

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,

Appellee

v.

Daniel H. ARNOLD
Lance Corporal (E-4)
U.S. Marine Corps,

Appellant

SUPPLEMENT TO PETITION FOR
GRANT OF REVIEW

Crim.App. Dkt. No. 202400368

USCA Dkt. No. 26-0126/MC

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF
APPEALS FOR THE ARMED FORCES:

Kimberly D. Barnes
Appellate Defense Counsel
Appellate Defense Division, Code 45
1254 Charles Morris Street, SE
Building 58, Suite 100
Washington, DC 20374
Phone: (971) 832-9634
kimberly.d.barnes22.civ@us.navy.mil
CAAF Bar No. 33570

Table of Contents

Table of Authorities	ii
Issue Presented.....	1
Whether the lower court erred in denying Appellant’s motion to attach his declaration.	1
Statement of Statutory Jurisdiction.....	1
Statement of the Case.....	1
Statement of Facts.....	2
Reason to Grant Review	3
This Court should review the lower court’s denial of the motion to attach because <i>Jessie</i> does not apply here, and even if it did, the lower court erred in applying <i>Jessie</i> . In doing so, it effectively negated Appellant’s right to personally raise issues for appellate review pursuant to <i>Grostefon</i>	3
A. This Court should grant review to examine whether <i>Jessie</i> has been overruled by statute.....	4
B. If <i>Jessie</i> applies despite Congress’ changes to the statute, then this Court should review the lower court’s misapplication of <i>Jessie</i> because it was erroneous and will lead to negation of an appellant’s right to personally raise issues for appellate review under <i>Grostefon</i>	10
C. If <i>Jessie</i> still applies, this Court should clarify how to apply it because the lower courts apply <i>Jessie</i> inconsistently.	14
Conclusion	17
Certificate of Compliance with Rule 21(b).....	19
Appendix.....	19
Certificate of Filing and Service.....	19

Table of Authorities

Supreme Court Cases

<i>Kimberly v. Marvel Ent., LLC</i> , 135 S. Ct. 2401 (2015).....	9
<i>Mackey v. Lanier Collection Agency & Serv.</i> , 486 U.S. 825, 837 (1988).....	9
<i>Universal Health Servs. v. United States</i> , 136 S. Ct. 1989, 195 L. Ed. 2d 348 (2016)	6

Court of Military Appeals and Court of Appeals for the Armed Forces Cases

<i>United States v. Allbery</i> , 44 M.J. 226 (C.A.A.F. 1996).....	8
<i>United States v. Beatty</i> , 64 M.J. 456 (C.A.A.F. 2007)	5
<i>United States v. Blanks</i> , 77 M.J. 239 (C.A.A.F. 2018).....	8-9
<i>United States v. Brennan</i> , 58 M.J. 351 (C.A.A.F. 2003).....	5
<i>United States v. Erby</i> , 54 M.J. 476 (C.A.A.F. 2001).....	5, 11, 12, 13
<i>United States v. Fagnan</i> , 12 C.M.A. 192 (C.M.A. 1961).....	4, 5, 6, 8, 10
<i>United States v. Gibson</i> , 43 M.J. 343 (C.A.A.F. 1995).....	9
<i>United States v. Grostefon</i> , 12 M.J. 431 (C.M.A. 1982)	passim
<i>United States v. Jessie</i> , 79 M.J. 437 (C.A.A.F. 2020).....	passim
<i>United States v. Lopez</i> , __ M.J. __, No. 24-0226, 2025 CAAF LEXIS 735 (C.A.A.F. Sept. 2, 2025)	14
<i>United States v. Parker</i> , 36 M.J. 269 (C.M.A. 1993)	5, 10, 11, 14
<i>United States v. Pena</i> , 64 M.J. 259 (C.A.A.F. 2007)	5, 13
<i>United States v. Price</i> , 7 C.M.A. 590 (C.M.A. 1957).....	6
<i>United States v. Pullings</i> , 83 M.J. 205 (C.A.A.F. 2023)	11
<i>United States v. Suarez</i> , 86 M.J. 65 (C.A.A.F. 2025).....	14
<i>United States v. Swift</i> , 53 M.J. 439 (C.A.A.F. 2000).....	9
<i>United States v. White</i> , 54 M.J. 469 (C.A.A.F. 2001)	11

