IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES Appellee	)	BRIEF ON BEHALF OF APPELLANT
v.	)	Crim. App. Dkt. No. 20160704
	)	USCA Dkt. No. 19-0339/AR
Specialist (E-4) **MARCO A. REYES** United States Army Appellant	)	

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

Issues Presented

I. WHETHER THE MILITARY JUDGE ERRED IN DENYING THE DEFENSE'S MOTION TO DISMISS THE CHARGES AND SPECIFICATIONS FOR A VIOLATION OF APPELLANT'S RIGHT TO A SPEEDY TRIAL UNDER ARTICLE 10, UCMJ.

II. WHETHER THE RECORD OF TRIAL IS COMPLETE UNDER ARTICLE 54, UCMJ, WHERE IT CONTAINS ONLY A SUMMARIZED TRANSCRIPT OF THE ARTICLE 39(a), UCMJ, SESSIONS THAT OCCURRED PRIOR TO THE WITHDRAWAL AND RE-REFERRAL OF THE CHARGES.

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Statement of Statutory Jurisdiction

The Army Court of Criminal Appeals [Army Court] had jurisdiction over this matter pursuant to Article 66, Uniform Code of Military Justice [UCMJ], 10 U.S.C. § 866. This Honorable Court has jurisdiction over this matter under Article 67(a)(3), UCMJ, 10 U.S.C. § 867 (a)(3).

Statement of the Case

A military judge sitting as a general court-martial convicted Specialist [SPC] Marco A. Reyes, contrary to his pleas, of five specifications of sexual assault, two specifications of conspiracy to obstruct justice, one specification of willfully disobeying a lawful order, two specifications of larceny of a value less than $500.00, two specifications of assault consummated by battery, three specifications of adultery, and three specifications of obstruction of justice in violation of Articles 81, 90, 120, 121, 128, and 134, UCMJ. (JA at 180). The military judge sentenced SPC Reyes to be confined for 13 years, to be reduced to the grade of E-1, and to be discharged from the service with a dishonorable discharge. (JA at 185). Specialist Reyes was credited with 547 days of confinement credit. (JA at 185).

On May 2, 2019, the Army Court affirmed the findings and the sentence in an opinion of the court. Specialist Reyes was notified of the Army Court's decision and filed a Petition for Grant of Review on June 18, 2019 and supplement

in support on July 23, 2019. This Court granted the petition on December 10, 2019 and ordered briefs. Appellant's brief follows.

Statement of Facts

A. Reyes I

Specialist Reyes was placed into pretrial confinement on July 31, 2015. (JA at 120). Charges were originally preferred against appellant on August 6, 2015—referred to as *Reyes I* in the record of trial. (JA at 121). On August 11, 2015, the government ordered a Rule for Courts-Martial [R.C.M.] 706 inquiry. (JA at 186). The parties agreed to not hold the Article 32, UCMJ hearing until receiving the R.C.M. 706 report. (JA at 311). The R.C.M. 706 inquiry was not completed until September 25, 2015, and defense requested a delay until October 15, 2015 to hold the hearing. (JA at 312). Following the preliminary hearing officer's report on November 13, 2015, and in accordance with the recommendations of the preliminary hearing officer, the charges were dismissed and re-preferred on November 20, 2015. (JA at 312). On December 2, 2015, the convening authority ultimately referred the charges for *Reyes I*. (JA at 312).

In the docket request, the government indicated they would not be available for trial until March 15, 2016 and defense stated that they would not be ready for trial until May 9, 2016—however, the military judge set the trial for April 11, 2016. (JA at 126). On December 8, 2015, the government submitted Section III

disclosures to Defense. (JA at 125). Further, on December 8, 2015, defense filed their discovery request explicitly requesting "any books, papers, documents or photographs which are in the possession, custody or control of military authorities and are material to the preparation of the Defense." (JA at 125). On December 14, 2015, the government filed a response to the defense's discovery request stating, "The Government is not aware of any material in its possession which are material to the preparation of the Defense and will provide if it becomes aware of any such evidence." (JA at 126-27).

The defense submitted offers to plead guilty on December 9, 2015, January 7 and 26, 2016 and February 2, 2016. (JA at 126-30). The first motions hearing was originally scheduled for January 28, 2016 but the government requested a delay in the hopes the offer to plead guilty would be approved. (JA at 316). Defense objected to the delay over concerns that the offer to plead guilty would not be approved and that this would delay the defense's ability to procure experts. (JA at 316). After further briefing the defense conceded that the government had shown reasonable cause and the military judge continued the motions hearing until February 8, 2016. (JA at 316).

