Corps Court of Criminal Appeals
1254 Charles Morris St SE, Ste 320
Washington Navy Yard, DC 20374

[REDACTED]

Subject: Filing - Panel 2 - U.S. v. OHU - 202100266 - D - 3EOT (GRZINCIC)

To this Honorable Court,

Please see the attached filing. Please note the motion to file the supplemental reply is still pending decision.

VR,

Anthony Grzincic
Major, U.S. Marine Corps
Appellate Defense Counsel
Code 45, Navy and Marine Corps Appellate Review Activity

[REDACTED]

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

Before Panel No. 2

UNITED STATES

Appellee

v.

**Thae OHU
Corporal (E-4)
U.S. Marine Corps**

Appellant

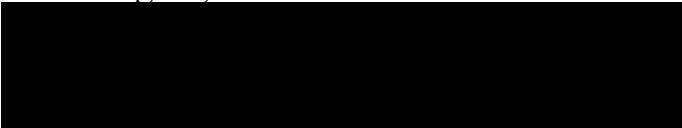
) **APPELLANT’S MOTION FOR**
) **FOR FOURTH ENLARGEMENT**
) **OF TIME**

) NMCCA No. 202100266

) Tried at Marine Corps Base Quantico,
) Virginia, on May 12, 2021 before a
) Special Court-Martial convened by
) The Commanding General, Training
) Command; LtCol M.D. Zimmerman,
) USMC, presiding

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

Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity
1254 Charles Morris St., SE
Bldg 58, Ste 100
Washington, DC 20005



COMES NOW the undersigned and respectfully moves for an enlargement of time to file a brief and assignments of error. The current due date is 10 March 2022. The number of days requested is 30. The requested due date is 9 April 2022. Cpl Ohu has been consulted and consents to this motion.

The current status of the case:


1. The Record was docketed on 29 September 2021.
2. The Moreno date is 29 March 2023.
3. Cpl Ohu is not currently in confinement.
4. The Record consists of 318 transcribed pages and a total of 1430 pages.
5. Counsel has completed his review of the record of trial.

Good cause exists for granting this motion. This is a special court-martial case that began as a premeditated murder allegation. Counsel has reviewed the record and formulating an appellate strategy with the appellant. Additional time is necessary for the undersigned to research potential issues, and draft assignments of error.

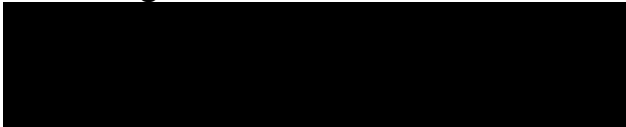
Additionally, Counsel's current workload has contributed to the need for this enlargement. During the current period of enlargement, Counsel has been working on completing an AOE Brief before this Court in the case of *United States v. Cabrera*. The *Cabrera* brief currently stands at nearly 80 pages across five assignments of error, and as such has required a significant amount of time and energy to

complete. Counsel has also reviewed the AOE brief submitted in *United States v. Grubb* and has helped support oral argument through the moot court process for *United States v. Taylor*. Lastly, the deputy director of Code 45 was out of the office completing her reserve duty. With the director of Code 45 billet gapped, undersigned counsel was responsible for overseeing the office in the deputy director's absence. As such, Counsel needs additional time in this Case.

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

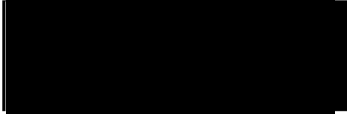


Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity
1254 Charles Morris St., SE
Bldg 58, Ste 100
Washington, DC 20005

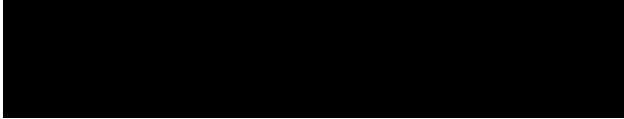


CERTIFICATE OF FILING AND SERVICE

I certify that the original of the foregoing was electronically delivered to the Court via email, that a copy was uploaded into the Court's case management system, and that a copy of the foregoing was delivered to Appellate Government (Code 46) on March 7, 2022.




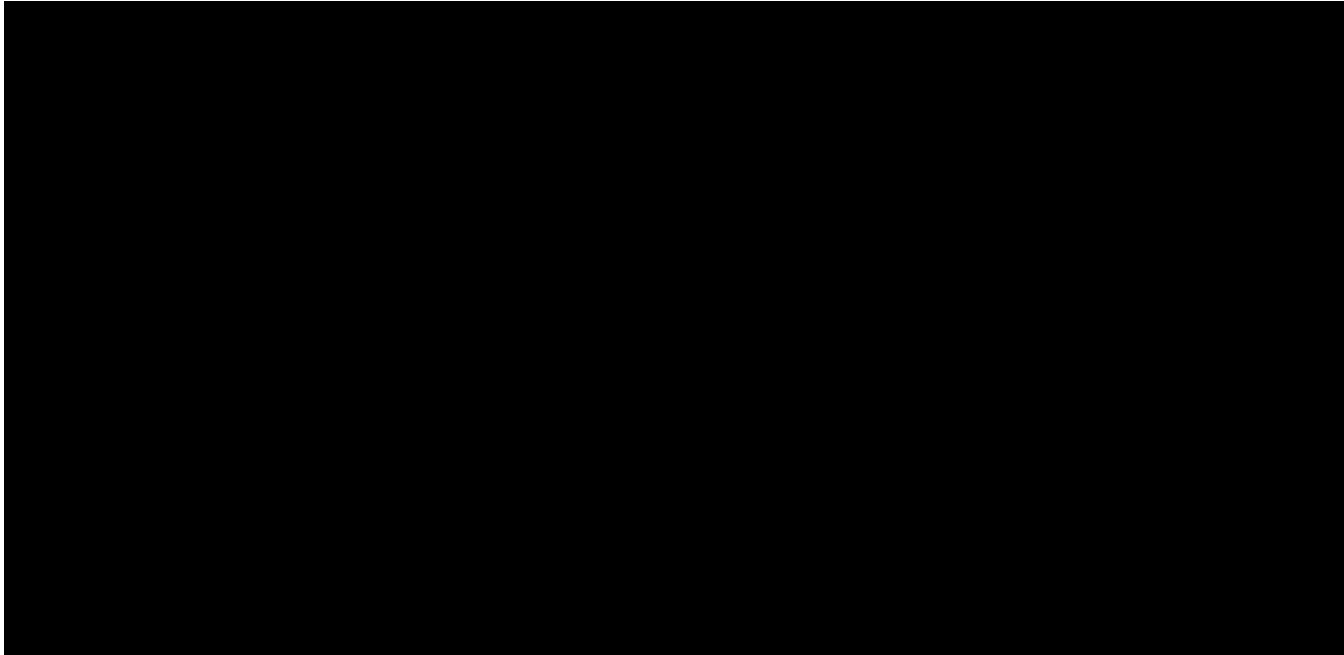
Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity
1254 Charles Morris St., SE
Bldg 58, Ste 100
Washington, DC 20005



Subject: RECEIPT - Filing - Panel 2 - U.S. v. OHU - 202100266 - D - 4EOT (GRZINCIC)
Date: Tuesday, March 8, 2022 7:22:25 AM

RECEIVED
Mar 8 2022
United States Navy-Marine Corps
Court of Criminal Appeals


Panel Paralegal
Navy-Marine Corps Court of Criminal Appeals
1254 Charles Morris St SE, Ste 320
Washington Navy Yard, DC 20374



Subject: Filing - Panel 2 - U.S. v. OHU - 202100266 - D - 4EOT (GRZINCIC)

To this Honorable Court,

Please see the attached filing.

VR,

Anthony Grzincic
Major, U.S. Marine Corps

Appellate Defense Counsel

Code 45, Navy and Marine Corps Appellate Review Activity

Washington Navy Yard



Subject: RULING - Filing - Panel 2 - U.S. v. OHU - 202100266 - D - 4EOT (GRZINCIC)
Date: Wednesday, March 9, 2022 2:19:37 PM

MOTION GRANTED
9 MAR 2022
United States Navy-Marine Corps
Court of Criminal Appeals

Panel Paralegal
Navy-Marine Corps Court of Criminal Appeals
1254 Charles Morris St SE, Ste 320
Washington Navy Yard, DC 20374

Subject: Filing - Panel 2 - U.S. v. OHU - 202100266 - D - 4EOT (GRZINCIC)

To this Honorable Court,

Please see the attached filing.

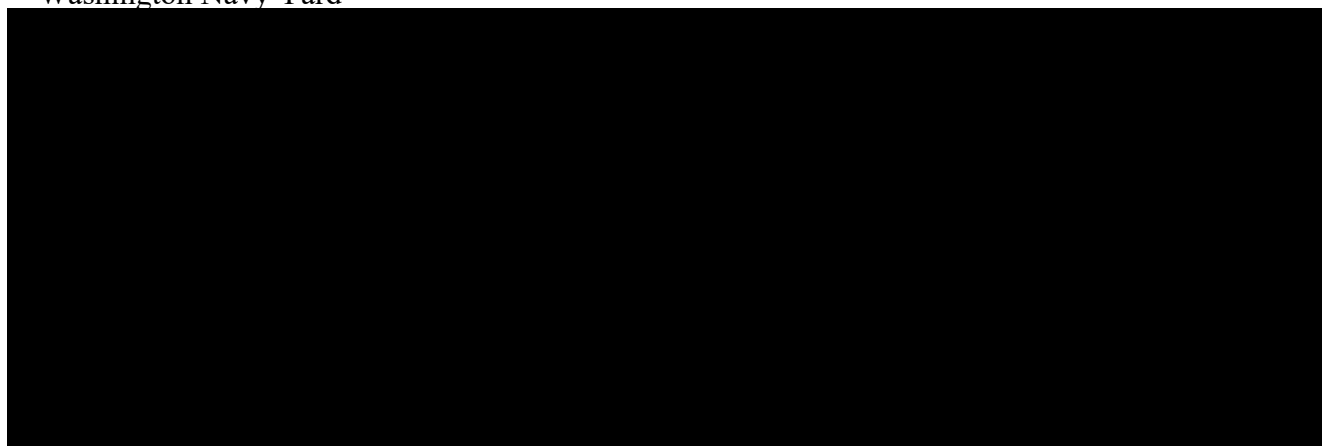
VR,

Anthony Grzincic
Major, U.S. Marine Corps

Appellate Defense Counsel

Code 45, Navy and Marine Corps Appellate Review Activity

Washington Navy Yard



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

Before Panel No. 2

UNITED STATES

Appellee

v.

Thae OHU
Corporal (E-4)
U.S. Marine Corps

Appellant

**APPELLANT’S MOTION TO
COMPEL PRODUCTION OF
APPELLATE EXHIBITS**

NMCCA Case No. 202100266

Tried at Marine Corps Base Quantico,
Virginia, on May 12, 2021 before a
Special Court-Martial convened by
Commanding General, Training
Command; LtCol M.D. Zimmerman,
USMC, presiding

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

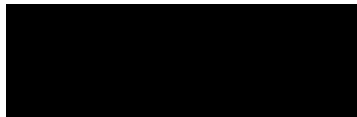
Appellant, through undersigned Counsel, pursuant to Rules 1.4 and 23 of this Court’s Rules of Appellate Procedure, moves for production of items that are not included in the record of trial that was docketed with this Court on March 5, 2021. In accordance with Rule for Courts-Martial 1112(b)(6), Manual for Courts-Martial (2019), the listed items should have been included in the record of trial. Specifically, the Appellate Exhibits in the record of trial begin numbering at Appellate Exhibit IV. Thus, Appellate Exhibits I-III are missing.

There is no reference on the record to explain what the three missing Appellate Exhibits are comprised of. Notably, in the transcript, the Military Judge


refers to a previous court-martial seemingly on the same charges that involved at least litigation of some motions. (R. at 5-6.) It is unclear whether these missing appellate exhibits relate to that trial or some other matter. Ultimately, although counsel has examined the entire unsealed portion of the record of trial as it exists, counsel cannot complete his review until the missing appellate exhibits are properly included in the record.

Because the government is responsible for this post-trial delay, the Appellant should not be required to ask for an enlargement of time to file her opening brief while the government works to remedy its error.

Accordingly, this Court should order the government produce the missing items, and order a stay, setting the due date for the initial brief and assignment of errors be at thirty days beyond the date that the Government produces the items and properly completes the record of trial.

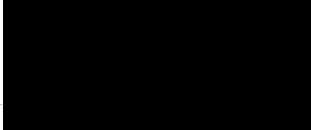


Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity
1254 Charles Morris St., SE
Bldg 58, Ste 100
Washington, DC 20005




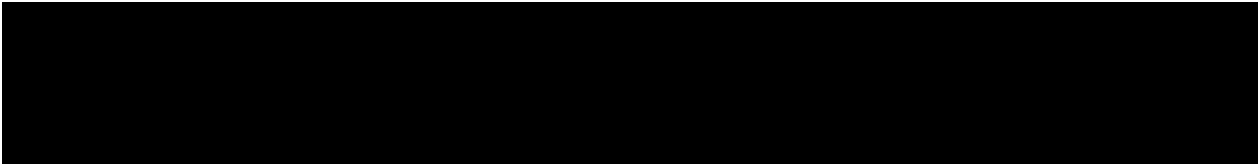
CERTIFICATE OF FILING AND SERVICE

I certify that the original of the foregoing was emailed to the Court on April 7, 2022, that a copy will be uploaded into the Court's case management system on April 7, 2022, and that a copy of the foregoing was emailed to Director, Appellate Government Division on April 7, 2022.