Service Court of Criminal Appeals Cases

<i>United States v. Arnold</i> , No. 202400368, 2025 CCA LEXIS 572 (N-M. Ct. Crim. App. Dec. 11, 2025).....	passim
<i>United States v. Banks</i> , No. ACM 24057, 2025 CCA LEXIS 578 (A.F. Ct. Crim. App. Dec. 18, 2025)	7, 8, 9
<i>United States v. Cole</i> , No. ACM 40189, 2023 CCA LEXIS 118 (A.F. Ct. Crim. App. Mar. 6, 2023)	

<i>United State v. Cole</i> , 84 M.J. 398 (C.A.A.F. 2024).....	16
<i>United States v. Cruz</i> , No. 202400211, 2026 CCA LEXIS 19 (N-M. Ct. Crim. App. Jan. 20, 2026).....	15
<i>United States v. Giles</i> , No. ACM 40482, 2024 CCA LEXIS 544 (A.F. Ct. Crim. App. Dec. 23, 2024)	7, 8, 9
<i>United States v. Hale</i> , No. 202400240, 2025 CCA LEXIS 461 (N-M. Ct. Crim. App. Sept. 29, 2025)	15
<i>United States v. Ollison</i> , No. ACM S32745, 2024 CCA LEXIS 116 (A.F. Ct. Crim. App. Mar. 19, 2024)	16
<i>United States v. Zeische</i> , No. ACM 24022, 2025 CCA LEXIS 472 (A. F. Ct. Crim. App. Oct. 8, 2025)	12, 15

Statutes

Art. 66, UCMJ, 10 U.S.C. § 866.....	passim
Art. 67, UCMJ, 10 U.S.C. § 867.....	1
Art. 120b, UCMJ, 10 U.S.C. § 920b.....	1

Other Authorities

MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 910.....	12
National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283 (2021)	7, 8
National Defense Authorization Act for Fiscal Year 2022, Pub. L. 117-81 (2022)	7

Rules

CAAF Rule 19	13
CAAF Rule 21	3
NMCCA Rule 18.3	13, 14

Issue Presented

Whether the lower court erred in denying Appellant's motion to attach his declaration.

Statement of Statutory Jurisdiction

Appellant received a court-martial sentence that included a dishonorable discharge. Accordingly, his case fell within the lower court's Article 66 jurisdiction. 10 U.S.C. § 866(b)(1) (2018). Appellant's petition for grant of review was timely filed on 30 January 2026, properly bringing his case within this Court's jurisdiction under Article 67(a)(3), Uniform Code of Military Justice (UCMJ). 10 U.S.C. § 867(a)(3) (2018).

Statement of the Case

A general court-martial composed of a military judge alone convicted Appellant, consistent with his pleas, of two specifications of Article 120b, UCMJ. 10 U.S.C. § 920b (2018); (R. at 188). The military judge sentenced Appellant to be reduced to paygrade E-1, twelve months' confinement, and a dishonorable discharge. (R. at 236; Appellate Ex. XXXIV.) The military judge entered the following judgment: reduction to paygrade E-1, twelve months' confinement and a dishonorable discharge. (Entry of Judgment, Aug. 29, 2024.) On December 11, 2025, the lower court affirmed Appellant's conviction and sentence.

Statement of Facts

Appellant pled guilty pursuant to a plea agreement. Before the NMCCA he asserted his pleas were improvident because he could not give an informed waiver of his constitutional rights when he plead guilty. He raised this issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Appellant signed a declaration, which presented evidence supporting his assignment of error. Counsel moved to attach Appellant's declaration. (Appellant's Mot. Attach; Appellant's Suppl. Mot. Attach.) The lower court denied Appellant's motion, stating:

The Court held a chambers conference with counsel and granted Appellant additional time to supplement his motion to address the Government's position. Appellant filed his supplement on 7 May 2025 arguing that denial of Appellant's motion would undercut Appellant's rights pursuant to *United States v. Grostefon*.²

We disagree. Appellant's argument would be an unlimited extension of the record and is unsupported by the United States Court of Appeals for the Armed Forces decision in *United States v. Jessie*.³

(NMCCA Order Den. Mot. to Attach. May 20, 2025.)