On January 28, 2016, over six weeks after the first offer to plea, the government sent its first draft of the stipulation of fact to the defense. (JA at 316). On February 2, 2016, the government received the signed stipulation of fact from

defense. (JA at 316). Two days later, on February 4, 2016, the Convening Authority rejected the Offer to Plead Guilty. (JA at 318).

On Friday, February 5, 2016, at approximately 2000 hours, with no duty days before the next scheduled Article 39(a) session, the government sent the defense an email including approximately 140 pages of additional discovery consisting of emails between the trial counsel and JA, one of the complaining witnesses, which contain a multitude of statements from JA. (JA at 317). On the following Monday, February 7, 2016, the defense filed a motion to dismiss the charges due to a violation of SPC Reyes' right to a speedy trial. (JA at 205). The next day, the military judge granted the defense motion to compel a forensic psychiatrist. (JA at 317). The Article 10, UCMJ, motion was ultimately denied by the military judge on March 14, 2016. (JA at 301).

On March 28, 2016 the defense filed a motion to dismiss alleging a Sixth Amendment speedy trial violation due to the government's failure to procure the court ordered experts in forensic psychiatry and Spanish translation. (JA at 301). The military judge denied the motion on April 4, 2016. Based upon the delay in producing experts and the Army's decision to reassign lead defense counsel to a different duty at another station, the military judge continued the trial from April 11 until August 26, 2016. (JA at 216-220; 301).

On April 18, 2016, charges in *Reyes I* were withdrawn, dismissed, and re-referred. (JA at 301). This was apparently done to ensure that the redeploying division was the convening authority—despite R.C.M. 601(g) making this step entirely unnecessary. (JA at 21-22).

B. Reyes II

Following re-referral, on May 9, 2016 Specialist Reyes was arraigned in *Reyes II*. (JA at 138). On May 16, 2016 the defense accepted a counteroffer from the convening authority that changed this case into a mixed plea. (JA at 138). Trial remained set for August 26, 2016. (JA at 138).

Ten days before trial, on August 16, 2016, the government provided audio recordings of Specialist Reyes from his time in pre-trial confinement. (JA at 140). On August 17, 2016, the government filed Mil. R. Evid. 413 and 404(b) notice that it supplemented on August 19th. (JA at 140). Also on the 19th, the government disclosed phone logs documenting the numbers called and duration of the calls by the accused for the time he had been in pre-trial confinement (now more than one year). (JA at 140). The next day the government provided the content of those calls, including 1,419 individual audio files. (JA at 141). On August 23, 2016, the government sent the defense a *Brady*[1] disclosure related to one of the charged

[1] *Brady v. Maryland*, 373 U.S. 93 (1963).

victims. (JA at 141). They sent a separate *Brady* notice regarding a different charged victim on August 24, 2016. (JA at 142).

That same day, the defense counsel alleged anew that the government had violated Article 10, UCMJ and moved the court to compel a verbatim transcript of the proceedings in *Reyes I*. (JA at 141). The military judge denied the motions on August 29, 2016. (JA at 142). After denying the Article 10, UCMJ, motion to dismiss, the military judge granted a continuance until October, 17 2016 so that defense counsel could review the newly provided evidence. (JA at 143).

On September 23, 2016, the defense withdrew from the partial guilty plea and the case again became fully contested. (JA at 143). Between September 30 and October 13, the convening authority approved $34,750 in additional funds for the defense's Spanish translator to continue to review the confinement calls disclosed on August 19, 2016. (JA at 144). On October 7, 2016, the government, based on its continuing duty, disclosed an additional forty-two audio files documenting phone calls made by the accused while in pre-trial confinement. (JA at 144).

On October 16, 2016, defense counsel were permitted to interview the primary victim DR through her special victim's counsel [SVC]. (JA at 145). During said interview, DR stated that she had emailed Special Agent [SA] Morton several screenshots and then explained in the body of the email the context to the

attachments. (JA at 145). When defense requested the emails from the government, SA Morton informed the defense that he had saved the attachments into the casefile but deleted the emails themselves. (JA at 145).

On October 17, 2016, the government disclosed a 447 page document containing emails and messages to SA Morton they believed had been previously disclosed to defense. (JA at 146). At least one of the messages had not been previously disclosed. (JA at 146). That same day, the government disclosed that the lead trial counsel had been emailed messages between DR and DM (both named victims) in the case on September 15, 2015 that had never been disclosed to defense or forwarded to law enforcement; the government disclosed those messages as well. (JA at 146). On October 18, 2016, the government disclosed text messages sent between SA Morton and Ms. CR (a government witness). (JA at 146).