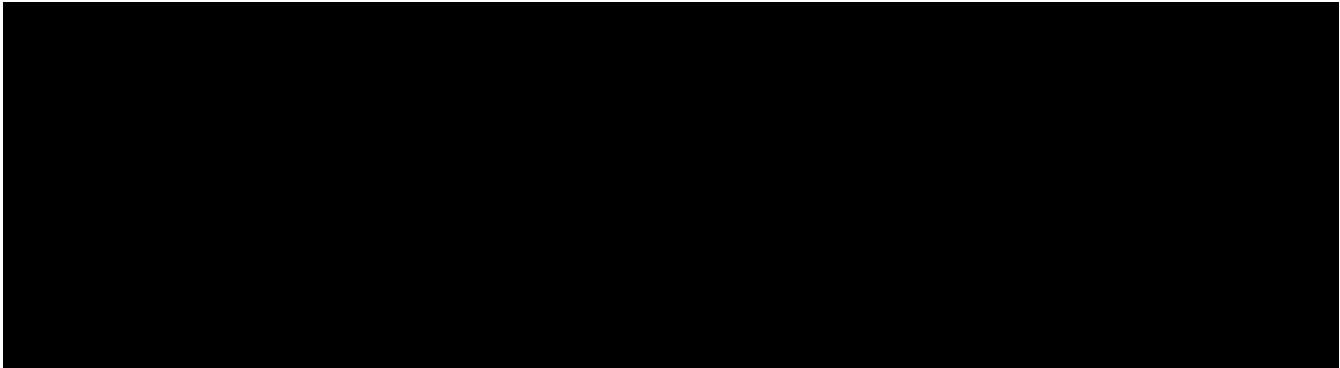
Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity
1254 Charles Morris St., SE
Bldg 58, Ste 100
Washington, DC 20005





Subject: RECEIPT - Panel 2- U.S. v. OHU - 202100266 - D - MOTION TO COMPEL PRODUCTION OF MATERIAL MISSING FROM RECORD AND STAY PROCEEDINGS (Grzincic)
Date: Wednesday, April 6, 2022 2:16:41 PM

RECEIVED
Apr 6 2022
United States Navy-Marine Corps
Court of Criminal Appeals



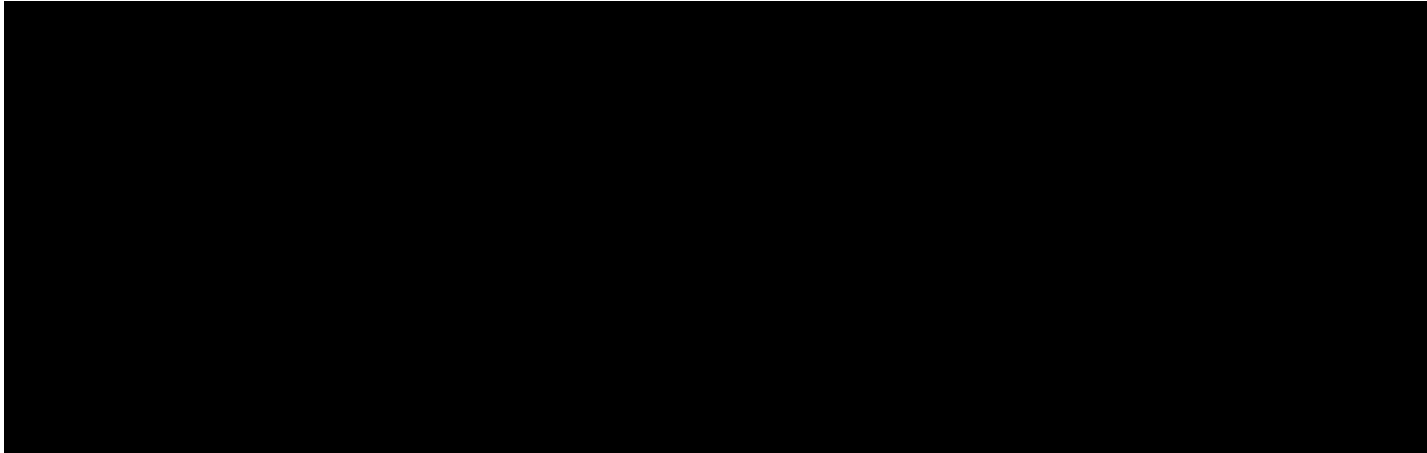
Subject: Filing - Panel 2- U.S. v. OHU - 202100266 - D - MOTION TO COMPEL PRODUCTION OF MATERIAL MISSING FROM RECORD AND STAY PROCEEDINGS (Grzincic)

To this Honorable Court,

Please see the attached filing.

VR,

Anthony Grzincic
Major, U.S. Marine Corps
Appellate Defense Counsel
Code 45, Navy and Marine Corps Appellate Review Activity
Washington Navy Yard



[REDACTED]

Subject: RE: Filing - Panel 2- U.S. v. OHU - 202100266 - D - MOTION TO COMPEL PRODUCTION OF MATERIAL MISSING FROM RECORD AND STAY PROCEEDINGS (Grzincic)
Date: Wednesday, April 13, 2022 10:38:51 AM

WITH REGARD TO THE MOTION TO COMPEL PRODUCTION OF AE I-III:

MOTION GRANTED
13 APR 2022
United States Navy-Marine Corps
Court of Criminal Appeals

WITH REGARD OT THE MOTION TO STAY PROCEEDINGS:

MOTION DENIED
13 APR 2022
United States Navy-Marine Corps
Court of Criminal Appeals

[REDACTED]
LT, JAGC, USN
Commissioner
Navy-Marine Corps Court of Criminal Appeals
NMCCA | Code 51
1254 Charles Morris St. SE | Bldg 58, Suite 320
Washington Navy Yard, DC, 20374-5124

[REDACTED]

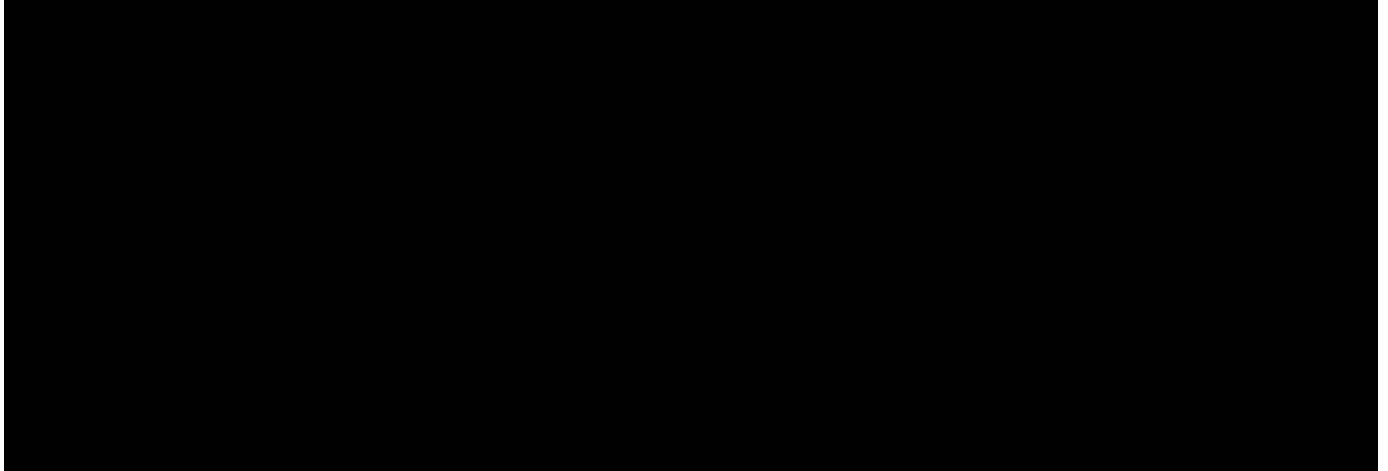
Subject: Filing - Panel 2- U.S. v. OHU - 202100266 - D - MOTION TO COMPEL PRODUCTION OF MATERIAL MISSING FROM RECORD AND STAY PROCEEDINGS (Grzincic)

To this Honorable Court,

Please see the attached filing.

VR,

Anthony Grzincic
Major, U.S. Marine Corps
Appellate Defense Counsel
Code 45, Navy and Marine Corps Appellate Review Activity
Washington Navy Yard



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

Before Panel No. 2

| | | |
|-------------------|---|--------------------------------------|
| UNITED STATES, |) | APPELLEE’S OPPOSITION TO |
| Appellee |) | APPELLANT’S MOTION FOR |
| |) | FIFTH ENLARGEMENT OF TIME |
| v. |) | |
| |) | Case No. 202100266 |
| Thae OHU, |) | |
| Corporal (E-4) |) | Tried at Marine Corps Base Quantico, |
| U.S. Marine Corps |) | Virginia, on May 12, 2021, before a |
| Appellant |) | special court-martial convened by |
| |) | Commanding General, Training |
| |) | Command, Lieutenant Colonel M. D. |
| |) | Zimmerman, U.S. Marine Corps, |
| |) | presiding. |

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

Pursuant to Rule 23.2 of this Court’s Rules of Appellate Procedure, the United States opposes Appellant’s Motion for Fifth Enlargement of Time because it fails to comply with precedent and this Court’s Rules that protect the United States’ and Appellant’s right to speedy appellate processing.

A. This Court’s Rules require a discussion of case complexity.

This Court may grant an enlargement of time only if an appellant shows good cause with particularity. N-M. Ct. Crim. App. R. 23.2(c)(3). This Rule

requires counsel to engage in a discussion of the complexity of the case. N-M. Ct. Crim. App. R. 23.2(c)(3)(F).

This Court is directly responsible for exercising “institutional vigilance” over this and all cases pending Article 66 review. *Diaz v. JAG of the Navy*, 59 M.J. 34, 40 (C.A.A.F. 2003). Appellant must comply with this Court’s Rules, which enable the Court to maintain “institutional vigilance” over his case. *Id.*

The justification for appellate delay implicates Appellant’s right to speedy appellate process. In *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006), the court held that the Court of Criminal Appeals failed to exercise “institutional vigilance” and attributed that failure to the United States where appellate defense counsel stated the same reason for delay in each enlargement request. *Id.* at 137. The court found recurrent, rote justifications for delay suggested there was no evidence demonstrating either “that the enlargements were directly attributable to [the appellant],” “that the need for additional time arose from other factors such as the complexity of [the appellant]’s case,” or that “the numerous requests for delay filed by appellate defense counsel benefited [the appellant].” *Id.*

B. The Motion does not comply with the Rules. It does not include a discussion of the case’s complexity.

As with each of the previous four requests, the current Motion again fails to discuss the case’s complexity. (*Compare* Appellant’s Mot. Fifth Enl., April 5,

2022, *with* Appellant’s Mot. Forth Enl. March 7, 2022, Appellant’s Mot. Third Enl., February 4, 2022, Appellant’s Mot. Second Enl., January 3, 2022 *and* Appellant’s Mot. First Enl., December 9, 2022.)

Each of the five enlargement motions fails to even use the word “complex”. Instead, Appellant relies on the Court to infer complexity by stating that the “case began as a premeditated murder allegation.” (*See* Appellant’s Mot. Fifth Enl., April 5, 2022.) This rote claim fails to inform the Court—so that the Court can exercise “institutional vigilance”—and fails to convey to the United States information to permit a fully informed response to the Motion. *Diaz*, 59 M.J. at 40. Rule 23.2(c)(3)(F) demands more.


The Motion fails to justify a Fifth Enlargement.

Conclusion

The United States respectfully requests this Court deny Appellant’s Motion for Fifth Enlargement of Time. If Appellate Defense Counsel submits an amended Motion that complies with this Court’s Rules, the United States will reconsider its position.

Michael A. Tuosto
Digitally signed
by Michael A.
Tuosto
MICHAEL TUOSTO
Lieutenant, JAGC, U.S. Navy
Appellate Government Counsel
Navy-Marine Corps Appellate

Review Activity
Bldg. 58, Suite B01
1254 Charles Morris Street SE
Washington Navy Yard, DC 20374



Certificate of Filing and Service

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Michael A. Tuosto
Digitally signed
by Michael A.
Tuosto
MICHAEL TUOSTO
Lieutenant, JAGC, U.S. Navy
Appellate Government Counsel

[REDACTED]

Subject: RECEIPT - FILING - Panel - 2 U.S. v. Ohu - NMCCA 202100266 - G Oppo 5th EOT (Tuosto)
Date: Monday, April 11, 2022 4:11:39 PM

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United States Navy-Marine Corps
Court of Criminal Appeals

[REDACTED]

Panel Paralegal
Navy-Marine Corps Court of Criminal Appeals
1254 Charles Morris St SE, Ste 320
Washington Navy Yard, DC 20374

[REDACTED]

Subject: FILING - Panel - 2 U.S. v. Ohu - NMCCA 202100266 - G Oppo 5th EOT (Tuosto)

To this Honorable Court:

Please see attached for Government's opposition to Appellant's motion for a fifth enlargement of time in the case of U.S. v. Ohu, NMCCA No. 202100266.

Thank you.

Mike Tuosto
LT, JAGC, USN
Navy and Marine Corps Appellate Review Activity
Appellate Government Counsel (Code 46)
1254 Charles Morris St. SE, Bldg. 58, Suite B01
Washington Navy Yard, DC 20374-5124

[REDACTED]

Subject: RE: Filing - Panel 2- U.S. v. OHU - 202100266 - D - 5EOT (Grzincic)
Date: Wednesday, April 13, 2022 10:35:45 AM

MOTION GRANTED
13 APR 2022
United States Navy-Marine Corps
Court of Criminal Appeals

[REDACTED]

LT, JAGC, USN
Commissioner
Navy-Marine Corps Court of Criminal Appeals
NMCCA | Code 51
1254 Charles Morris St. SE | Bldg 58, Suite 320
Washington Navy Yard, DC, 20374-5124

[REDACTED]

Subject: Filing - Panel 2- U.S. v. OHU - 202100266 - D - 5EOT (Grzincic)

To this Honorable Court,

Please see the attached filing.

VR,

Anthony Grzincic
Major, U.S. Marine Corps
Appellate Defense Counsel
Code 45, Navy and Marine Corps Appellate Review Activity
Washington Navy Yard
[REDACTED]

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

Before Panel No. 2

UNITED STATES

Appellee

v.

**Thae OHU
Corporal (E-4)
U.S. Marine Corps**

Appellant

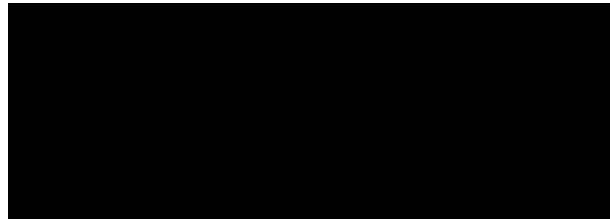
) **APPELLANT’S MOTION FOR**
) **FOR FIFTH ENLARGEMENT**
) **OF TIME**

)
) NMCCA No. 202100266

)
) Tried at Marine Corps Base Quantico,
) Virginia, on May 12, 2021 before a
) Special Court-Martial convened by
) The Commanding General, Training
) Command; LtCol M.D. Zimmerman,
) USMC, presiding

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

Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity



COMES NOW the undersigned and respectfully moves for an enlargement of time to file a brief and assignments of error. The current due date is 9 April 2022. The number of days requested is 30. The requested due date is 9 May 2022. Cpl Ohu has been consulted and consents to this motion.

The current status of the case:

1. The Record was docketed on 29 September 2021.
2. The Moreno date is 29 March 2023.
3. Cpl Ohu is not currently in confinement.
4. The Record consists of 318 transcribed pages and a total of 1430 pages.
5. Counsel has completed his review of the unsealed portions of the record of trial.

Good cause exists for granting this motion. This is a special court-martial case that began as a premeditated murder allegation. Counsel has been researching identified potential issues, and begun the process of outlining a draft of potential assignments of error. Counsel needs additional time to complete the briefing in this case.

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




1C

Major, U.S. Marine Corps


2

Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity

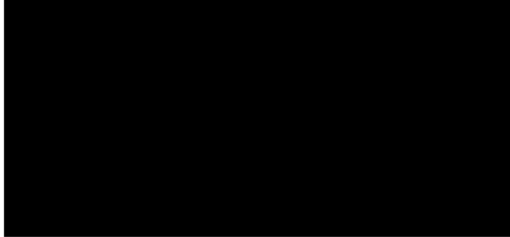


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Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity



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

Before Special Panel No. 2

UNITED STATES

Appellee

V.

