IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES Appellee v. Staff Sergeant (E-6) **LADONIES P. STRONG** United States Army Appellant	BRIEF ON BEHALF OF APPELLANT Crim. App. Dkt. No. ARMY 20200391 USCA Dkt. No. 23-0107/AR

Sean Patrick Flynn
Major, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060
(703) 693-0674
USCAAF Bar No. 37529

Bryan A. Osterhage
Major, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
USCAAF Bar Number 36871

Jonathan F. Potter, Esq.
Senior Appellate Counsel
Defense Appellate Division
USCAAF Bar Number 26450

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

Issues Presented

I.

WHETHER THE ARMY COURT ERRED WHEN IT DETERMINED THAT AGENTS WERE STILL "ENDEAVORING TO SEIZE" THE DIGITAL MEDIA ON APPELLANT'S PHONE AFTER AGENTS HAD ALREADY SEIZED THE PHONE.

II.

WHETHER APPELLANT WAS PREJUDICED WHERE THE MJ FAILED TO INSTRUCT THE PANEL IN ACCORDANCE WITH THE PLAIN LANGUAGE OF THE CHARGE SHEET.

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 (2018). This Honorable Court has jurisdiction over this matter under Article 67(a)(3), UCMJ.

Statement of the Case

On July 18, 2020, a general court-martial composed of officer and enlisted members found Appellant, Staff Sergeant Ladonies P. Strong, contrary to her pleas, guilty of one specification of preventing an authorized seizure of property and one specification of negligent homicide, in violation of Articles 131e and 134, UCMJ. (JA 29, 64). On July 20, 2020, the panel sentenced Appellant to be reduced to the grade of E-1, confined for three years, and to receive a bad-conduct discharge. (JA 91). The convening authority approved the findings and sentence on September 8, 2020. (JA 92). The military judge entered judgment the next day. (JA 93).

On February 10, 2022, the Army Court heard oral argument on Appellant's case. (JA 94). On June 29, 2022, the Army Court sua sponte ordered a second oral argument, this time en banc, which occurred on August 25, 2022. (JA 95–96). On January 6, 2023, the Army Court affirmed the findings and sentence in a divided opinion. *United States v. Strong*, 83 M.J. 509 (A. Ct. Crim. App. 2023) (en banc). Three judges dissented, including two of the three judges from the panel that heard the original oral argument. *Id.* (Arguelles, J., Smawley, C.J., and Penland, J., dissenting).

This Court granted review on June 23, 2023. (JA 1).

Summary of Argument

Appellant's conviction, under Article 131e for preventing a seizure, hinges on whether agents were still "endeavoring to seize" the digital content of her cell phone *after* her cell phone was seized. This Court must answer that question in the negative. When agents seized the cell phone, they necessarily seized its digital content. Because agents had already seized the data, this Court must set aside Appellant's conviction.

However, even if this Court determines agents had not yet seized the data, Appellant still prevails for two reasons. First, the evidence remains legally insufficient to support a finding that agents were "endeavoring to seize." Assuming a seizure of data does not occur when agents seize the device, it surely occurs when agents secure the device from external communication. *Strong*, 83 M.J. at 516. And that is what the agents *believed* they had done when they placed the cell phone in what they presumed was an operational Faraday bag. Because the ordinary meaning of "endeavor" connotes intent, agents could not be "endeavoring" to seize property they believed they had already seized.

Second, as discussed in the second Issue Presented, there was either an impermissible "constructive amendment" or at least a "material variance" to the charge. Specifically, the military judge instructed the panel that Appellant

obstructed, obscured, or disposed of her *cell phone*, which was the property agents were "endeavoring to seize." This constituted plain error and introduced the possibility of a conviction on an uncharged theory, materially prejudicing appellant's substantial rights.