But Appellant's assigned error rested almost entirely on facts contained in his declaration. (Appellant's Br. at 2, 4-7.) His initial, and supplemental, motions to attach applied Article 66, UCMJ, and this Court's rulings in *United States v. Jessie*, 79 M.J. 437 (C.A.A.F. 2020), and *Grostefon*, all of which supported the

granting of his motion. The majority of Appellant’s brief relied on his declaration—nineteen of thirty-seven footnotes of the brief cited his declaration. If the portions relying on Appellant’s declaration were redacted from his brief, which the Court’s denial of his motion to attach effectively did, his brief would be largely blacked out but for administrative information and statements of law.

On December 11, 2025, the lower court issued a one-page decision, affirming the findings and sentence and stating that Appellant’s assigned error required neither discussion nor relief. Whether that is or is not true, this Court need not decide. But Appellant’s issue required *review*, and because the lower court denied the motion, his issue did not receive any review.

Reason to Grant Review

This Court should review the lower court’s denial of the motion to attach because *Jessie* does not apply here, and even if it did, the lower court erred in applying *Jessie*. In doing so, it effectively negated Appellant’s right to personally raise issues for appellate review pursuant to *Grosteffon*.

This Court should grant review to readdress *Jessie* and motions to attach. Congress has removed the statutory language that *Jessie* relied on, calling into question whether *Jessie* has been overruled by statute. And service courts apply *Jessie* in inconsistent ways. The lower court’s denial of Appellant’s motion to attach is inconsistent with this Court’s approval and use of post-trial attachments. C.A.A.F. Rule 21(b)(5)(A), (B).

A. This Court should grant review to examine whether *Jessie* has been overruled by statute.¹

The version of Article 66 applicable to Appellant’s case states that “The Court may affirm only such findings of guilty as the Court finds correct in law, and in fact in accordance with subparagraph (B).” 10 U.S.C. §866 (2024). This Court’s decisions in *Jessie*, *United States v. Fagnan*, 12 C.M.A. 192 (C.M.A. 1961), and the myriad cases in between, relied on the phrase “on the basis of the entire record,” which Congress removed from the statute.

This Court in *Jessie* stated “the text of Article 66[d], UCMJ, does not permit the CCAs to consider matters that are outside the entire record.” 79 M.J. at 445. It acknowledged that Congress and the President could revise Article 66[d], UCMJ.² *Id.* Congress did so and removed exactly the words the *Jessie* Court relied on.

1. This Court in *Jessie* relied on the words “on the basis of the entire record” in Article 66 to restrict the CCAs’ authority to attach matters in a sentence appropriateness case.³

Although *Jessie* has been expanded to encompass a wide variety of proposed attachments supporting an equally wide variety of assignments of error, *Jessie* itself simply installed guardrails on what could be attached to a record of trial in

¹ In conjunction with reviewing applicability of *Jessie*, it follows that the Court should also reconsider the validity of *United States v. Fagnan*, 12 C.M.A. 192 (C.M.A. 1961).

² This was stated in relation to a policy argument the appellant advanced, but is equally true in general.

³ This is the same phrase the Court relied on in *Fagnan*. 12 C.M.A. at 195.

aid of sentencing review. 79 M.J. at 439-40. The appellant in *Jessie* essentially asked the CCA to reduce his sentence based on conditions of post-trial confinement and proposed adding several documents related to confinement facility rules. *Id.* The CAAF upheld the CCA’s decision that denied attaching those documents to the record. *Id.* at 445.

This Court decided *Jessie* based on language from the 2016 UCMJ, that the CCA could “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.” 79 M.J. 437. The phrase “on the basis of the entire record” was key to this Court’s *Jessie* ruling, and key to precedential cases the *Jessie* Court analyzed and relied upon. 79 M.J. at 440-43 (citing *Fagnan*, 12 C.M.A. 192; *United States v. Brennan*, 58 M.J. 351 (C.A.A.F. 2003); *United States v. Erby*, 54 M.J. 476 (C.A.A.F. 2001); *United States v. Beatty*, 64 M.J. 456 (C.A.A.F. 2007); *United States v. Parker*, 36 M.J. 269 (C.M.A. 1993); *United States v. Pena*, 64 M.J. 259 (C.A.A.F. 2007)).

The Court in *Jessie* turned to the words “the entire record” time and again in its discussion of the parties’ arguments for and against attaching the documents the appellant wanted the CCA to consider. Examples include:

- “We think policy arguments should not guide our decision in this case because the text of Article 66(c), UCMJ, does not permit the CCAs to

consider matters that are outside the entire record.” 79 M.J. at 445 (citing *Universal Health Servs. v. United States*, 136 S. Ct. 1989, 2002, 195 L. Ed. 2d 348 (2016)) (explaining that “policy arguments cannot supersede the clear statutory text”).