Thae OHU
Corporal (E-4)
U.S. Marine Corps

Appellant

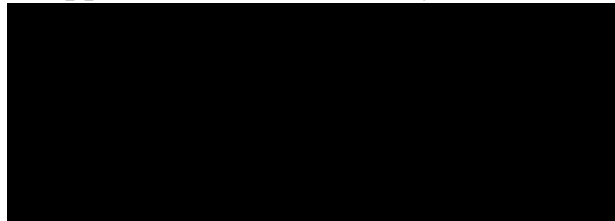
APPELLANT’S REPLY BRIEF

NMCCA No. 202100266

Tried at Marine Corps Base Quantico, Virginia, on May 12, 2021 before a Special Court-Martial convened by The Commanding General, Training Command; LtCol M.D. Zimmerman, USMC, presiding

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

Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity



COMES NOW, Cpl Thae Ohu, and provides the following reply to the government's answer.

A. This Court should not view the fact that there was a guilty plea as a significant factor in whether the sentence was inappropriately severe.

The plea agreement in this case is not an assertion that any specific punishment, or even range of punishments, was appropriate. Rather, the plea agreement in this case only indicates that the parties agreed that anything outside the scope of the agreed upon punishments are inappropriate. An accused has no say in the “starting point” maximum punishment that he or she faces, but the government does based on its charging decisions. Through the course of the negotiations, the government agreed to limit that scope of possible punishments in exchange for certain actions on the part of Cpl Ohu.¹ The fact that the parties were willing to agree to terms to limit some possible punishments does not mean that Cpl Ohu assented to all possible remaining punishments. Likewise, Cpl Ohu's understanding of the possibility of a discharge does not equate to assenting to a range of punishments in a plea deal any more than her understanding of the possible punishments would at a contested trial. Understanding that a punishment is a possibility is not the same as asserting that a punishment would be reasonable.

¹ A.E. IV

The record itself undermines a presumption that the parties agreed that the possible punishments were all reasonable by the simple fact that the government and the accused both argued for different punishments at trial.² There was obviously no agreement on that point, and it is an improper windfall for the government for this Court to simply assume that the accused consented to the appropriateness of all remaining possible punishments.³ She did not, as reflected by her Counsel's argument during pre-sentencing.⁴ This Court should thus not use the simple fact that there was a plea agreement in this case as a factor when considering whether the sentence was appropriate pursuant to Article 66, UCMJ.

B. A bad-conduct discharge in this case is not appropriate because of the character of the accused and the nature of the offense - not as a matter of clemency.

Cpl Ohu is asking this Court to consider the unique factors involved in this case. Specifically, when looking at her character, this Court should consider that the Marine Corps chose to enlist a young woman with full knowledge of her history of mental health issues.⁵ The evidence of the military doctors' medical assessment demonstrates that her service worsened her mental health issues, and thus the Marine Corps bears some responsibility in this case.⁶ And the mental

² R. 304-15.

³ A.E. IV

⁴ R. 304-15.

⁵ R. 277-78; P.E. 16 at 7, 33.

⁶ D.E. B at 4.

health provider who testified at the sentencing hearing stated that lack of impulse control is one of the symptoms of her mental health issues – which the Marine Corps was aware of when they recruited her.⁷ The accused’s character in this case demonstrates a deeply troubled young woman who suffered from an acute mental health crises after her condition worsened due to her service in the Marine Corps.⁸

In addition to the arguments contained in the Appellant’s brief, when weighing the severity of the offenses, this Court should also consider that none of the victims in this case chose to make any statement against Cpl Ohu at trial. In fact, the only statement made by a victim in this case was a plea that Cpl Ohu not be given any punishment.⁹ Neither the character of the offender nor the nature of the offense supports a bad-conduct discharge pursuant to the sentence inappropriateness factors, not as a matter of clemency.

Ultimately, a bad-conduct discharge is not appropriate because contrary to R.C.M. 1003(b)(8)(C) a punitive separation did not “appear[] to be necessary.” This is particularly true where Cpl Ohu had a pending medical separation package that was ready for approval.¹⁰ As noted in Appellant’s brief, a bad-conduct discharge in this case undermines the sentencing principles and is inappropriately

⁷ R. at 188-92.

⁸ A.E. VII at 407-08.

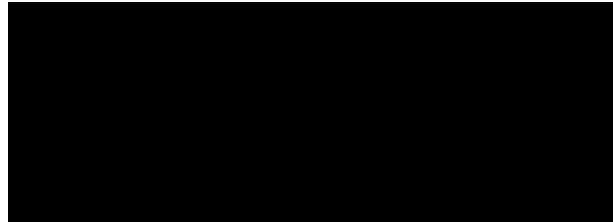
⁹ R. at 174.

¹⁰ D.E. A; D.E. B.

severe. It was not necessary or appropriate in this case, and as such, should be disapproved.



Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity



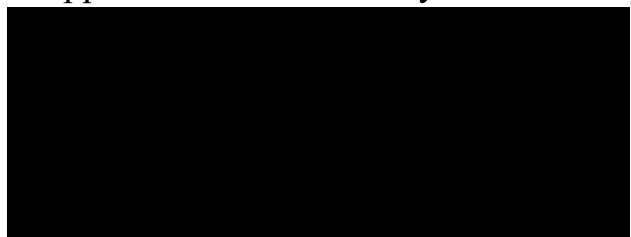
CERTIFICATE OF FILING AND SERVICE

I certify that the foregoing was electronically delivered to the Court, uploaded into the Court's case management system, and delivered to Appellate Government Division (Code 46) on August 8, 2022.



1c

Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity



This opinion is subject to administrative correction before final disposition.

United States Navy-Marine Corps
Court of Criminal Appeals

Before
HOUTZ, DEERWESTER, and KIRKBY
Appellate Military Judges

UNITED STATES
Appellee

v.

Thae OHU
Corporal (E-4), U.S. Marine Corps
Appellant

No. 202100266

Decided: 27 October 2022

Appeal from the United States Navy-Marine Corps Trial Judiciary

Military Judge:
Michael. D. Zimmerman

Sentence adjudged 12 May 2021 by a special court-martial convened at Marine Corps Base Quantico, Virginia, consisting of a military judge sitting alone. Sentence in the Entry of Judgment: confinement for 328 days, reduction to E-1, and a bad-conduct discharge.

For Appellant:
Major Anthony Grzincic, USMC

For Appellee:
Lieutenant Michael Tuosto, JAGC, USN
Lieutenant Commander Jeffrey S. Marden, JAGC, USN

Senior Judge DEERWESTER delivered the opinion of the Court, in which Senior Judge Houtz and Judge Kirkby joined.

**This opinion does not serve as binding precedent under
NMCCA Rule of Appellate Procedure 30.2(a).**

DEERWESTER, Senior Judge:

Pursuant to her pleas, Appellant was convicted of two specifications of willfully disobeying a superior commissioned officer; one specification of damaging military property; one specification of aggravated assault with a deadly weapon upon an intimate partner; and two specifications of assault consummated by a battery in violation of Articles 90, 108, and 128, Uniform Code of Military Justice [UCMJ].¹ Appellant now raises one assignment of error: the adjudged sentence of a bad-conduct discharge was inappropriately severe. After careful review, we affirm the convictions and sentence as correct in law and fact.

I. BACKGROUND

Appellant and Staff Sergeant [SSgt] Hotel² lived together in Virginia Beach, Virginia, and were intimate partners.³ One afternoon in April 2020, after a dispute ensued regarding the purchase of a home appliance, Appellant grabbed a chef knife, with a blade slightly longer than eight inches, from the kitchen and chased SSgt Hotel throughout the house while yelling, “I’m going to kill you, you mother f[***]. I’m going to kill you, you son of a b[***], you son of a b[***].”⁴ SSgt Hotel locked himself in a bedroom, and Appellant repeatedly stabbed at the door, damaging it.⁵ After a short period of time, SSgt Hotel

¹ 10 U.S.C. §§ 890, 908, 928.

² All names in this opinion, other than those of Appellant, the judges, and counsel, are pseudonyms.

³ R. 38–39.

⁴ R. 39–40, 60–61; Pros. Ex. 22.

⁵ R. 40, 44; Pros. Ex. 8, 9.

called law enforcement, who arrived at the scene and arrested Appellant, taking her to a holding facility. Throughout the event, while Appellant “intended to hurt him” and “would have hurt him” if “the door wasn’t there,” SSgt Hotel was not injured.⁶

Appellant’s commanding officer ordered her not to contact SSgt Hotel or come within sixty feet of him or their residence.⁷ Regardless, she called SSgt Hotel, “asking him to meet,” and then went to their house and entered it with her key.⁸ Appellant was then placed into pretrial confinement.

While in pretrial confinement, Appellant attempted to commit suicide, prompting the brig to send her to Naval Hospital Portsmouth for evaluation and treatment. While there, Appellant was restrained.⁹ She became “really upset” when the hospital corpsmen attending to her took a blanket she was using, so she slipped her restraints off and used them “as a weapon to hit the window,” which “cracked in a million different places.”¹⁰ The second time Appellant hit the window, “the glass shattered and it went into [a Marine’s] eye” requiring the Marine “to get her eyes flushed out.”¹¹ The glass also ended up “striking” another Marine, who Appellant knew was “behind the door holding it.”¹²

Appellant entered into a plea agreement with the Government in which the parties agreed to impose certain sentencing limitations on the military judge, including that confinement would be limited to time served, and that no fines or forfeitures would be adjudged. During her guilty plea, Appellant submitted substantial evidence in extenuation and mitigation, including information involving her mental health, evidence of unsanitary conditions while being held in pretrial confinement, character witness testimony and written statements, and a victim impact statement from SSgt Hotel in which he requested that Appellant receive no further punishment, be released from pretrial confinement, and receive medical and mental health care.

⁶ R. 40, 43.

⁷ R. 109–110, 118

⁸ R. 113.

⁹ R. 85.

¹⁰ R. 86–87, 92.

¹¹ R. 85, 88–89.

¹² R. 98.

II. DISCUSSION

A. Appellant's Sentence was Appropriate

Appellant argues her sentence of a bad-conduct discharge is inappropriately severe. We review the appropriateness of a sentence de novo.¹³ This Court “may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved.”¹⁴ “Sentence appropriateness involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves.”¹⁵ The analysis requires “‘individualized consideration’ of the particular accused ‘on the basis of the nature and seriousness of the offense and the character of the offender.’”¹⁶ In determining sentence appropriateness, we may not engage in exercises of clemency.¹⁷

Appellant negotiated with the convening authority to preclude the military judge from awarding any fines or forfeitures, and to limit confinement to that already served. Appellant did not negotiate any protection from a punitive discharge. The military judge properly ensured the plea agreement was entered into voluntarily and by Appellant's own free will. Appellant received the benefit of her bargain, but now contends the bad-conduct discharge was inappropriately severe when considering the significant mitigating mental health evidence presented during sentencing.

We disagree and find the adjudged sentence appropriate. Weighing the gravity and circumstances of this misconduct, particularly when considering the properly admitted evidence in aggravation and the other evidence in extenuation and mitigation, we are convinced that justice was done and Appellant received “the punishment [she] deserved.”¹⁸ We do not in any way dismiss

¹³ *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).

¹⁴ Article 66(d)(1), UCMJ.

¹⁵ *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988).

¹⁶ *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-181 (C.M.A. 1959)).

¹⁷ *Healy*, 26 M.J. at 395-396.

¹⁸ *Id.* at 395.

the substantial mitigation evidence presented in this case. However, when contrasted with the offenses to which Appellant pleaded guilty, we are convinced that the sentence of a bad-conduct discharge is not inappropriately severe.

III. CONCLUSION

After careful consideration of the record and briefs of appellate counsel, we have determined that the approved findings and sentence are correct in law and fact and find no error materially prejudicial to Appellant's substantial rights occurred.¹⁹ Accordingly, the findings and sentence are **AFFIRMED**.

Senior Judge HOUTZ and Judge KIRKBY concur.



FOR THE COURT:

[REDACTED]

MARK K. JAMISON
Clerk of Court [REDACTED]

¹⁹ Articles 59, 66, UCMJ.

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

Before Special Panel No. 2

UNITED STATES

Appellee

V.

Thae OHU
Corporal (E-4)
U.S. Marine Corps

Appellant

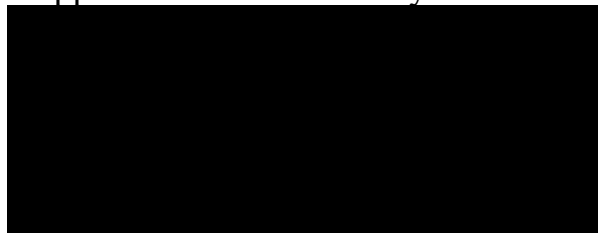
**APPELLANT’S OUT OF TIME
MOTION FOR FIRST
ENLARGEMENT OF TIME TO
FILE REPLY BRIEF**

NMCCA No. 202100266

Tried at Marine Corps Base Quantico,
Virginia, on May 12, 2021 before a
Special Court-Martial convened by
The Commanding General, Training
Command; LtCol M.D. Zimmerman,
USMC, presiding

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

Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity




COMES NOW the undersigned and respectfully moves for an enlargement of time to file a reply brief. By function of this Court's Rules 18.4 and 15.1 the current due date is August 1, 2022. The number of days requested is 7. The requested due date is August 8, 2022. Cpl Ohu has been consulted and consents to this motion.

The current status of the case:


1. The Record was docketed on 29 September 2021.
2. The Moreno date is 29 March 2023.
3. Cpl Ohu is not currently in confinement.
4. The Record consists of 318 transcribed pages and a total of 1430 pages.
5. Counsel has completed review of the record.

Good cause exists for permitting counsel to file out of time and for granting the motion itself. Counsel was Sick in Quarters from July 25-July 31 and was unable to accomplish any work for that week. As such, a little more time is needed for him to finalize the reply brief and get it submitted. He respectfully requests that this Court grant the motion in order to allow him to make up for the time away from work due to his illness.

WHEREFORE, Appellant respectfully requests that this Court grant this motion for a 7-day enlargement of time.

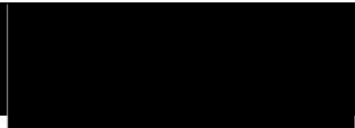


Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity




CERTIFICATE OF FILING AND SERVICE

I certify that the original of the foregoing was electronically delivered to the Court via email, that a copy was uploaded into the Court's case management system, and that a copy of the foregoing was delivered to Appellate Government (Code 46) on August 1, 2022.



Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity



[REDACTED]

Subject: RECEIPT - Filing - Special Panel 2 - U.S. v. OHU - 202100266 - D - 1 EOT (Reply Brief) (Grzincic)
Date: Monday, August 1, 2022 11:08:34 AM

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United States Navy-Marine Corps
Court of Criminal Appeals

[REDACTED]

Panel Paralegal
Navy-Marine Corps Court of Criminal Appeals

[REDACTED]

[REDACTED]

Subject: Filing - Special Panel 2 - U.S. v. OHU - 202100266 - D - 1 EOT (Reply Brief) (Grzincic

To this Honorable Court,

Please see the attached filing.