On October 24, 2016, the military judge denied the ultimate defense Article 10, UCMJ, motion. (JA at 177). The military judge appears to not have ruled upon defense's renewed motion for a verbatim transcript. (JA at 300). Trial began.

Summary of Argument

Article 10, UCMJ, requires the government to process an accused's case with reasonable diligence if the government places him in pre-trial confinement.

Nonetheless, after the original referral, the government failed to exercise reasonable diligence in processing appellant's case in a variety of ways. The government delayed processing the case in hopes of a pre-trial agreement that the convening authority ultimately disapproved. The government was not diligent in finding a court-ordered expert. The government caused delay when it ordered appellant's counsel assigned to a different installation. The government was negligent in complying with discovery obligations and made numerous *Brady* disclosures that resulted in delay. This lack of reasonable diligence with appellant's case resulted in 455 elapsed days from the time the government placed SPC Reyes in confinement until it brought him to trial. These actions, or lack thereof, violate Article 10, UCMJ, and mandate dismissal.

To the extent that this Court is unable to find an Article 10, UCMJ, violation, it is due to the lack of a complete record. On April 18, 2016, the government dismissed appellant's original charges and re-referred the same charges under a different headquarters.[2] Rule for Courts-Martial [R.C.M.] 601(g) makes clear that transfer of referred charges between headquarters is authorized. Nonetheless, because the government chose to dismiss and re-refer (without releasing SPC Reyes from pre-trial confinement), all of the proceedings from the

[2] It also added service discrediting as an alternate terminal element to Specifications 8-11 of Charge VII. (Charge Sheet).

first half of this case were reduced to a summarized transcript. Such a transcript prohibits meaningful appellate review of appellant's first two motions to dismiss for violating his rights to a speedy trial under Article 10, UCMJ, and the Sixth Amendment. Such review is required by Article 54, UCMJ, which demands a "complete" record in every general court-martial resulting in a punitive discharge. If this court does not grant relief under Article 10, UCMJ, it should return the record of proceedings for a truly complete record and verbatim transcript from what the military judge called *Reyes I*.

Issue I

WHETHER THE MILITARY JUDGE ERRED IN DENYING THE DEFENSE'S MOTION TO DISMISS THE CHARGES AND SPECIFICATIONS FOR A VIOLATION OF SPC REYES'S RIGHT TO A SPEEDY TRIAL UNDER ARTICLE 10.

Standard of Review

Whether the government has used reasonable diligence in discharging its duty under Article 10, UCMJ, to take immediate steps to try an accused is reviewed de novo. *United States v. Cooper*, 58 M.J 54, 59 (C.A.A.F. 2003).

Law

Article 10, UCMJ, provides, "when any person subject to this chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to

dismiss the charges and release him." The test for assessing an alleged violation of Article 10 is whether the government has acted with "reasonable diligence" in proceeding to trial. *United States v. Kossman,* 38 M.J. 258, 262 (C.A.A.F. 1993). The government bears the burden to "demonstrate and explain reasonable diligence in moving its case forward in response to a motion to dismiss." *United States v. Cooley*, 75 M.J. 247, 260 (C.A.A.F. 2016).

The touchstone for measurement of compliance with the UCMJ is not constant motion, but reasonable diligence in bringing the charges to trial. *Cooper* 58 M.J. at 58. Article 10 provides service-members with broader rights than are available to civilians under the Sixth Amendment. *United States v. Birge,* 52 M.J. 209, 211 (C.A.A.F. 1999). Violations of Article 10 are determined by balancing the four factors announced in *Barker v. Wingo*, 407 U.S. 514 (1972). *Id*. at 212. These factors are (1) the length of the delay, (2) the reason for the delay, (3) whether the defendant asserted his right to a speedy trial, and (4) prejudice to the defendant. *Barker*, 407 U.S. at 530-532. Nevertheless, because Article 10 imposes a more stringent standard, Sixth Amendment speedy trial standards do not dictate whether Article 10 has been violated. *United States v. Thompson*, 68 M.J. 308, 312 (C.A.A.F. 2010).

The remedy for an Article 10, UCMJ, violation is dismissal with prejudice of the affected charges. *Kossman*, 38 M.J. at 262. "Where the circumstances of

delay are not excusable, it is no remedy to compound the delay by starting all over." *Id*.