- *Fagnan* “correctly interpreted the express requirement that a CCA base its review on the ‘entire record’ to mean that a CCA cannot consider matters outside the ‘entire record.’” 79 M.J. at 444.
 - “The ‘entire record’ restriction, under the grammar and punctuation of the second sentence, applies equally whether the CCA is reviewing a sentence’s correctness in law, reviewing a sentence’s correctness in fact, or determining whether a sentence should be approved.” 79 M.J. at 444.
2. Over the past five years, Article 66 has evolved and is significantly different from its wording and structure in the 2016 Manual (*Jessie*) or even the 1951 Manual (*Fagnan*).

When this Court decided *Jessie*, Article 66(c)⁴ said, in pertinent part:⁵

The 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.

10 U.S.C. § 866 (2018) (emphasis added).

⁴ At the time *Jessie* was decided, this portion was Article 66(c). With the 2017 NDAA, it was relabeled as Article 66(d)(1).

⁵ This language was unchanged from the 1951 Manual under which *Fagnan* was decided in 1961, except that Manual uses “board of review” rather than “court.”

Beginning with the 2017 National Defense Authorization Act (NDAA), Congress has made significant and purposeful changes to Article 66. Of import here, in the 2021 NDAA, Congress amended Article 66(d). Pub. L. 116-283, § 542 (2021) [hereinafter NDAA 2021]. Under this change, the statute said:⁶

The Court may affirm only such findings of guilty as the Court finds correct in law, and in fact in accordance with subparagraph (B) [factual sufficiency review]. The Court may affirm only 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.

10 U.S.C.S. § 866 (2022).

In this change to the statute, Congress broke apart the CCA’s responsibility as to findings (further split into “in law” and “in fact”) from its responsibility as to sentence. Congress removed the phrase “on the basis of the entire record” from the portion relating to findings of guilty.⁷ It retained it when it comes to sentence review, which was the issue raised in *Jessie*.⁸

⁶ Congress has since revised Article 66 again, but that change is not applicable here based on its effective date.

⁷ In NDAA 2021 Congress left the phrase as it applied to CCAs’ review of the sentence, but the following year, Congress removed the phrase entirely. *Compare* NDAA 2021 *with* NDAA for Fiscal Year 2022, Pub. L. 117-81.

⁸ The current version of Article 66 has no instance of the phrase “on the basis of the entire record,” prompting the Air Force CCA to invite this Court’s review of *Jessie*. *See United States v. Giles*, No. ACM 40482, 2024 CCA LEXIS 544 (A.F. Ct. Crim. App. Dec. 23, 2024); *United States v. Banks*, No. ACM 24057, 2025 CCA LEXIS 578 (A.F. Ct. Crim. App. Dec. 18, 2025).

The changes made to Article 66 discussed above apply to “any case in which every finding of guilty entered into the record . . . is for an offense that occurred on or after [1 January 2021].” P.L. 116-283, § 542(e). The findings of guilty in Appellant’s case are for offenses that occurred in February and March 2022. Therefore, this version of Article 66 applies to his case.

3. Statutory change overrules case precedent. And at least one other service court has invited this Court to review *Jessie* in light of changes to Article 66.

Congress’ changes to a statute may lead to changes in case precedent. *United States v. Allbery*, 44 M.J. 226, 228 (C.A.A.F. 1996). Arguably the CCAs could consider *Jessie* non-binding because of the superseding changes to the statute. *Allbery*, 44 M.J. at 228. But they have been unwilling to do so.⁹ See *United States v. Giles*, No. ACM 40482, 2024 CCA LEXIS 544, at *27 n.5 (A.F. Ct. Crim. App. Dec. 23, 2024) (inviting CAAF to review *Jessie*); *United States v. Banks*, No. ACM 24057, 2025 CCA LEXIS 578, at *7 n.5 (A.F. Ct. Crim. App. Dec. 18, 2025) (noting that *Jessie* may no longer apply based on changed language of Article 66).