VR,

Anthony Grzincic
Major, U.S. Marine Corps
Appellate Defense Counsel
Code 45, Navy and Marine Corps Appellate Review Activity

[REDACTED]

[REDACTED]

[REDACTED]

Subject: RULING - Filing - Special Panel 2 - U.S. v. OHU - 202100266 - D - 1 EOT (Reply Brief) (Grzincic)
Date: Monday, August 1, 2022 11:36:56 AM

MOTION GRANTED
1 AUGUST 2022
United States Navy-Marine Corps
Court of Criminal Appeals

[REDACTED]

Panel Paralegal
Navy-Marine Corps Court of Criminal Appeals

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Subject: Filing - Special Panel 2 - U.S. v. OHU - 202100266 - D - 1 EOT (Reply Brief) (Grzincic)

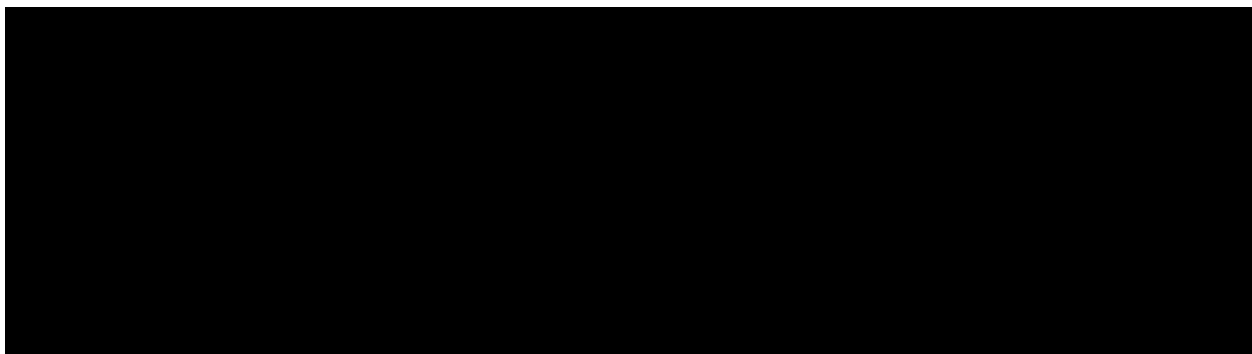
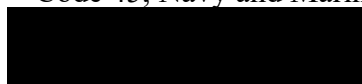
To this Honorable Court,

Please see the attached filing.

VR,

Anthony Grzincic
Major, U.S. Marine Corps
Appellate Defense Counsel

Code 45, Navy and Marine Corps Appellate Review Activity



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

Before Special Panel No. 2

UNITED STATES

Appellee

v.

Thae OHU
Corporal (E-4)
U.S. Marine Corps

Appellant

**APPELLANT’S MOTION TO
SEAL NUDE VIDEO OF
APPELLANT**

NMCCA Case No. 202100266

Tried at Marine Corps Base Quantico,
Virginia, on May 12, 2021 before a
Special Court-Martial convened by
Commanding General, Training
Command; LtCol M.D. Zimmerman,
USMC, presiding

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

The Appellant respectfully requests that this Court issue an order to seal the video recordings contained on the DVD located at page 82 of Defense Exhibit P. These videos depict Cpl Ohu naked in her cell in the midst of a mental crisis after getting feces on her clothing.

Rule for Court Martial 1113(a) allows a military judge to seal matters for good cause. Although the exhibit was not sealed at the trial level, it should have been for the following reasons: The sensitive videos show Cpl Ohu in the middle of suffering from a mental health crisis triggered by getting feces on her clothing. The videos show her distraught, removing her clothing and pacing back and forth in her cell,

naked. Because Cpl Ohu was confined, she had no choice in whether she was being surveilled and did not consent to being video recorded. Accordingly, she enjoys a reasonable expectation that videos of her nude in her cell would be limited in their dissemination to the greatest extent possible.¹

Page 81 of Defense Exhibit P also contains a written description of the contents of the videos, which satisfies any public interest and obviates the need to access and view the videos themselves. This case has also generated significant public and media interest. And as such, it is likely that there will be numerous requests for public disclosure of the record of trial – requiring additional viewing of the video by FOIA or other administrative personnel to determine releasability. This also increases the likelihood that the video will actually be released either intentionally or in error. Sealing the videos would obviate that problem.

In sum, this is a highly sensitive video containing a nonconsensual video recording of a young woman in the nude suffering from a mental health crisis. Thus,


¹ Undersigned Counsel acknowledges that this was a defense sentencing exhibit, and there is nothing to indicate that the trial defense counsel requested that it be sealed. But as with all “sealing requests,” the submission of this important piece of evidence is separate from the question of whether it should be openly accessible in the record. The lack of a request to seal at trial was a mistake and an oversight on the part of Trial Defense Counsel. Pursuant to this motion, Cpl Ohu explicitly asserts that she desires that this be sealed. Additionally, the rule permits items to be sealed either upon request of a party or *sua sponte* by the judge. Thus, this Court can consider the issue even without a specific trial defense request.

good cause existed (and still exists) to seal the requested matters. Given the balance of considerations in this case, the military judge should have sealed the matters at the trial level.

This Court has the authority to seal matters that should have been sealed at the trial level but were not. In *United States v. Barry*, 76 M.J. 407 (C.A.A.F. 2017), the Court of Appeals for the Armed Forces identified unsealed matters in the record that should have been sealed. To remedy the error, the Court sealed the matters. *Id.* As in *Barry*, this Court should remedy the error by sealing the sensitive video contained on the DVD at page 82 of Defense Exhibit P.

Lastly, all parties have already filed briefs in this case, and after reviewing the filings, it appears sealing the exhibit would not require the briefs to be sealed or amended. Nor is the Appellant contending that Government Counsel should not have access, as necessary, to view the exhibit. Thus, there is no prejudice to any party by granting this order. In order to protect the dignity and privacy of the Appellant, this Court should seal the video.

WHEREFORE, Appellant respectfully requests that this Court seal the DVD contained at page 82 of Defense Exhibit P.




Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps

Appellate Review Activity




CERTIFICATE OF FILING AND SERVICE

I certify that the original of the foregoing was emailed to the Court, that a copy will be uploaded into the Court's case management system, and that a copy of the foregoing was emailed to Director, Appellate Government Division on August 18, 2022.



Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity



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

Before Special Panel No. 2

| | | |
|-------------------|---|--------------------------------------|
| UNITED STATES, |) | APPELLEE’S ANSWER TO |
| Appellee |) | APPELLANT’S MOTION TO SEAL |
| |) | NUDE VIDEO OF APPELLANT |
| v. |) | |
| |) | Case No. 202100266 |
| Thae OHU, |) | |
| Corporal (E-4) |) | Tried at Marine Corps Base Quantico, |
| U.S. Marine Corps |) | Virginia, on May 12, 2021, by a |
| Appellant |) | special court-martial convened by |
| |) | Commanding General, Training |
| |) | Command, Lieutenant Colonel M. D. |
| |) | Zimmerman, U.S. Marine Corps |
| |) | presiding. |

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

Pursuant to Rule 23 of this Court’s Rules of Appellate Procedure, the United States supports Appellant’s motion to seal the video recordings contained in page eighty-two of Defense Exhibit P, which depict Appellant nude. Good cause exists to seal this particular exhibit, especially upon Appellant’s request, to protect her privacy and dignity interests, while not prejudicing this Court or parties in their appellate responsibilities and otherwise mitigating public interest concerns.

A. The Appellant requests, and good cause exists, to seal the exhibit.

The discussion of Rule for Courts-Martial 1113(a) notes that “[u]pon request or otherwise for good cause, a military judge may seal matters at his or her discretion.”

Within the Appellant’s motion, she explicitly asserts her desire to seal the exhibit based on the sensitive nature of the video. (Appellant’s Mot. Seal, at 2 n.1, Aug. 18, 2022.)

Furthermore, good cause exists to seal the exhibit. In *United States v. Cordle*, No. 200600570, 2007 CCA LEXIS 135, at *10 n. 5–6 (N-M. Ct. Crim. App. Apr. 17, 2007), this Court ordered prosecution exhibits sealed due to their “pornographic nature” because they depicted genitals in a sexually explicit manner, even without the issue being raised at the trial level. *Id.* The defense exhibit video depicts the Appellant nude and, like in *Cordle*, this Court should order it sealed.

B. Parties can still examine exhibit as necessary to fulfill responsibilities.

R.C.M. 1113(b) provides an adequate process for this Court, parties, and other appropriate authorities to examine the sealed matters when it is reasonably necessary to a proper fulfillment of their responsibilities. As noted by Appellant, there is no prejudice to any party and sealing the exhibit does not require briefs or any other filings to be amended. (Appellant’s Mot. Seal, at 3.)

C. Appellant's privacy interest overrides public interest in this exhibit.

R.C.M. 806 recognizes a separate public interest in a public trial in order to reduce the chance of arbitrary and capricious decisions and enhance public confidence in the court-martial process. However, if using the closure analysis as analogous to good cause for sealing an exhibit, the Appellant's privacy and dignity interests override the public's access to this particular exhibit. The sealing, limited to a particular exhibit, is no broader than required and page eighty-one of Defense Exhibit P alternately contains a description of the video contents that sufficiently satisfies the public interest.

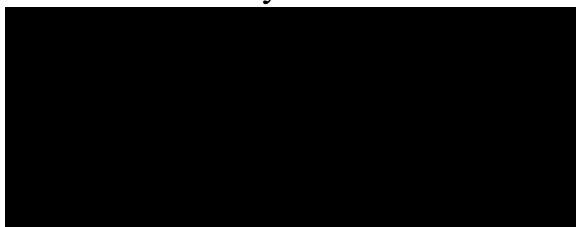
Although relevant and admissible as defense mitigating evidence, the Appellant's privacy and dignity interest in sealing this exhibit is generally consistent with other interests recognized within the Uniform Code of Military Justice (UCMJ), Rules for Courts-Martial, and Military Rules of Evidence in avoiding undue embarrassment or degrading evidence. *See generally* Article 31(c) UCMJ, 10 U.S.C. § 831(c); R.C.M. 806(b); Mil. R. Evid. 303; and Mil. R. Evid. 611(a)(3).

Conclusion

The United States supports Appellant's motion to seal the video recordings contained in page eighty-two of Defense Exhibit P.

James A. Burkart Digitally signed by
James A. Burkart

JAMES A. BURKART
Lieutenant Colonel, U.S. Marine Corps
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Navy-Marine Corps Appellate
Review Activity



Certificate of Filing and Service

I certify I uploaded this document into this Court's case management system and emailed it to this Court's filing address and Appellate Defense Counsel, Major Anthony M. GRZINCIC, U.S. Marine Corps, on August 19, 2022.

James A. Burkart Digitally signed by
James A. Burkart

JAMES A. BURKART
Lieutenant Colonel, U.S. Marine Corps
Appellate Government Counsel

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

Before Panel No. 2

UNITED STATES

Appellee

v.

Thae OHU

Corporal (E-4)

U. S. Marine Corps,

Appellant

**APPELLANT’S BRIEF AND
ASSIGNMENT OF ERROR**

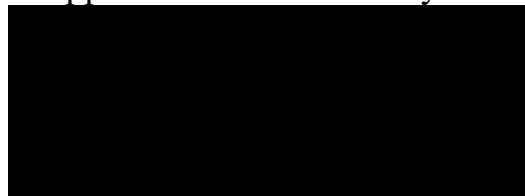
Filed under Seal

NMCCA No. 202100266

Tried at Marine Corps Base
Quantico, Virginia, on May 12,
2021 before a Special Court-Martial
convened by Commanding General,
Training Command; LtCol M.D.
Zimmerman, USMC, presiding.

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

Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity



Issue Presented

I. Article 66(c) only allows this court to approve a punishment that is appropriate for the offender. Was a Bad Conduct Discharge inappropriately severe sentence considering Cpl Ohu's strong mitigation case?

Statement of Statutory Jurisdiction

Cpl Thae Ohu, received a special court-martial sentence which included a bad-conduct discharge.¹ The Judgment was entered into the record as adjudged.² Accordingly, this Court has jurisdiction pursuant to Article 66(b)(3), Uniform Code of Military Justice (UCMJ).³

Statement of the Case

A military judge alone, sitting as a special court-martial, convicted Cpl Ohu, consistent with her pleas, of one specification of aggravated assault, and two specifications of assault consummated by a battery in violation of Article 128, UCMJ; one specification of destruction of military property in violation of Article 108, UCMJ; and two specifications of willful disobedience of a lawful order of a superior commissioned officer in violation of Article 90, UCMJ.⁴ The military

¹ R. at 317.

² Entry of Judgement dtd August 26, 2021

³ 10 U.S.C. § 866 (2019).

⁴ R. at 141-42; 10 U.S.C. §§ 890, 908, 928 (2019).

judge sentenced Cpl Ohu to a reduction to E-1, confinement for a total 328 days, and a bad-conduct discharge.⁵

Statement of Facts

- A. From the time she was a child, Cpl Ohu has faced innumerable challenges.

Cpl Ohu's father was a Burmese freedom fighter struggling for democracy against his government's brutal dictatorship. Her parents eventually fled to Bangkok, Thailand to escape the danger of bombs and gunfire.⁶ As a newborn baby, Cpl Ohu was taken to a Burmese refugee camp located in Thailand, where she spent her first few years.⁷ The United States Government eventually offered her family the chance to immigrate to America, and they took it.⁸ But Cpl Ohu's struggles continued even after arriving in America.

Due to limited language skills, unfamiliarity with how to navigate the American way-of-life (such as how to enroll the children in schools), and lack of support systems in their new home, the family was forced to again relocate when Cpl Ohu was four years old.⁹ Cpl Ohu lacked a stable environment growing up. Her parents would get into serious conflicts, which resulted in her mother going to

⁵ R. at 317.

⁶ R. at 162.

⁷ R. at 163.

⁸ R. at 163.

⁹ R. at 163.

jail.¹⁰ Her father struggled with alcohol, and it was discovered that her mother suffers from [REDACTED].¹¹

During a [REDACTED] her mother [REDACTED] and her sister while they hid their youngest sister in the closet.¹² This resulted in her and her sister being placed in foster care the first time.¹³ Her mother was sent to live in a women's home.¹⁴ Eventually they returned to live with their father, but ended up in foster care again after her father discharged a gun in the house when he found her older sister in bed with her boyfriend.¹⁵ During this second period of foster care, Cpl Ohu was [REDACTED] by her foster mother, who would often not even feed her.¹⁶ On top of all this, Cpl Ohu was [REDACTED] as a child by a family friend.¹⁷

When she was in high school, Cpl Ohu began having sex.¹⁸ And when she was a sophomore, she became pregnant.¹⁹ The pregnancy ended in an incredibly difficult [REDACTED] in her second trimester.²⁰ This triggered [REDACTED] and led to

¹⁰ R. at 163.

¹¹ R. at 274.

¹² R. at 274.

¹³ R. at 274.

¹⁴ R. at 163.