Argument

Balancing the four *Barker v. Wingo* factors weighs in favor of the defense. Accordingly the charges must be dismissed. Each factor will be addressed in turn.

A. Length of the delay

The first factor, the length of the delay, triggers the full analysis and "can be dispositive." *Cooley*, 75 M.J. at 260. This factor considers "the seriousness of the offense, the complexity of the case, the availability of proof" and additional circumstances. *Id*. Article 10 protections begin when an accused is arrested or put into confinement prior to trial. *Kossman*, 38 M.J. at 259.

This factor weighs heavily in favor of Specialist Reyes. Specialist Reyes was placed in pretrial confinement on July 31, 2015. He was brought to trial on October 24, 2016—455 days later. On August 6, 2015, one week after placing Specialist Reyes into pre-trial confinement, the government preferred initial charges against him. Following an Article 32, UCMJ, preliminary hearing, and receiving the benefit of the preliminary hearing officer's recommendations, the government dismissed and re-preferred the almost identical charges,[3] along with

[3] It appears the "bodily harm to wit:" was altered in a number of specifications. The dates, victims, and nature of the charges do not appear to have significantly changed.

additional charges, on November 20, 2015. (App. Ex. XIV, pg 2592). While it took the government 116 days to investigate the charges (including the accused's sanity), prefer, refine, refer, and arraign, it took the government an additional 339 days to get his case to trial. Specialist Reyes remained in pre-trial confinement throughout this entire 455-day period.

This case has similar facts to those in *Cooley*. There, this Court found:

> On the facts before us, the length of the delay is unreasonable. Even though we accept that the First Charges involved a complex investigation, no additional investigative action is reflected in the record after March 2013. The charges in *Cooley I* that were dismissed without prejudice for violating the speedy trial rule in R.C.M. 707 in May 2013 were virtually identical to the charges finally brought to trial in October 2013 in *Cooley III*, and all information related to the New Charge of possessing child pornography appears to have been in the Government's possession by March 2013.

Cooley, 75 M.J. at 260. In *Cooley*, the lack of diligence led to 289 days of pre-trial confinement. *Id*. at 251. Here it led to 455. Like in *Cooley*, the reasons for the delay are unreasonable and weigh in SPC Reyes's favor.

B. Reason for the delay

The second factor weighs in favor of SPC Reyes because the government, throughout the process, failed to act with reasonable diligence in numerous ways. As detailed in the statement of facts, the primary reason for the delays in this case

were the inability to procure an expert, failure to process offers to plead guilty with reasonable diligence, and last minute disclosures of massive amounts of discovery.

On July 31, 2015 the government placed SPC Reyes in confinement and triggered its Article 10, UCMJ, and R.C.M. 707 requirements to provide a speedy trial. Over the course of the next 116 days, the government preferred charges, conducted an inquiry into the mental capacity and responsibility of the accused, conducted an Article 32, UCMJ, preliminary hearing, received the report, dismissed and re-preferred charges to conform to the hearing officer's recommendations, and referred the charges to trial before a general courts-martial. However, having arraigned the accused within the normal 120 days as required by R.C.M. 707 had he not been confined, the government then failed to continue its reasonable diligence as mandated by Article 10, UCMJ.

Over the next 339 days the government was not reasonably diligent in bringing SPC Reyes to trial. The defense asked the government to provide any government expert in forensic psychiatry on December 23, 2015. (JA at 136). On January 12, 2016, the defense moved the court to compel production of the expert; the court subsequently agreed an expert was required and ordered the government to produce an expert on February 8, 2016. (JA at 132). Nevertheless, despite the defense's willingness to accept any available forensic psychiatrist employed by the United States, the government dawdled back and forth with various people for six

weeks before notifying the defense and the court that they needed to delay the trial from the docketed April 15 start date due to their inability to procure the court-ordered expert. The defense had originally notified them of this need in December. (JA at 136). This triggered a 133 delay in the start of trial until August 26. This delay was entirely avoidable and reasonable diligence would have prevented it. The military judge erred in believing that asking SPC Reyes if he was ok with the delay was legally relevant. Specialist Reyes's counsel had told him an expert was required and the military judge agreed. He is not required to forego the court-ordered necessary expert to preserve his right to speedy trial.