Because Congress amended Article 66 and removed the exact language underpinning *Jessie*, *Fagnan*, and a host of other cases, it behooves this Court to revisit these rulings. See *United States v. Blanks*, 77 M.J. 239, 241-42 (C.A.A.F. 2018) (discussing the rule and role of *stare decisis* and stating factors to consider

⁹ The policy of *stare decisis* is not flexible and “[a] precedent-making decision may be overruled by the court that made it or by a court of a higher rank.” *Allbery*, 44 M.J. at 228 (citing 20 AmJur2d Courts § 186 (1965)).

when evaluating the application of *stare decisis*). Congress' changes to Article 66 is a "special justification" for this Court to overrule its prior precedent. *Blanks*, 77 M.J. at 242 (citing *Kimberly v. Marvel Ent., LLC*, 135 S. Ct. 2401, 2409 (2015)); *see also Giles*, 2024 CCA LEXIS 544; *Banks*, 2025 CCA LEXIS 578.

After this Court decided *Jessie*, Congress amended Article 66. In its updates to the UCMJ, Congress *removed* the language pivotal to the *Jessie* decision. "The primary responsibility for overruling decisions on statutory construction is with Congress." *United States v. Gibson*, 43 M.J. 343, 346 (C.A.A.F. 1995). Therefore, Congress overruled *Jessie*. *See id.* (Congress can overrule judicial precedent); *United States v. Swift*, 53 M.J.439, 448-51 (C.A.A.F. 2000) (the lack of Congressional action shows a lack of overruling judicial precedent).

4. Congress overruled *Jessie* and nothing precludes the lower courts from accepting attachments to the record if deemed necessary to deciding issues before the court.

"On the basis of the entire record" was restrictive wording in Article 66. The *Jessie* Court said that if CCAs were given limitless review authority, then these words would be superfluous. 79 M.J. at 444 (citing *Mackey v. Lanier Collection Agency & Serv.*, 486 U.S. 825, 837 (1988)). Post-*Jessie*, Congress removed those restrictive words and thereby changed the landscape for motions to attach. There is "nothing in the language of Article 66(c) that precludes the CCA from allowing the

parties to *supplement* the record if that court deems it necessary in order to perform its statutorily mandated duties[.]” 79 M.J. at 446 (Ohlson, J., dissenting).

B. If *Jessie* applies despite Congress’ changes to the statute, then this Court should review the lower court’s misapplication of *Jessie* because it was erroneous and will lead to negation of an appellant’s right to personally raise issues for appellate review under *Grostefon*.

The *Jessie* Court acknowledged that “based on experience [] extra-record fact determinations may be necessary predicates to resolving appellate questions.” 79 M.J. at 442-43 (quoting *Parker*, 36 M.J. at 272) (internal quotations omitted). It then delineated circumstances in which CCAs could attach material to the record. 79 M.J. at 443-45. The lower court abused its discretion in erroneously applying *Jessie* and refusing to acknowledge the necessity of Appellant’s declaration to resolve the appellate question.

Under *Jessie*, there are three general categories/legal theories relating to supplementing a record, either through motions to attach or a fact-finding hearing.

First, and the most restrictive, generally disallows any additional information. *Jessie*, 79 M.J. at 442 (discussing *Fagnan* and the old wording of Article 66).

Second are a series of cases that allow items to be attached to the record to support appellate questions “when those claims and issues are raised by the record but are not fully resolvable by the materials in the record.” *Jessie*, 79 M.J. at 442. This Court recognized that this allowance has been used to “resolv[e] claims of

ineffective assistance of counsel and a wide variety of other issues.” *Id.* (citing *United States v. Parker*, 36 M.J. 269, 272 (C.M.A. 1993) (listing examples of CCA’s ordering *DuBay* fact-finding hearings to gather additional facts for appellate resolution)).

Third are cases that allow CCAs to consider matters not in the record and not otherwise raised by the record. *Jessie*, 79 M.J. at 443 (citing *Erby*, 54 M.J. at 478) (discussing the necessity of attaching documents about post-trial confinement mistreatment as part of its “duty to determine whether a sentence is ‘correct in law.’”). Courts have applied this third category to claims of cruel and unusual punishment under Article 55, UCMJ, and the Eighth Amendment. *United States v. Pullings*, 83 M.J. 205 (C.A.A.F. 2023). The CCAs have sometimes used this third line of cases to attach matters to the record that relate to alleged violations of First or Fifth Amendment rights, generally in the context of post-trial confinement. *Pullings*, 83 M.J. at 219-220 (Hardy, J., concurring in the judgment) (discussing application of *United States v. White*, 54 M.J. 469 (C.A.A.F. 2001) and arguing to overturn it).