¹⁵ R. at 274.

¹⁶ R. at 275.

¹⁷ R. at 275; D.E. Q at 1.

¹⁸ R. at 275.

¹⁹ R. at 275.

²⁰ R. at 276.

Cpl Ohu's first [REDACTED]²¹ She was admitted to inpatient psychiatric treatment and was diagnosed with [REDACTED] and [REDACTED]²²

Cpl Ohu did not have a solid support system, and after the unwed pregnancy, [REDACTED] and because of her [REDACTED] she felt stigmatized by her close knit Burmese immigrant community.²³ She felt as if she had lost her honor.²⁴

B. She was open and honest with the Marine Corps about her struggles prior to joining – she was advised to stop taking her medication so that she could get a waiver.

Cpl Ohu viewed the Marine Corps as a way to earn her honor back.²⁵ When she initially attempted to join the Marine Corps, she was turned away because she acknowledged to them that she was suffering from [REDACTED] and [REDACTED] and on medication.²⁶ [REDACTED]

[REDACTED]²⁷ The recruiter informed Cpl Ohu that in order to join the Marine Corps, she would have to stop taking her medication for at least two years.²⁸

She did stop taking her meds, and as a result, the Marine Corps granted her a waiver and allowed her to enlist.²⁹ [REDACTED]

²¹ R. at 276.

²² R. at 276.

²³ R. at 277.

²⁴ R. at 277.

²⁵ R. at 277.

²⁶

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ P.E. 16 at 7.

[REDACTED]

[REDACTED],³⁰ [REDACTED]

[REDACTED].³¹ Ultimately, the waiver was granted.³²

C. Cpl Ohu thrived when her illness was not hampering her.

At her hearing, several of Cpl. Ohu's supervisors and mentors came in and testified on her behalf. The Sergeant Major from her first command in [REDACTED] discussed how he and other senior enlisted leadership supported her, and although there had been one previous minor issue, she generally thrived while she was at that command.³³ But once those senior enlisted leaders left, Cpl. Ohu lost her support system in [REDACTED].³⁴

And it was at this time that Cpl. Ohu was betrayed by her direct supervisor.³⁵ Towards the end of her time at [REDACTED] the Sergeant she worked for [REDACTED] [REDACTED].³⁶ Because they worked together, she not only saw, but was required to interact with her assailant every day.³⁷ She discussed the incident in private with her Chaplain. But because of the power dynamic, and without her senior leadership support system, she was afraid to officially report him at that time.³⁸

³⁰ [REDACTED]

³¹ [REDACTED]

³² [REDACTED]

³³ R. at 245-251.

³⁴ R. at 279.

³⁵ R. at 279.

³⁶ R. at 279.

³⁷ R. at 279-80.

³⁸ R. at 280.

She eventually PCS'ed from [REDACTED] to NAS Oceana to work at the schoolhouse. And for a while, she was able to successfully cope with her illness and prevent it from negatively affecting her life. Her supervisor there, who worked with Cpl Ohu for roughly 18 months beginning in late 2015 or early 2016, testified at the court-martial that she was “proficient,” “professional,” and a person he routinely relied on to accomplish the mission.³⁹

But he also explained that Cpl Ohu recognized that she was struggling, and her mental health was declining.⁴⁰ She came to him for support regarding her mental health issues, and he fully supported her.⁴¹ During this time, she was attending mental health treatment, and according to him, “it was never an issue.”⁴² Overall, his opinion was that she was a “phenomenal Marine.”⁴³ But Cpl Ohu was continuing to struggle.⁴⁴ As the symptoms of her mental illnesses (i.e. erratic behavior, short-temper, etc...) manifested themselves, Cpl Ohu eventually found herself being NJP'ed and counseled. It was at this time that she officially reported what had happened to her in [REDACTED]⁴⁵

³⁹ R. at 150.

⁴⁰ R. at 151.

⁴¹ R. at 151.

⁴² R. at 151.

⁴³ R. at 153.

⁴⁴ R. at 281.

⁴⁵ R. at 280.

D. Cpl Ohu's mental health struggles are well documented.

Throughout her time in the military, Cpl Ohu has been repeatedly evaluated by mental health professionals. A Physical Evaluation Board determined that she suffers from chronic [REDACTED] and moderate [REDACTED] with intermittent [REDACTED] (with current episode with [REDACTED]).⁴⁶ The Board determined that these conditions were severe enough to recommend that she be medically retired.⁴⁷

Likewise, the Department of Veteran's Affairs determined that Cpl Ohu suffered from service connected major [REDACTED] with [REDACTED] and [REDACTED] (claimed as adjustment [REDACTED]).⁴⁸ For these conditions, they assigned her a 70% disability evaluation.⁴⁹ The Department of Veterans Affairs found that although these conditions may have existed prior to military service, they were permanently worsened as a result of service.⁵⁰ The disability rating was based on:

- Difficulty in adapting to stressful circumstances
- Difficulty in adapting to work
- Depressed mood
- Suicidal ideation
- Difficulty in adapting to a work-like setting

⁴⁶ D.E. A at 7.

⁴⁷ D.E. A at 7.

⁴⁸ D.E. B at 2.

⁴⁹ D.E. B at 2.

⁵⁰ D.E. B at 4.

- Anxiety
- Difficulty in establishing and maintaining effective work and social relationships
- Chronic sleep impairment
- Panic attacks more than once a week
- Occupational and social impairment with reduced reliability and productivity.
- Bruxism⁵¹

At trial, a clinical neuropsychologist discussed the results of his evaluation of Cpl Ohu.⁵² He acknowledged the “chaotic and traumatic” nature of her childhood, referencing specific examples involving the move from [REDACTED] to [REDACTED] to the U.S., her mother’s mental illness, being [REDACTED] being in and out of foster care, and her pregnancy and [REDACTED].⁵³ Based on his assessment, in addition to [REDACTED] Cpl Ohu also suffers from [REDACTED] and [REDACTED].⁵⁴ The neuropsychologist explained that Cpl Ohu’s behavior is consistent with what would be expected of someone affected by these conditions.⁵⁵

These conditions raised the possibility that Cpl Ohu was incompetent to assist in her defense or stand trial.⁵⁶ While the charges were pending a previous court-martial, and while Cpl Ohu was confined in pre-trial confinement, she was

⁵¹ D.E. B at 6.

⁵² R. at 177.

⁵³ R. at 187.

⁵⁴ R. at 188.

⁵⁵ R. at 188-92.

⁵⁶ R. at 6, 32.

evaluated under R.C.M. 706.⁵⁷ Because the issue had already been considered and litigated, the military judge referenced his ruling from the previous trial, and included it as Appellate Exhibit VII.⁵⁸

[REDACTED]

[REDACTED]⁵⁹ [REDACTED]

[REDACTED]

[REDACTED]

⁶⁰

[REDACTED]

[REDACTED]

[REDACTED]⁶¹

⁵⁷ Those charges were withdrawn from that general court-martial and re-referred to this court-martial.

⁵⁸

⁵⁹

⁶⁰

⁶¹

[REDACTED]

[REDACTED]

[REDACTED] ⁶² [REDACTED]

[REDACTED]

[REDACTED] ⁶³ [REDACTED]

[REDACTED]

[REDACTED] ⁶⁴ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ⁶⁵ At the time of this court-martial, Cpl Ohu

was taking [REDACTED] and [REDACTED]

[REDACTED] medication to manage her mental illness. ⁶⁶

Lastly, on February 11, 2020, Cpl Ohu suffered from a major mental breakdown and attempted to [REDACTED] by running into traffic. ⁶⁷ She repeatedly attempted to be transferred to wounded warrior battalion at that time. ⁶⁸ But in spite of these significant and ongoing mental health issues, Cpl Ohu's application to the wounded warrior battalion was rejected twice. ⁶⁹

⁶² [REDACTED]
⁶³ [REDACTED]
⁶⁴ [REDACTED]
⁶⁵ [REDACTED]
⁶⁶ [REDACTED]

⁶⁷ R. at 170-171.

⁶⁸ D.E. F at 1-2.

⁶⁹ D.E. F at 1-2.

E. In the midst of a mental health crisis Cpl Ohu attacked SSgt Hotel.

On April 5, 2020, a minor argument between Cpl Ohu and SSgt Hotel escalated into a full-blown mental health crisis. SSgt Hotel and Cpl Ohu were (and continue to be) in a committed romantic and intimate relationship.⁷⁰ They lived together in the house where the incident occurred.⁷¹ That morning, they had gotten into a minor argument over spending money on a clothes washer and dryer, and Cpl Ohu irrationally believed that SSgt Hotel was ending their relationship.⁷² Irrational behavior in response to a sense of abandonment is a common occurrence in people, such as Cpl Ohu, who suffer from [REDACTED]⁷³

Accordingly, Cpl Ohu left and got intoxicated.⁷⁴ When she returned home distressed hours later, she went into the kitchen and grabbed a knife to hurt herself.⁷⁵ But SSgt Hotel was in her way.⁷⁶ In that moment, she experienced a flashback where she felt anger and resentment stemming from her [REDACTED]⁷⁷ For that moment, she visualized that she was attacking the Marine who had [REDACTED] her years ago, even though she was aware that only she and SSgt Hotel were in the house.⁷⁸ SSgt Hotel locked himself in a room, which

⁷⁰ P.E. 22 at 2.

⁷¹ R. at 38.

⁷² R. at 46, 57-58.

⁷³ R. at 188.

⁷⁴ R. at 39, 63.

⁷⁵ R. at 39, 63.

⁷⁶ R. at 39-40.

⁷⁷ R. at 57-63.

⁷⁸ R. at 40, 46-47, 57-63.

prevented Cpl Ohu from actually hurting him.⁷⁹ Nevertheless, Cpl Ohu continued to stab at the door with the knife.⁸⁰ After a short amount of time, Cpl Ohu calmed down and stopped.⁸¹ Ultimately, at trial, Cpl Ohu recognized that regardless of whether she perceived SSgt Hotel or the Marine who [REDACTED] she had no justification for trying to attack someone with a knife.⁸²

SSgt Hotel has repeatedly stated that although it was a dangerous situation, he was concerned her mental health, not about being hurt.⁸³ And in fact, he was not injured in any way from the incident.⁸⁴ He only called the police in order to help him respond to her mental health crisis.⁸⁵

F. Cpl Ohu was also convicted of an assault related to a mental breakdown that occurred while Cpl Ohu was in confinement and of violating an MPO.

Later, while she was in the hospital after the incident on April 5, 2020, Cpl Ohu received a military protective order directing her to stay away from SSgt Hotel.⁸⁶ She was eventually released from the hospital, but had to speak to a command investigator about her previous [REDACTED] that she had reported.⁸⁷ It was an incredibly emotionally difficult day for Cpl Ohu, and she sought out SSgt

⁷⁹ R. at 40.

⁸⁰ R. at 40.

⁸¹ R. at 42.

⁸² R. at 66.

⁸³ R. at 40, 171.

⁸⁴ R. at 168.

⁸⁵ R. at 168.

⁸⁶ R. at 110.

⁸⁷ R. at 112.

Hotel who was (and continues to be) her primary support system.⁸⁸ She tried on several occasions to contact him, in spite of the military protective order, and eventually used her key to get into the house.⁸⁹ SSgt Hotel asked her to leave the house, and Cpl Ohu left without incident.⁹⁰ For this, she was convicted of a violation of Article 90, UCMJ.⁹¹

There was also an incident on July 22, 2020. While being held at Portsmouth Naval Hospital, Cpl Ohu again attempted to commit ██████████ with a razor blade.⁹² While she was waiting to be admitted into the emergency room, the chasers took a blanket from her that was keeping her warm.⁹³ At the time, Cpl Ohu was in severe emotional distress, and she had a meltdown.⁹⁴ She slipped out of her wrist restraints, then used the restraints to break a glass window on the door where she was being kept.⁹⁵ Glass from the door ended up getting into the eyes of two individuals who were standing on the other side of it.⁹⁶ For this, she was convicted of two specifications of violating Article 128, UCMJ.⁹⁷ Notably, neither of these named victims on the charge sheet elected to make a statement at the trial.

⁸⁸ R. at 112.

⁸⁹ R. at 113.

⁹⁰ R. at 113.

⁹¹ Entry of Judgement.

⁹² R. at 85.

⁹³ R. at 85.

⁹⁴ R. at 86.

⁹⁵ R. at 87.

⁹⁶ R. at 88.

⁹⁷ Entry of Judgement.

G. The prosecution and punishment of Cpl Ohu are directly in opposition to the victim's explicit desires.

SSgt Hotel stated that these court-martial proceedings “will leave me with the deepest regret in my life.”⁹⁸ He indicated that if he knew that the Marine Corps would use the incident to punish Cpl Ohu, he would never have called the police in the first place.⁹⁹ He said, “I cannot begin to tell you about the nightmares of regret that I will face if this court places a conviction on Corporal Ohu.”¹⁰⁰ He finished his plea to the Court by stating, “My immediate and extended family, my daughter and I, are pleading with every fiber of our existence for this court to end the injustice that has befallen on Corporal Ohu...I demand that grace be given and compassion granted for Thae Ohu, [] this and only this will bring justice for me and my family.”¹⁰¹

H. While in confinement, Cpl Ohu suffered inhumane conditions.

Cpl Ohu was placed in pre-trial confinement on June 19, 2020, and remained there until May 12, 2021.¹⁰² [REDACTED]

[REDACTED]¹⁰³ First off, she had limited access to mental health

⁹⁸ R. at 174.

⁹⁹ R. at 174.

¹⁰⁰ R. at 174.

¹⁰¹ R. at 174.

¹⁰² [REDACTED] Statement of Trial Results.

¹⁰³ [REDACTED].

treatment during this time. Brig personnel acknowledged “we do not provide any pre-trial mental health treatment here at this facility.”¹⁰⁴

Additionally, Cpl Ohu was placed in a completely empty cell for days at a time.¹⁰⁵ She was placed in a “suicide risk cell” which effectively constituted solitary confinement.¹⁰⁶ She was denied access to any books, journals, and was even denied a Bible to read.¹⁰⁷ During these extended times, brig staff refused to allow Cpl Ohu to contact her attorneys.¹⁰⁸ They suggested that her ability to speak on the phone to her attorneys was contingent on her improving her behavior – indicating that the restriction was punitive and the ability to speak to her attorneys was a reward she could earn.¹⁰⁹ On numerous occasions, Cpl Ohu was prevented from seeing her attorneys even when they traveled to meet in person.¹¹⁰

¹⁰⁴ D.E. P at 28.

¹⁰⁵ R. at 288-289.

¹⁰⁶ R. at 288-89.