Compounding this unreasonableness was the government's lackadaisical practice of providing late disclosure of discovery to the defense, the most egregious of which was the decision to seek and disclose the content of over 1,400 phone calls made by SPC Reyes, some of which were apparently to victims and witnesses in the case the week before the August trial start date. In order to effectively represent their client, the defense was forced to request a delay to comb through this vast, eleventh hour discovery dump. The military judge again erroneously believed SPC Reyes's consent was relevant and erroneously attributed this delay to the defense. (JA at 143) However, it was the government's late disclosure that triggered the delay. Specialist Reyes lacked a meaningful choice due to governmental action. Defense counsel would be ineffective if they did not

review the entirety of the evidence provided in a criminal case that involved numerous statements by the accused, witnesses, and victims.

The government's last minute disclosures were not isolated to August. This happened in February prior to the motions hearing. This happened again in October immediately before trial. In fact, the government requested a one day delay on the eve of trial to ensure they had actually complied with their discovery obligations; realizing they hadn't, they turned their lead counsel into a witness, and disclosed even more evidence. (JA at 104-10). Government apathy, bumbling, and inaction are wholly responsible for this post-referral delay.

C. Assertion of Speedy Trial Right.

Specialist Reyes first asserted his right to a speedy trial in his motion dated February 7, 2016. (JA at 131). He next asserted his right to speedy trial on March 28. (JA at 136). The military judge's contention that it is relevant that SPC Reyes didn't assert his right to speedy trial in *Reyes II* until filing the August motion is wrong. (JA at 159). Under Article 10, UCMJ, speedy trial is a demand made not of the court but of the government that placed Specialist Reyes in pre-trial confinement. Specialist Reyes alleged a speedy trial violation in February and remained continuously in pre-trial confinement until his trial. He renewed that claim and alleged violations based upon government inaction in March, August, and October 2016. The government was on notice that SPC Reyes demanded a

speedy trial and their subsequent simultaneous withdrawal and re-referral does not change that fact. Given the four separate demands for speedy trial spanning more than eight months, this factor weighs heavily in Specialist Reyes' favor.

D. Prejudice.

Finally, in weighing the prejudice to SPC Reyes, the Supreme Court has identified three interests that the right to a speedy trial was designed to protect: (i) prevent oppressive pretrial incarceration; (ii) minimize anxiety and concern of the accused; and (iii) limit the possibility that the defense will be impaired. *United States v. Mizgala*, 61 M.J. 122 at 129 (C.A.A.F. 2005) (citing *Barker*, 407 U.S. at 532). In addition, speedy trial serves a societal interest in the efficient administration of justice and prevents an accused and community from suffering the deleterious effects of pretrial confinement. *See Barker* 407 U.S. at 519-521; *United States v. Black*, 918 F.3d 243, 254 (2d Cir. 2019). Of these, the most serious is the third concern because the inability of a defendant to adequately prepare his case skews the fairness of the entire system. *Id*.

However, the Supreme Court has "expressly rejected the notion that an affirmative demonstration of prejudice was necessary to prove a denial of the constitutional right to a speedy trial." *Moore v. Ariz.*, 414 U.S. 25, 26 (1973). This is true because "the major evils protected against by the speedy trial guarantee

exist quite apart from actual or possible prejudice to an accused's defense." *United States v. Mason*, 45 C.M.R. 162, 168 (C.M.A. 1972).

The government's failure to promptly process offers to plea, produce experts, and turn over discovery led to substantial delay. This, in turn, caused SPC Reyes, to needlessly remain in pretrial confinement, suffering from anxiety and angst. (JA at 43-45). Specialist Reyes' had to request his original Trial Defense Counsel be allowed to continue his case after the government reassigned her to an installation from North Carolina to Texas. (JA at 44). This caused SPC Reyes even more anxiety, because it put into question the consistent and competent representation he was due. (JA at 44). Had the government acted with reasonable diligence and timely produced the necessary psychiatrist, this case would have gone to trial on April 15, 2016. Had the government not waited until August to decide to obtain all of SPC Reyes' calls while confined, this case would have gone to trial in August. While the military judge attempted to remedy the government's lack of reasonable diligence with continuances and the suppression of evidence, SPC Reyes was never granted the proper remedy—dismissal with prejudice for a violation of Article 10, UCMJ.

The government did not move with reasonable diligence in prosecuting the *Reyes I* or *Reyes II* charges. Specialist Reyes was placed in pretrial confinement for 455 days until the merits portion of his trial, he demanded speedy trial, the

delays were attributable to governmental inaction, and he suffered prejudice as a result. Accordingly, this Court should find the government did not carry their burden to prove reasonable diligence and dismiss this case for a violation of Article 10, UCMJ.