1. Appellant’s declaration falls within *Jessie*.

Appellant’s declaration fell within both the second and third bases this Court enumerated in *Jessie*. Appellant’s issue on appeal was the providence of his guilty pleas and his assertion that he did not make an informed decision when he gave up

his constitutional rights. *See United States v. Zeische*, No. ACM 24022, 2025 CCA LEXIS 472 (A. F. Ct. Crim. App. Oct. 8, 2025) (attaching the appellant's declaration in support of *Grostefon* issue of improvident pleas).

First, his claim was raised by the record and not fully resolvable by the materials in the record. Appellant plead guilty pursuant to a plea agreement that he was incapable of fully understanding at the time. Although alcohol use is not specifically addressed in the record, there are indications of physical and/or mental health problems. These include his referral to Operational Stress Control and Readiness in March 2022 (Pros. Ex. 3 at 12), multiple counseling chits for relatively minor misconduct (Pros. Ex. 3), and his own reference to PTSD (Appellate Ex. XI at 10). But because of his alcohol misuse, he was unable (and unwilling) to articulate this to the trial court or even his own attorneys. His declaration fell within *Jessie*.

Second, his claim on appeal is an issue that the CCA has a duty to determine, namely whether the findings are correct in law. *See Erby*, 54 M.J. at 478. Pleading guilty necessitates informed and knowing relinquishment of constitutional rights. MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 910(c) (2018) [hereinafter MCM]. His declaration included specific information about his mental health, alcohol use, and state of mind at the time of his court-martial. These facts were crucial for the lower court to consider when it ruled on

his asserted constitutional providence of pleas issue. His declaration thus fell under the line of cases led by *Erby* and *Pena* and should have been attached to the record.

The lower court simply ignored the record and Appellant's constitutional challenge. It incorrectly found that facts in Appellant's declaration did not address matters raised, but not resolved, by the record. (Order Den. Mot. Attach.) It failed to address the constitutional aspect of his asserted error. The lower court misapplied *Jessie* and denied Appellant's motion to attach. This was error.

2. Appellant's right to personally raise issues under *Grostefon* cannot be abridged by a narrow interpretation of *Jessie*.

Appellant has the right to personally raise issues for appellate review. In *Grostefon* this Court's predecessor ruled that:

[W]e will require that when the accused specified error in his request for appellate representation or in some other form, the appellate defense counsel will, at a minimum, invite the attention of the Court of Military Review to those issues and, in its decision, the Court of Military Review will, at a minimum, acknowledge that it has considered those issues enumerated by the accused and its disposition of them.

United States v. Grostefon, 12 M.J. 431, 436-37 (C.M.A. 1982).

Appellate court rules reflect this mandate and the importance of this right to personally raise issues. CAAF Rule 19; NMCCA Rule 18.3. For decades, this Court's precedent has reinforced that an appellant's declaration supporting his assignment of error is typically allowed. *See Jessie*, 79 M.J. at 442 ("This Court has similarly allowed a CCA to accept affidavits . . . when necessary for resolving

claims of ineffective assistance of trial defense counsel and a *wide variety of other issues.*”) (emphasis added) (citing *United States v. Parker*, 36 M.J. 269 (C.M.A. 1993)). Rule 18.3 of the lower court’s Rules of Practice and Procedure requires counsel to notify the court of “errors raised personally by the Appellant” and that “[c]ounsel shall note the evidence that supports the Appellant’s *Grostefon* complaint and the applicable law.” Even though the Rule cannot supplant *Jessie*, it indicates that counsel must be able to show evidence supporting the appellant’s *Grostefon* complaint. If some of that evidence must be attached to the record of trial, then *Jessie* should be construed liberally to protect the appellant’s rights to be heard on appeal.

In Appellant’s case, the lower court erred in its application of *Jessie* and as a result prevented Appellant from having his personally raised issue given meaningful review on appeal.

C. If *Jessie* still applies, this Court should clarify how to apply it because the lower courts apply *Jessie* inconsistently.