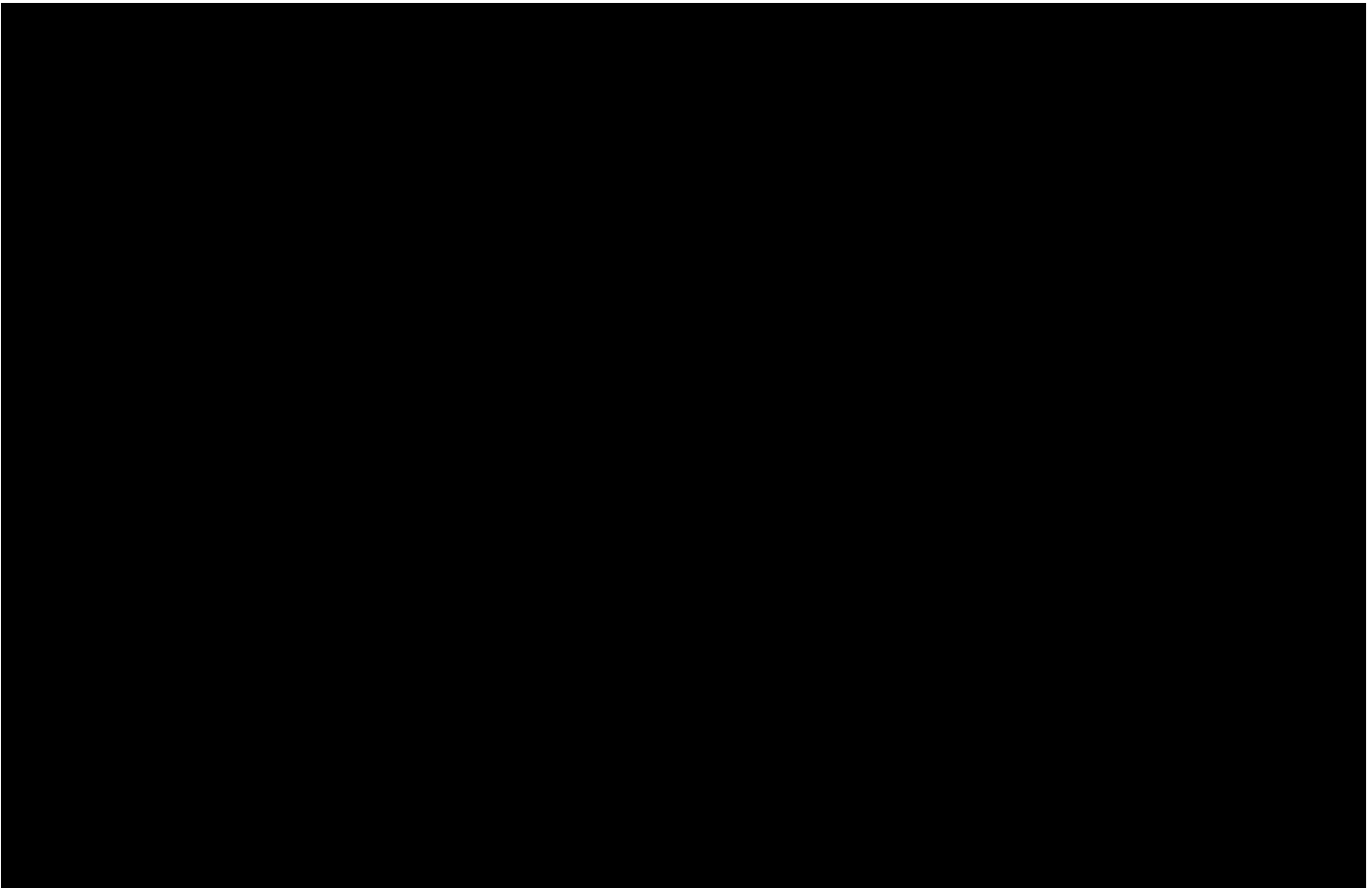
¹⁰⁷ R. at 289; D.E. P at 48.

¹⁰⁸ D.E. P at 9-10.

¹⁰⁹ D.E. P at 9-10.

¹¹⁰ D.E. P at 13, 23-24.

But the most ignominious treatment of Cpl Ohu was her lack of bathroom facilities. Cpl Ohu was not provided access to a toilet, but was instead required to defecate and urinate into a hole in the floor in her cell as depicted in these photographs:



Defense Exhibit G at 19-20, 22.

She was not even provided with water to “flush” any remnant fecal matter down this hole in the ground.¹¹¹ On at least one occasion, she was required to pick

¹¹¹ R. at 289.

up her feces with her hands because she did not get it all in the hole while she was defecating.¹¹²

- I. The military judge awarded a bad conduct discharge, but recommended that the convening authority suspend and remit it.

Ultimately, the military judge awarded Cpl Ohu a Bad Conduct Discharge, but included a specific recommendation to the convening authority that he suspend the discharge, which would allow Cpl Ohu to be discharged without a punitive discharge.¹¹³ The convening authority rejected the judge's recommendation.¹¹⁴

Summary of Argument

When weighing the offenses against the significant mitigating evidence in this case, Cpl Ohu's conduct did not merit a bad-conduct discharge. Cpl Ohu is a Marine with a well-documented history of mental illness, who was suffering from significant emotional distress. Additionally, although the incident involving SSgt Hotel was serious, ultimately nobody was hurt. And SSgt Hotel was more concerned about Cpl Ohu's condition. He has repeatedly expressed his opinion that she should not be given a punishment detrimental to her receipt of mental health treatment, and indicated that harsh punishment by this court would actually re-victimize him as well. Finally, Cpl Ohu's deplorable confinement conditions

¹¹² R. at 289.

¹¹³ R. at 317.

¹¹⁴ Entry of Judgment.

constitute significant mitigation evidence. In light of these factors and the punishment already served by Cpl Ohu, a bad-conduct discharge is unnecessarily severe.

Argument

IV. *Article 66(c) only allows this court to approve a punishment that is appropriate for the offender. A bad-conduct discharge is an inappropriately severe sentence in light of the circumstances.*

Standard of Review

This Court reviews the appropriateness of a sentence *de novo*.¹¹⁵

Discussion

This Court “may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved.”¹¹⁶ The sentence should not be more severe than that “warranted by the offense, the circumstances surrounding the offense, [the offender’s] acceptance or lack of responsibility for [the] offense, and his [or her] prior record.”¹¹⁷ It is important “that the punishment should fit the offender and not merely the crime.”¹¹⁸ If a sentence is unjustifiably severe, this Court may not approve it.¹¹⁹

¹¹⁵ *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).

¹¹⁶ 10 U.S.C. § 866(c) (2019).

¹¹⁷ *United States v. Aurich*, 31 M.J. 95, 97 (C.M.A. 1990).

¹¹⁸ *United States v. Mack*, 9 M.J. 300, 317 (C.M.A. 1980) (quotation omitted).

¹¹⁹ *See United States v. Lanford*, 20 C.M.R. 87, 92-95 (C.M.A. 1955).

- A. The case does not rise to the level of a bad-conduct discharge when considered in light of Cpl Ohu's mental health issues.

“The appropriateness of a sentence must be judged by an “individualized consideration” of “the nature and seriousness of the offense and the character of the offender.”¹²⁰ In this case, the “character of the offender” is a young Marine who has endured a lifetime of hardship and mental health struggles. She was upfront and honest with the Marine Corps about these challenges when she joined.¹²¹ And ultimately, although she accepted responsibility for her actions, the expert psychiatrist testified that her mental illness significantly contributed to her behavior.¹²² The severity and extent of her mental health issues and their relation to the offenses in this case thus constitutes significant mitigating evidence.

Additionally, in this case a bad-conduct discharge is not appropriate because contrary to R.C.M. 1003(b)(8)(C) a punitive separation did not “appear[] to be necessary.” This is particularly true where Cpl Ohu had a pending medical separation package that was ready for approval.¹²³ At the time of trial, Cpl Ohu had already served nearly a year of pre-trial confinement.¹²⁴

¹²⁰ *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

¹²¹ P.E. 16 at 7.

¹²² R. at 194-95.

¹²³ D.E. A; D.E. B.

¹²⁴ Statement of Trial Results.

- B. The central offense did not result in any injury to the victim. And the remaining victims of the other offenses elected not to testify or make any statement at trial.

On the other side of the ledger, the April 5, 2020 incident was serious, although it did not result in either physical or psychological injury to SSgt Hotel.¹²⁵ Consideration of the severity of the offense in this case should also include consideration of the impacts of the victim. In this case, there were no physical injuries suffered by SSgt Hotel.¹²⁶ In fact, SSgt Hotel, who regrets involving authorities, indicated that it was the prosecution and punishment of Cpl Ohu that would injure him, not the incident.¹²⁷ And the other two named victims did not desire to participate as witnesses or make an unsworn statement. Their silence is deafening. Cpl Ohu did not minimize the misconduct, but this Court should consider that the offense would have been considerably more severe if there had been significant long-term emotional or physical injuries to the victims in this case. But here, there weren't. The only person involved in this case who continues to suffer is Cpl Ohu.

- C. The punishment runs contrary to the sentencing principles.

First off the punishment certainly does not serve a general “deterrent” purpose in this case. Based on the sentencing evidence, the only deterrent effect

¹²⁵ R. at 168.

¹²⁶ R. at 168.

¹²⁷ R. at 174.

the punishment would have is to deter intimate partners from involving law enforcement in the first place.¹²⁸ SSgt Hotel stated that based on this hearing and Cpl Ohu's punishment, he "shouldn't have called the police that night."¹²⁹

Likewise, Cpl Ohu's mental health issues are uniquely severe. As such, the "deterrent" effect to any potential offenders is incredibly limited. Although her mental state did not rise to the level of being a defense, Cpl Ohu described that in the moment, she was unable to think rationally.¹³⁰ It is unlikely that even if Cpl Ohu had known about a case similar to hers at the time she was suffering from her breakdown, that it would have had any effect on her behavior. And the evidence by the expert psychiatrist indicated that far-and-away the most significant deterrent to Cpl Ohu doing something like this again is her access to treatment, not the punishment imposed in this court-martial. Thus a bad-conduct discharge does not "appear[] to be necessary" as a deterrent.

But the evidence shows that a bad-conduct discharge could undermine her ability to rehabilitate. The psychiatrist specifically indicated that her rehabilitation depend crucially on her access to mental health treatment in the future.¹³¹ A bad-conduct discharge makes Cpl Ohu ineligible for immediate care upon discharge.¹³²

¹²⁸ R. at 174.

¹²⁹ R. at 174.

¹³⁰ R. at 40, 46-47, 57-63, 66.

¹³¹ R. at 197-99.

¹³² D.E. N.

Her theoretical ability to receive care in the future is speculative. The evidence shows that lack of access to care would be detrimental to her rehabilitation.¹³³ And under the law, the punitive discharge disqualifies her from receiving care.¹³⁴ Thus, the bad-conduct discharge is inappropriately severe because it undermines the rehabilitation of the accused in this case.

D. This Court should also consider Cpl Ohu's appalling confinement conditions when considering whether the inclusion of a bad-conduct discharge made the punishment inappropriately severe.

This Court must consider the entire record of trial when determining whether a punishment is inappropriately severe.¹³⁵ In this case, that includes considering the deplorable conditions Cpl Ohu was subjected to while in confinement. She was not subjected to ordinary confinement conditions – she was not even allowed to have a paperback Bible to read.¹³⁶ The brig treated her rights to counsel as an incentive that could be earned if Cpl Ohu behaved herself.¹³⁷ She was kept in isolation and treated like an animal as evidenced by the images of the hole she was expected to use as a latrine (without toilet paper, water, or any other means to clean herself or the grate itself).¹³⁸

¹³³ R. at 197-99.

¹³⁴ D.E. N.

¹³⁵ 10 U.S.C. § 866(c) (2019).

¹³⁶ R. at 289; D.E. P at 48.

¹³⁷ D.E. P at 9-10, 13, 23-24.

¹³⁸ D.E. G at 19-20, 22.

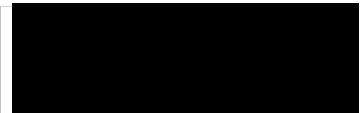

These conditions amounted to additional punishment beyond a simple calculation of day-for-day pre-trial confinement credit, particularly in light of “the character of the offender” in this case – a Marine with significant mental health issues. These confinement conditions exacerbated her mental health problems. Cpl Ohu suffered enough punishment as a result of her horrid confinement conditions. And a bad-conduct discharge on top of these conditions is inappropriately severe.

Conclusion

Cpl Ohu’s bad-conduct discharge is inappropriately severe when considering the significant mitigating mental health evidence and its relationship to the committed offenses and the conditions of confinement served.

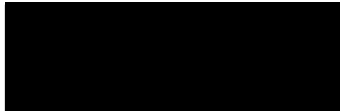
Relief Requested

This Court should not affirm the bad-conduct discharge.

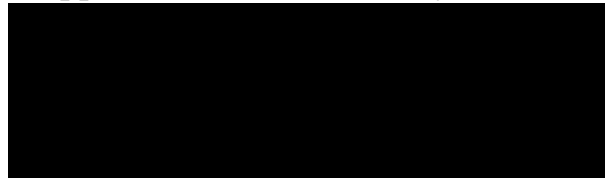

Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney


CERTIFICATE OF FILING AND SERVICE

I certify that the original and three copies of the foregoing were delivered to the Court, that a copy was uploaded into the Court's case management system, and that a copy of the foregoing was delivered to Appellate Government Division (Code 46) on May 17, 2022.



Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney



[REDACTED]

Subject: RECEIPT - Filing - Panel 2 - U.S. v. OHU - 202100266 - D - REDACTED BRIEF AND ASSIGNMENTS OF ERROR (GRZINCIC)

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United States Navy-Marine Corps
Court of Criminal Appeals

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Panel Paralegal

Navy-Marine Corps Court of Criminal Appeals

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Subject: Filing - Panel 2 - U.S. v. OHU - 202100266 - D - REDACTED BRIEF AND ASSIGNMENTS OF ERROR (GRZINCIC)

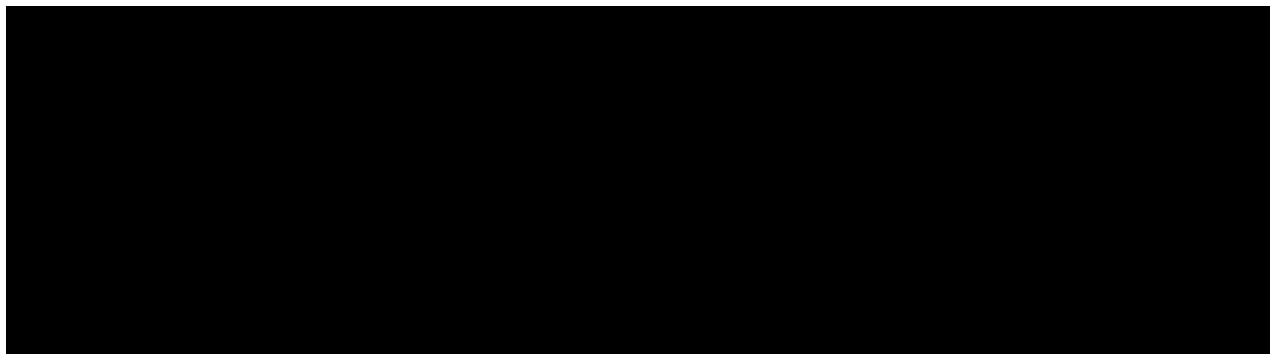
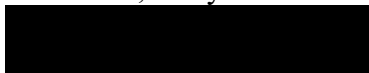
To this Honorable Court,

Please see the attached filing.