Issue II

WHETHER THE RECORD OF TRIAL IS COMPLETE UNDER ARTICLE 54, UCMJ, WHERE IT CONTAINS ONLY A SUMMARIZED TRANSCRIPT OF THE ARTICLE 39(a), UCMJ, SESSIONS THAT OCCURRED PRIOR TO THE WITHDRAWAL AND RE-REFERRAL OF THE CHARGES.

Standard of Review

"The question of whether the record of trial is incomplete, is one that presents a question of law that this court reviews de novo." *United States v. Henry*, 53 M.J. 108, 110 (C.A.A.F. 2000) (internal quotations omitted).

Law

Article 54, UCMJ, requires each general court-martial to keep a "separate" and "complete" record of the proceedings in each case that includes, in relevant part, a punitive discharge. To be complete, the record must include, amongst other things, a verbatim transcript of all sessions and all appellate exhibits. R.C.M. 1103(b). The "concern is not the sufficiency of the record for purposes of review, but with the statutory command regarding the type of record that must be made of

courts-martial proceedings." *United States v. Gray*, 7 M.J. 296, 298 (C.M.A. 1979).

Argument

In *United States v. Gray*, the Court of Military Appeals held that a record was not verbatim, and thus incomplete, when it did not include a sidebar conference that involved "a ruling by the military judge affecting the rights of the accused at trial." *Id*. The Court rejected the government's contention that it was enough to obtain affidavits and that the defense had previously objected to the sidebar issue on the record. *Id*. Nor is it enough that this Court can discern the substance of the first two Article 10 motions based upon the enclosure of the original motions. *See United States v. Sturdivant*, 1 M.J. 256, 257 (C.M.A. 1976) ("It may be true, as the Court of Military Review determined, that the substance of the discussion can reasonably be ascertained; and, further, from the fact of the absence of any complaint, it may be inferred that defense counsel perceived no legal error during the discussion. However, we are not concerned with the sufficiency of the record for the purpose of review in constitutional terms, but with the command of Article 19, UCMJ.").

Because the accused was continuously in pre-trial confinement, a verbatim record of, at minimum, the motions to dismiss alleging a speedy trial/Article 10 violation from *Reyes I* are required to make the record "complete" because the

ruling by the military judge affected the rights of SPC Reyes in this trial. Normally, for an accused not in pre-trial confinement, his speedy trial rights attach upon preferral and terminate upon dismissal. R.C.M. 707. For an accused in pretrial confinement, speedy trial rights attach upon entry into confinement. Article 10, UCMJ. Accordingly, the correctness of the ruling on the motions to dismiss for violations of Article 10, UCMJ, and his right to speedy trial remain ripe for appellate review. Article 54, UCMJ, therefore requires a complete record and verbatim transcript. Full appellate review is not satisfied by the motions of the parties. Instead, it requires a transcript of the arguments made and stipulations agreed to during the hearing itself.

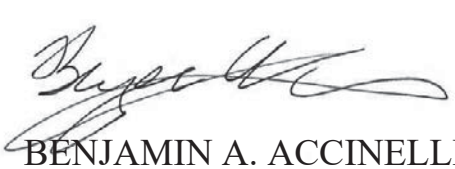
Moreover, it also includes the rulings of the military judge. In *Reyes II*, the military judge made all her Article 10 rulings from the bench and not in writing as attached appellate exhibits. The summarized transcript from *Reyes I* simply says "The military judge denied the defense's motion to dismiss for Article 10 / *US v. Stellato*." (264). There is no meaningful way to consider her findings of fact and conclusions of law without a verbatim transcript. Moreover, the government has the burden. Absent knowing what actually happened in these proceedings, there is no way for an appellate court to review whether the government carried their burden at that time. Accordingly, to comply with the statutory mandate, a

complete record in this case must include a verbatim transcript and appellate exhibits related to appellant's speedy trial and Article 10, UCMJ, motions.

This Court should remand the case to the Army Court with instruction to reassess the sentence to a level not exceeding that permissible in a trial with a non-verbatim transcript or to remand to the Convening Authority for rehearing.

Conclusion

Wherefore, appellant requests this Court grant the relief requested herein.



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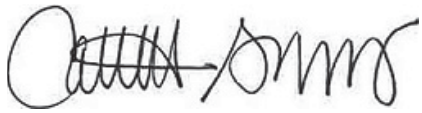

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the forgoing in the case of United States v. Reyes, Crim. App. Dkt. No. 20160704, USCA Dkt. No. 19-0339/AR, was electronically filed with the Court and Government Appellate Division on January 23, 2020.

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