This Court routinely relies on documents that CCAs have attached to the record. In *United States v. Suarez*, the lower court attached post-trial affidavits and this Court cited to those affidavits in reversing the lower court’s decision. 86 M.J. 65 (C.A.A.F. 2025). Likewise, in *United States v. Lopez*, the lower court attached a post-trial affidavit, which this Court relied on to resolve an issue of appellate discovery. __ M.J. __, No. 24-0226, 2025 CAAF LEXIS 735 (C.A.A.F. Sept. 2,

2025). In those cases, had the lower court denied the motion to attach, this Court could not have rendered decisions.

The NMCCA and the other service courts regularly grant motions to attach declarations of appellants to ensure a just resolution of the case.

In *United States v. Cruz*, the NMCCA attached the appellant's declaration, which related to improvident pleas and ineffective assistance of counsel (IAC). No. 202400211, 2026 CCA LEXIS 19, at *4 & n.7 (N-M. Ct. Crim. App. Jan. 20, 2026). Just as in Appellant's case, the appellant in *Cruz* took issue with advice of counsel and asserted that he would not have signed the plea agreement if he fully understood its ramifications. *Id.* In that case, the lower court properly attached the declaration to the record.

Likewise in *United States v. Hale* the NMCCA attached the appellant's declaration relating to his claim of IAC. No. 202400240, 2025 CCA LEXIS 461 (N-M. Ct. Crim. App. Sept. 29, 2025). The propriety of attaching the appellant's declaration in *Hale*, which addressed advice given to him by his attorneys, was no different than the propriety of attaching Appellant's declaration. It is illogical and inconsistent that the NMCCA allowed Hale's declaration but not Appellant's.

Recently the Air Force Court of Criminal Appeals (AFCCA) attached two separate declarations of an appellant in support of her *Grostefon* claim of improvident pleas. *United States v. Zeische*, No. ACM 24022, 2025 CCA LEXIS

472 (A.F. Ct. Crim. App. Oct. 8, 2025). Just as in Appellant’s case, the appellant asserted that her pleas were improvident because they were involuntary or coerced—that the “overwhelming pressures” she faced made it impossible to “make a free and voluntary decision.” *Id.* at *8. The AFCCA granted both motions to attach, stating that the record of trial mentioned childcare and confinement conditions, which her declarations expanded upon. *Id.* at *16-17. The AFCCA deemed this sufficient under *Jessie*. *Id.*

Two more AFCCA cases demonstrate how the court has attached declarations similar to Appellant’s to adequately resolve issues raised. The AFCCA granted an appellant’s motion to attach his own declaration in *United States v. Ollison*, No. ACM S32745, 2024 CCA LEXIS 116 (A.F. Ct. Crim. App. Mar. 19, 2024). The declaration provided evidence concerning his claim of IAC. Similarly, in *United States v. Cole*, the AFCCA attached the appellant’s declaration (with attachments) relating to his claim of IAC and improvident pleas. No. ACM 40189, 2023 CCA LEXIS 118 (A.F. Ct. Crim. App. Mar. 6, 2023), *rev’d in part, aff’d in part, remanded* 84 M.J. 398 (C.A.A.F. 2024). In both cases, the AFCCA could not have resolved the asserted issues without the benefit of the appellants’ declarations.

In light of the foregoing, the lower court’s refusal to attach Appellant’s declaration warrants review. The lower court posited that attaching Appellant’s

declaration would “be an unlimited extension of the record.” (Order Den. Mot. Attach.) But under *Jessie*, the declaration should have been attached. The CCA’s random application of *Jessie* creates confusion and uncertainty. If ever a CCA should liberally construe *Jessie*, it is in the case where the sole issue on appeal is raised under *Grostefon*. Here the CCA erroneously applied *Jessie* and disregarded the importance of *Grostefon* and an appellant’s right to personally raise issues.

Article 66 required the lower court to review Appellant’s case. *Grostefon* requires it to hear issues Appellant wants to personally raise. Neither *Jessie*, nor anything in Article 66 or the RCM, authorize or empower the lower court to *refuse* (directly or indirectly by its rulings) to hear Appellant’s issue.¹⁰ The law requires them to consider it—and then if they disagree or decline to provide relief—so be it. This Court should grant review and ensure that if *Jessie* is to be applied at all, it is done so predictably and with an even hand and is not used as a tool that eradicates *Grostefon*.