VR,

Anthony Grzincic
Major, U.S. Marine Corps
Appellate Defense Counsel

Code 45, Navy and Marine Corps Appellate Review Activity



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

Before Panel No. 2

| | | |
|-------------------|---|--------------------------------------|
| UNITED STATES, |) | ANSWER ON BEHALF OF |
| Appellee |) | APPELLEE |
| |) | |
| v. |) | Case No. 202100266 |
| |) | |
| Thae OHU, |) | Tried at Marine Corps Base Quantico, |
| Corporal (E-4) |) | Virginia, on May 12, 2021, before a |
| U.S. Marine Corps |) | special court-martial convened by |
| Appellant |) | Commanding General, Training |
| |) | Command, Lieutenant Colonel M. D. |
| |) | Zimmerman, U.S. Marine Corps, |
| |) | presiding. |

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

Error Assigned

**Article 66(c) ONLY ALLOWS THIS COURT TO
APPROVE A PUNISHMENT THAT IS
APPROPRIATE FOR THE OFFENDER. WAS A
BAD CONDUCT DISCHARGE [AN]
INAPPROPRIATELY SEVERE SENTENCE
CONSIDERING CPL OHU'S STRONG
MITIGATION CASE?**

Statement of Statutory Jurisdiction

The Entry of Judgment includes a sentence of a bad-conduct discharge. This Court has jurisdiction under Article 66(b)(3), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(b)(3) (2016).

Statement of the Case

A military judge sitting as a special court-martial convicted Appellant, pursuant to her pleas, of willfully disobeying a superior commissioned officer, damaging military property, aggravated assault with a deadly weapon upon an intimate partner, and assault consummated by a battery, in violation of Articles 90, 108, and 128, UCMJ, 10 U.S.C. §§ 890, 908, 928 (2016). The Military Judge sentenced Appellant to 328 days of confinement, reduction to E-1, and a bad-conduct discharge. The Convening Authority noted “the sentence is approved,”¹ and the Military Judge entered the judgment into the Record.

¹ (Post-Trial Action at 2, Aug. 25, 2021.) But his action was ultra vires. *See* R.C.M. 1109(c) (2019) (outlining possible actions by convening authorities); R.C.M. 1109(g) (2019) (same); Art. 60a, UCMJ, 10 U.S.C. § 860a (2016) (same).

Statement of Facts

- A. The United States charged Appellant with, inter alia, attempted murder. Under a Plea Agreement, Appellant pled guilty to willfully disobeying a superior commissioned officer, damaging government property, aggravated assault with a deadly weapon upon an intimate partner, and assault consummated by a battery.

The United States charged Appellant with several offenses, including attempted murder. (Charge Sheet, May 3, 2021; Add. Charge Sheet, May 3, 2021.)

Under a Plea Agreement, Appellant pled guilty to willfully disobeying a superior commissioned officer, damaging military property, aggravated assault with a deadly weapon upon an intimate partner, and assault consummated by a battery. (R. 17; Appellate Ex. IV at 2–8.)

- B. During the providence inquiry, Appellant disclaimed a lack of mental responsibility defense. Aided by a Stipulation of Fact, she admitted her guilt and detailed her crimes.

1. Appellant disclaimed a lack of mental responsibility defense, and the Military Judge found her competent to stand trial.

The Military Judge addressed Appellant’s mental health and explained the defense of lack of mental responsibility. (See R. 22–32.) Appellant stated she had a “severe mental disease or defect” during her actions but admitted she appreciated “the nature and quality or wrongfulness of” of them. (R. 25.) She disclaimed the defense of lack of mental responsibility (R. 25–26) and the Military Judge found her competent to stand trial (R. 32).

2. Appellant chased her intimate partner with a knife and repeatedly stabbed the locked door he hid behind.

Appellant and SSgt Hotel lived together and were intimate partners. (R. 38–39.) Despite intending to hurt herself, when Appellant saw SSgt Hotel, she chased him with a “chef knife”—slightly longer than eight inches—while yelling, “I’m going to kill you, you mother fucker. I’m going to kill you, you son of a bitch, you son of a bitch.” (R. 39–40, 60–61; Prosecution (Pros.) Ex. 22.) SSgt Hotel locked himself in a bedroom, and Appellant repeatedly stabbed at the door, damaging it. (R. 40, 44; *see* Pros. Ex. 8–9.)

Appellant “intended to hurt him” and “would have hurt him” if “the door wasn’t there.” (R. 40, 43.)

3. While hospitalized, Appellant slipped her restraints and “shattered” a window, which damaged government property and caused shards of glass to strike two Marines.

After the incident, Appellant was hospitalized and restrained. (R. 85.) She became “really upset” when the corpsmen took her blanket, slipped her restraints off, and used them “as a weapon to hit the window,” which “cracked in a million different places.” (R. 86–87, 92.) The second time Appellant hit the window, “the glass shattered and it went into [a Marine’s] eye” requiring the Marine “to get her eyes flushed out.” (R. 85, 88–89.) The glass also ended up “striking” another Marine, who Appellant knew was “behind the door holding it.” (R. 98.)

4. Appellant violated her commanding officer's orders not to contact or come within sixty feet of SSgt Hotel.

Appellant's commanding officer ordered her not to contact SSgt Hotel or come within sixty feet of him or their residence. (R. 109–110, 118.) Regardless, she called SSgt Hotel—"asking him to meet"—and then went to their house and entered it with her key. (R. 113.)

- C. The Military Judge explained the Plea Agreement, accepted Appellant's pleas, and found her guilty.

The Military Judge discussed Appellant's Plea Agreement with her. (R. 121–138.) He confirmed that she "agree[d] to waive an administrative discharge board" and understood "what that might mean for [her]": that her discharge may be characterized "under other-than honorable conditions." (R. 126; Appellate Ex. IV at 9.)

He also confirmed she understood "the limitation the plea agreement puts on the sentence that this court could award" and "the consequences of a punitive discharge," which "may adversely affect [her] ability to receive Veterans' and all other benefits accrued as a result of [her] military service." (R. 135–36; Appellate Ex. IX at 11.)

Because Appellant "fully" understood and had "no questions about the plea agreement," the Military Judge accepted her pleas, and found her guilty. (R. 136–37, 141.)

D. Pre-sentencing, SSgt Hotel gave an unsworn statement, and Appellant presented a case in extenuation and mitigation.

1. SSgt Hotel stated Appellant did not injure him, and her conviction did not constitute justice.

In an unsworn statement, SSgt Hotel stated Appellant's actions did not injure him, and he regretting contacting the police. (R. 168.) He noted her conviction would not be justice for him. (R. 174.)

2. In extenuation and mitigation, Appellant detailed her mental health issues, sexual assault, and childhood trauma.

Appellant submitted documentation that a Physical Evaluation Board rated her as seventy percent disabled, (Defense (Def.) Ex. A at 8), and the Department of Veteran's Affairs proposed a ninety percent disability rating for "service-connected disabilities," (Def. Ex. B. at 22.) She also showed a discharge "under conditions other than honorable" would bar her from post-service benefits. (Def. Ex. N at 1.)

An "expert in the field of clinical and forensic psychology" who interviewed and tested Appellant diagnosed her with [REDACTED] and [REDACTED] and described her background as "highly chaotic and traumatic." (R. 185–88.)

In an unsworn statement, Appellant discussed her childhood: her [REDACTED] mother stabbed her, she was twice put into foster care where her guardians did not feed her, she was [REDACTED] by a family friend," and she

miscarried as a teenager, which led to attempted [REDACTED]

[REDACTED]’ (R. 274–76.) She claimed that after joining the Marine Corps, her supervisor sexually assaulted her but her command was not “willing to acknowledge” it. (R. 279–81.) However, documentation shows she “recanted” her statement and delayed three years in reporting the assault, which precluded law enforcement from finding “any other evidence to corroborate” her account. (Def. Ex. C at 5.)

Appellant also described the conditions of her pretrial confinement: she was placed in a “[REDACTED] risk cell” where she stayed “for up to 24 hours,” “was not afforded correspondence,” had “no running water,” and “had to eat with [her] hands.” (R. 289.)

E. The Military Judge heard argument, sentenced Appellant, and recommended that the Convening Authority suspend the punitive discharge.

Trial Counsel requested a punitive discharge because Appellant’s actions “put the life and safety of numerous victims at risk.” (R. 304.)

Appellant asked for “no more punishment” because she “is broken and she needs treatment. She doesn’t need more punishment.” (R. 309.) And a “BCD imposes an unnecessary barrier between [Appellant] and treatment.” (R. 313.)

The Military Judge sentenced Appellant to 328 days of confinement—328 days for aggravated assault, 140 for one Specification of assault consummated by a

battery, thirty for one Specification of assault consummated by a battery, sixty for damaging military property, and thirty for each Specification of willfully disobeying superior commissioned officer, to run concurrently—reduction to E-1, and a bad-conduct discharge. (R. 317.)

The Military Judge recommended the Convening Authority “suspend the punitive discharge” because Appellant’s “significant mental health history and diagnoses” constitute “significant extenuation and mitigation.” (R. 317.)

Argument

APPELLANT’S BAD-CONDUCT DISCHARGE APPROPRIATELY REFLECTS HER CRIMES AND CHARACTER: DESPITE HER MENTAL HEALTH ISSUES, SHE VIOLENTLY ATTACKED ANOTHER MARINE WITH A DEADLY WEAPON.

A. The standard of review is de novo.

This Court “review[s] sentence appropriateness de novo.” *United States v. Forbes*, 77 M.J. 765, 776 (N-M. Ct. Crim. App. 2018).

B. Courts determine the appropriateness of a sentence by the nature of the offense and the character of the offender.

“Th[is] Court may affirm . . . the sentence or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved.” Art. 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) (2016).

“Sentence appropriateness involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves.” *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988). Appellate courts provide “individualized consideration of the particular accused on the basis of the nature and seriousness of the offense and the character of the offender.” *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (citation and internal quotation marks omitted). “Notwithstanding [this Court’s] significant discretion to determine sentence appropriateness, [it] may not engage in acts of clemency.” *United States v. Baratta*, 77 M.J. 691, 692 (N-M. Ct. Crim. App. 2018) (citing *United States v. Nerad*, 69 M.J. 138, 146 (C.A.A.F. 2010)).

“A bad-conduct discharge . . . is designed as a punishment for bad-conduct” and is “appropriate for an accused . . . whose punitive separation appears to be necessary.” R.C.M. 1003(b)(8)(C) (2019).

C. A bad-conduct discharge—which Appellant’s Plea Agreement expressly authorized and contemplated—appropriately reflects her crimes and character.

1. Appellant received the benefit of her Plea Agreement, which authorized a bad-conduct discharge.

In *United States v. Halfacre*, 80 M.J. 656 (N-M. Ct. Crim. App. 2020), this Court held the appellant “received the benefit of his bargain” when the military judge adjudged a dishonorable discharge, and the pretrial agreement “did not

negotiate any protection from a punitive discharge.” *Id.* at 663; *see also United States v. Fuster*, No. 202000230, 2021 CCA LEXIS 503, at *8 (N-M. Ct. Crim. App. Sept. 29, 2021) (“Although Appellant did not ‘beat’ his deal, he did receive a sentence that was legally permitted by it. He received the benefit of his bargain.”).

Similarly, in *United States v. Widak*, No. 201500309, 2016 CCA LEXIS 172 (N-M. Ct. Crim. App. Mar. 22, 2016), this Court rejected the appellant’s sentence appropriateness argument because “the appellant specifically bargained for a pretrial agreement that allowed for the approval of the sentence of which he now complains.” *Id.* at *8–9; *see also United States v. Casuso*, No. 202000114, 2021 CCA LEXIS 328, at *8 (N-M. Ct. Crim. App. June 30, 2021) (“We question Appellant’s claim of inappropriate severity when the sentence he received was within the range of punishment he was expressly willing to accept in exchange for his pleas of guilty.”).

Here, similar to *Halfacre*, *Fuster*, *Casuso*, and *Widak*, Appellant negotiated for “the sentence of which [s]he now complains.” (*See* Appellate Ex. IV at 10); *Halfacre*, 80 M.J. at 663; *Fuster*, 2021 CCA LEXIS 503, at *8–9; *Casuso*, 2021 CCA LEXIS 328, at *8; *Widak*, 2016 CCA LEXIS 172, at *8–9. This Court should thus “question Appellant’s claim of inappropriate severity when the sentence [s]he received was within the range of punishment [s]he was expressly willing to accept in exchange for h[er] pleas of guilty.” *Casuso*, 2021 CCA LEXIS 328, at *8.

2. Regardless, a bad-conduct discharge appropriately reflects Appellant's crimes and character.

Here, Appellant's actions constituted "bad conduct" that warrant a punitive discharge. *See* R.C.M. 1003(b)(8)(C). She grabbed an eight-inch-long "chef knife" and chased after SSgt Hotel, her intimate partner, while yelling, "I'm going to kill you, you mother fucker. I'm going to kill you, you son of a bitch, you son of a bitch." (R. 39–40, 60–61; Prosecution (Pros.) Ex. 22.) And when SSgt Hotel fled and locked himself in a bedroom for safety, Appellant repeatedly stabbed the door, significantly damaging it. (R. 40, 44; *see* Pros. Ex. 8–9.) She "intended to hurt him" and "would have hurt him" if "the door wasn't there." (R. 40, 43.) Then, after being hospitalized, she slipped her restraints off, and used them to "as a weapon" to "shatter[]" a window, causing glass to enter one Marine's eyes and "striking" another Marine. (R. 85–89, 92, 98.) Her case in extenuation and mitigation did not negate that she "put the life and safety of numerous victims at risk." (R. 304.)

Appellant's arguments fail. First, while she correctly notes "the punitive discharge disqualifies her from receiving care," she ignores that she would also not have received benefits even without a bad-conduct discharge. (Appellant's Br. at 22–23, May 17, 2022.) Indeed, as part of the Plea Agreement, she waived her right to an administrative discharge board, which would result in her discharge being

characterized as “under other-than-honorable conditions.” (R. 126; Appellate Ex. IV at 9.) Such a characterization is a “bar[] to benefits.” (Def. Ex. N at 1.) Thus, because Appellant was never going to receive benefits regardless of whether the Military Judge adjudged a bad-conduct discharge, the punitive discharge did not “undermine her ability to rehabilitate.” (*See* Appellant’s Br. at 22–23.)

Second, the Military Judge considered Appellant’s mitigating evidence in adjudging a sentence, including her pretrial confinement conditions, SSgt Hotel’s unsworn statement, the lack of victim impact statements from the other Marines, and Appellant’s “pending medical separation package.” (Appellant’s Br. at 18, 20–21.) And while he acknowledged her “significant mental health history and diagnoses” constituted “significant extenuation and mitigation,” he nevertheless felt a bad-conduct discharge was an appropriate sentence for her actions. (R. 317.) So too should this Court.