Conclusion

In short, the lower court’s ruling ignores Congress’ crucial changes to Article 66. It is also inconsistent with other panels of the same court and other service courts. The ruling will simply create problems throughout the appellate

¹⁰ A negative side effect is the great decrease in judicial economy. This one-page declaration that the lower court judges already read has been the subject of three motions, one chambers’ conference, a CCA Order, and now Appellant’s petition to this Court.

courts. It signals that motions to attach may be arbitrarily granted or denied—that the groundless fear of unlimited additions to the record somehow outweighs the language of Article 66, the tenets of *Jessie*, and an appellant’s personal right to access justice. And it signals that an appellant’s right to personally present issues on appeal is not a meaningful right, which flies in the face of *Grostefon*. This Court should grant review and clarify how Article 66 now interrelates with motions to attach, reiterate that *Jessie* does not authorize the lower courts to arbitrarily grant or deny motions to attach, and remind practitioners and the lower courts not to elevate imagined consequences over an appellant’s right to appeal.

Appellant respectfully requests this Court to grant review and remand the case to the lower court to attach Appellant’s declaration to the record and thereafter properly conduct its Article 66 review.

/s/

Kimberly D. Barnes
Appellate Defense Counsel
Navy-Marine Corps Appellate Review Activity
1254 Charles Morris Street, SE
Building 58, Suite 100
Washington, DC 20374
Phone: (971) 832-9634
kimberly.d.barnes22.civ@us.navy.mil
CAAF Bar No. 33570

Certificate of Compliance with Rule 21(b)

This brief complies with the type-volume limitations of Rule 21 because it does not exceed 9,000 words and complies with the typeface and style requirements of Rule 37. The brief contains 5,201 words. Undersigned counsel used Times New Roman, 14-point type with one-inch margins on all four sides.

Appendix

United States v. Arnold, No. 202400368, slip op. (N-M. Ct. Crim. App. Dec. 11, 2025).

Certificate of Filing and Service

I certify that the foregoing was electronically delivered to this Court, Director, Appellate Government Division, and to Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity, on 2 March 2026.

/s/

Kimberly D. Barnes
Appellate Defense Counsel
Navy-Marine Corps Appellate Review Activity
1254 Charles Morris Street, SE
Building 58, Suite 100
Washington, DC 20374
Phone: (971) 832-9634
kimberly.d.barnes22.civ@us.navy.mil
CAAF Bar No. 33570

United States Navy - Marine Corps
Court of Criminal Appeals

Before
DALY, HARRELL, and KORN
Appellate Military Judges

UNITED STATES
Appellee

v.

Daniel H. ARNOLD
Lance Corporal (E-3), U.S. Marine Corps
Appellant

No. 202400368

Decided: 11 December 2025

Appeal from the United States Navy-Marine Corps Trial Judiciary

Military Judges:
Derek A. Poteet (Arraignment)
Aran T. Walsh (Motions and Trial)

Sentence adjudged 31 May 2024 by a general court-martial tried at Marine Corps Base Camp Pendleton, California, consisting of a military judge sitting alone. Sentence in the Entry of Judgment: reduction to E-1, confinement for 12 months, and a dishonorable discharge.

For Appellant:
Ms. Kimberly D. Hinson

For Appellee:
Commander Jeremy R. Brooks, JAGC, USN
Commander John T. Cole, JAGC, USN

APPENDIX
United States v. Arnold, NMCCA No. 202400368
Opinion of the Court

**This opinion does not serve as binding precedent, but
may be cited as persuasive authority under
NMCCA Rule of Appellate Procedure 30.2.**

PER CURIAM:

Appellant was convicted, consistent with his pleas, of two specifications of sexual abuse of a child, in violation of Article 120b, Uniform Code of Military Justice (UCMJ), for exposing his genitalia and communicating indecent language to a child who had not attained the age of 16 years.¹

Appellant asserts one assignment of error: Are Appellant's pleas improvident where he could not and did not give an informed waiver of his Constitutional rights?² We have carefully considered the matters raised by Appellant in his brief and find they do not require discussion or relief.³

We have determined that the findings and sentence are correct in law and that no error materially prejudicial to Appellant's substantial rights occurred.⁴

The findings and sentence are **AFFIRMED**.



FOR THE COURT:


MARK K. JAMISON
Clerk of Court

¹ 10 U.S.C. § 920b.

² Raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

³ See *United States v. Matias*, 25 M.J. 356, 361 (C.M.A. 1987).

⁴ Articles 59 & 66, UCMJ.