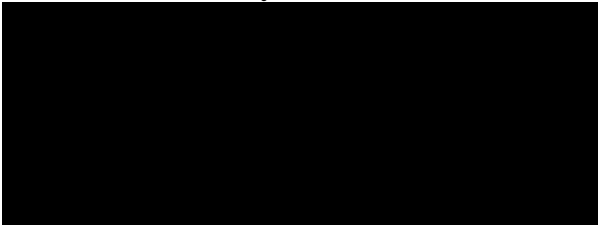
Appellant’s request for this Court to disapprove her bad-conduct discharge is nothing more than an impermissible act of clemency. *Compare* (Appellant’s Br. at 24), *with Baratta*, 77 M.J. at 692 (citing *Nerad*, 69 M.J. at 146). Indeed, even considering Appellant’s character, her “bad-conduct” necessitated punitive separation. *See* R.C.M. 1003(b)(8)(C); *Snelling*, 14 M.J. at 268.

Conclusion

The United States respectfully requests that this Court affirm the findings and sentence as adjudged below.

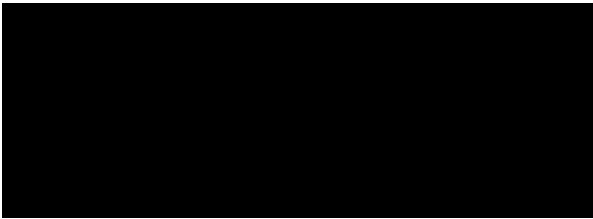
Michael A. Tuosto Digitally signed
by Michael A.
Tuosto

MICHAEL A. TUOSTO
Lieutenant, JAGC, U.S. Navy
Appellate Government Counsel
Navy-Marine Corps Appellate
Review Activity



Jeffrey S. Marden Digitally signed
by Jeffrey S.
Marden

JEFFREY S. MARDEN
Lieutenant Commander, JAGC, U.S. Navy
Appellate Government Counsel
Navy-Marine Corps Appellate
Review Activity



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Defense Counsel, Major Anthony M. GRZINCIC, U.S. Marine Corps, on July 11,
2022.

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by Michael A.
Tuosto
MICHAEL A. TUOSTO
Lieutenant, JAGC, U.S. Navy
Appellate Government Counsel

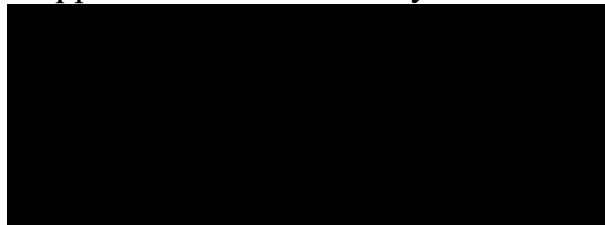
**IN THE UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS**

Before Panel No. 2

| | | |
|--|---|---|
| UNITED STATES |) | APPELLANT’S OUT OF TIME MOTION FOR SIXTH |
| |) | ENLARGEMENT OF TIME |
| <i>Appellee</i> |) | |
| |) | |
| v. |) | NMCCA No. 202100266 |
| |) | |
| Thae OHU Corporal (E-4) U.S. Marine Corps |) | Tried at Marine Corps Base Quantico, |
| |) | Virginia, on May 12, 2021 before a |
| |) | Special Court-Martial convened by |
| |) | The Commanding General, Training |
| <i>Appellant</i> |) | Command; LtCol M.D. Zimmerman, |
| |) | USMC, presiding |

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

Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity



COMES NOW the undersigned and respectfully moves for an enlargement of time to file a brief and assignments of error. The current due date is 9 May 2022. The number of days requested is 7. The requested due date is 16 May 2022. Cpl Ohu has been consulted and consents to this motion.

The current status of the case:

1. The Record was docketed on 29 September 2021.
2. The Moreno date is 29 March 2023.
3. Cpl Ohu is not currently in confinement.
4. The Record consists of 318 transcribed pages and a total of 1430 pages.
5. Counsel has completed his review of the unsealed portions of the record of trial.

Good cause exists for granting this motion. The enlargement is filed out of time because counsel anticipated having the brief completed by today, but simply needs a few additional days to finish the editing and review process. This is a special court-martial case that began as a premeditated murder allegation. Counsel has completed the first draft but it needs to be reviewed and finalized.

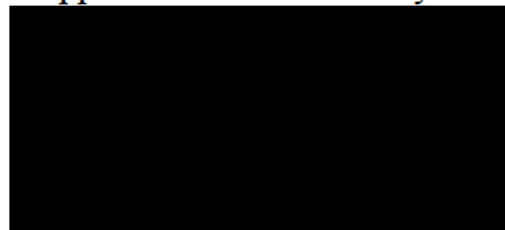
During the current period of enlargement, counsel finalized appellate strategy, completed research, and completed the first draft of the brief in this case. Counsel also provided supervisory and peer edits in *U.S. v. Gilmet*, and *U.S. v. Bocage*.

WHEREFORE, Appellant respectfully requests that this Court grant this motion for a 7-day enlargement of time.



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Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity



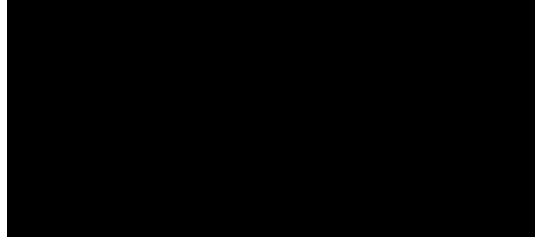
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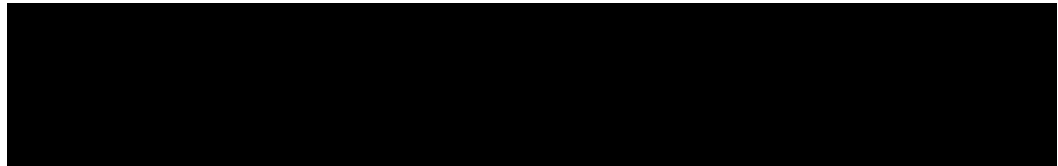


Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps

Appellate Review Activity



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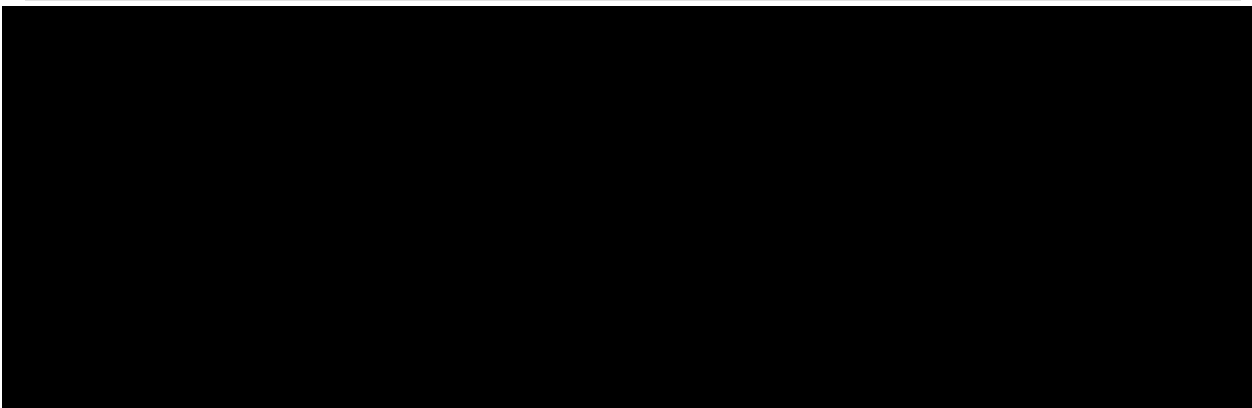
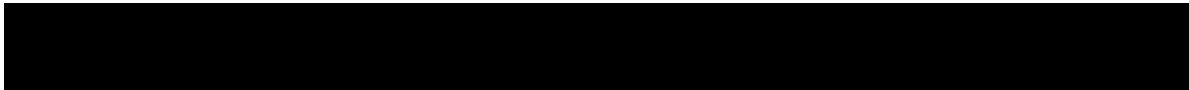
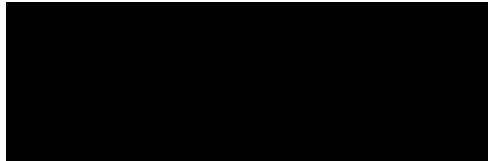
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United States Navy-Marine Corps
Court of Criminal Appeals



Panel Paralegal
Navy-Marine Corps Court of Criminal Appeals



Subject: Filing - Panel 2 - U.S. v. OHU - 202100266 - D - 6EOT (GRZINCIC)

To this Honorable Court,

Please see the attached filing.

VR,

Anthony Grzincic
Major, U.S. Marine Corps
Appellate Defense Counsel

Code 45, Navy and Marine Corps Appellate Review Activity

[REDACTED]

[REDACTED]

[REDACTED]

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

Before Panel No. 2

UNITED STATES

Appellee

v.

Thae OHU

Corporal (E-4)

U.S. Marine Corps

Appellant

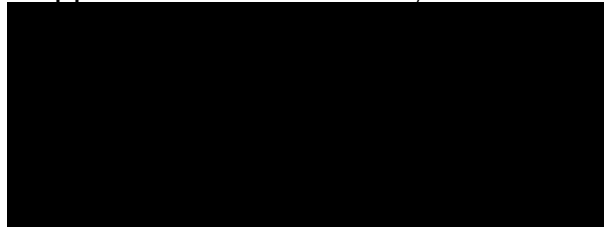
) **APPELLANT’S MOTION TO**
) **FILE THE BRIEF AND**
) **ASSIGNMENT OF ERROR UNDER**
) **SEAL**

) NMCCA No. 202100266

) Tried at Marine Corps Base Quantico,
) Virginia, on May 12, 2021 before a
) Special Court-Martial convened by
) Commanding General, Training
) Command; LtCol M.D. Zimmerman,
) USMC, presiding

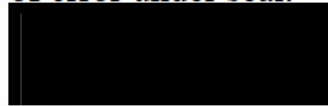
**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES
NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS**

Anthony M. Grzincic
Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity



Pursuant to Rule 17.4(c) of this Court's Rules of Appellate Procedure, Appellant respectfully requests to file the brief and assignments of error under seal. The nature of the brief focuses on appellant's mental health and requires reference to information contained in sealed exhibits. Thus, pursuant to Rule 17.4(b)(7), counsel could not file the brief with references to the sealed portions of the record without filing it under seal. As such, it is necessary in this case to file the brief under seal.

WHEREFORE, Appellant respectfully requests that this Court grant this motion to file the brief and assignments of error under seal.



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Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity



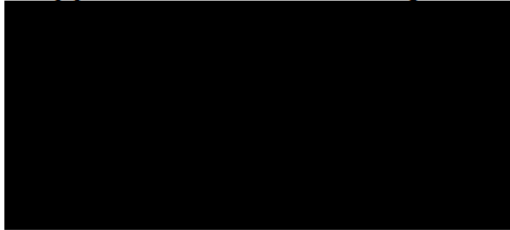
CERTIFICATE OF FILING AND SERVICE

I certify that the original of the foregoing was electronically delivered to the Court via email, that a copy was uploaded into the Court's case management system, and that a copy of the foregoing was delivered to Appellate Government (Code 46) on May 17, 2021.

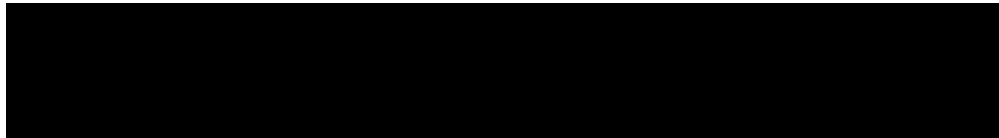


c

Major, U.S. Marine Corps
Appellate Defense Attorney
Navy-Marine Corps
Appellate Review Activity



From:
To:
Cc:



Subject: RECEIPT - Filing - Panel 2 - U.S. v. OHU - 202100266 - D - MOTION TO FILE BRIEF UNDER SEAL (GRZINCIC)
Date: Tuesday, May 17, 2022 10:30:31 AM

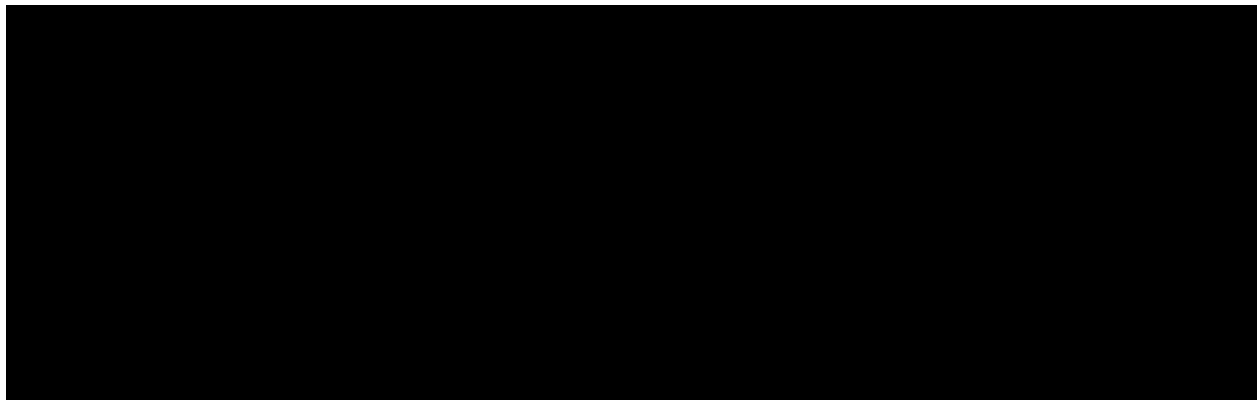
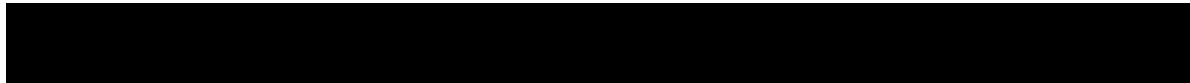
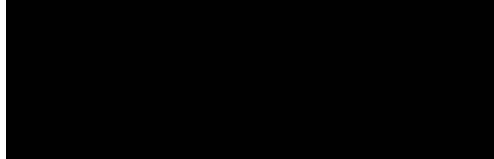
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MAY 17 2022

United States Navy-Marine Corps
Court of Criminal Appeals


Panel Paralegal

Navy-Marine Corps Court of Criminal Appeals



Subject: Filing - Panel 2 - U.S. v. OHU - 202100266 - D - MOTION TO FILE BRIEF UNDER SEAL (GRZINCIC)

To this Honorable Court,

Please see the attached filing.

VR,

Anthony Grzincic
Major, U.S. Marine Corps
Appellate Defense Counsel
Code 45, Navy and Marine Corps Appellate Review Activity

[REDACTED]

[REDACTED]

[REDACTED]

REMAND

THERE WERE NO REMANDS

SUPPLEMENTAL COURT-MARTIAL ORDER