Statement of Facts

The Government alleged the following:

> In that [Appellant], U.S. Army, did, at or near West Point, New York, on or about 7 June 2019, with intent to prevent its seizure, obstruct, obscure, and dispose of the digital content of her cellphone, property [Appellant] then knew a person authorized to make searches and seizures was endeavoring to seize."

(JA 29).

The charge related to the Government's seizure of Appellant's cell phone and watch while investigating a rollover accident in which Appellant was the driver, which resulted in the death of West Point cadet. (JA 32–33, 34). Agents obtained a warrant and went to Appellant's barracks to, in the testimony of the lead agent, seize "a cellular phone and an iWatch . . . ." (JA 36). After a scuffle over the cell phone, in which the lead agent alleged she had to order Appellant "at ease," law enforcement took control of the device. (JA 38). On appeal at the court below, the Government conceded this constituted a seizure of the cell phone. (JA 28)

To protect the cell phone from electronic transmissions, agents sealed the cell phone in what they believed was an operational "Faraday bag" and left Appellant's residence. (JA 35–36, 40–42, 65, 71). Approximately one hour *after* agents had seized her cell phone and left her residence, the data on Appellant's cell phone was "wiped" by means of a factory reset that was remotely executed. (JA 46, 48, 66, 71). When agents inspected the bag, they discovered it was not an operational "Faraday bag." (JA 42, 71).

At trial, the Government only introduced evidence that Appellant had the ability to "remotely wipe" her cell phone. *Strong*, 83 M.J. at 512. That is, the Government submitted no evidence that Appellant—or anyone else—had any other means of remotely accessing, viewing, organizing, using, or manipulating the cell phone's digital content.

For this specification, the military judge instructed the panel as follows:

> One, that persons authorized to make searches and seizures were endeavoring to seize certain property, to wit: the accused's cell phone;
>
> Two, that at or near West Point, New York, on or about 7 June 2019 the accused obstructed, obscured, and disposed of her cell phone with the intent to prevent its seizure;
>
> Three, that the accused then knew that persons authorized to make searches and seizures were endeavoring to seize her cell phone.

(JA 55, 77). Appellant did not object to these instructions. (JA 54).

The Government spent most of its time during its argument regarding this specification discussing what may have occurred after the cell phone was seized, but it mentioned "the accused's demeanor while [law enforcement] was trying to seize [the cell phone]." (JA 58). The defense likewise briefly mentioned "this fighting over the phone . . . ." (JA 63). But it too spent most of its time regarding this specification discussing the possible wiping of data.

The panel found Appellant guilty. (JA 64). There were no special findings.

I.
WHETHER THE ARMY COURT ERRED WHEN IT DETERMINED THAT AGENTS WERE STILL "ENDEAVORING TO SEIZE" THE DIGITAL MEDIA ON APPELLANT'S PHONE AFTER AGENTS HAD ALREADY SEIZED THE PHONE.

Standard of Review

Questions of legal sufficiency are reviewed de novo. *United States v. Walters*, 58 M.J. 391, 395 (C.A.A.F. 2003). Questions of statutory interpretation are similarly reviewed de novo. *United States v. Vargas*, 74 M.J. 1, 5 (C.A.A.F. 2014).

Law

Article 131e, UCMJ makes it unlawful for anyone "who, knowing that one or more persons authorized to make searches and seizures are seizing, are about to seize, or are endeavoring to seize property, [to] destroy[], remove[], or otherwise dispose[] of the property with intent to prevent the seizure thereof . . . ."

In *United States v. Hahn*, this Court turned to Fourth Amendment jurisprudence to define "seizure" for the very similar charge of removing property to prevent its seizure as "some meaningful interference with an individual's possessory interests in that property.'" 44 M.J. 360, 361 (C.A.A.F. 1996) (quoting *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)).[1] There, law enforcement laid in wait observing suspected stolen goods and, through a third party, enticed Hahn to attempt to move the stolen goods. *Id*. Hahn indeed showed up and began to put the stolen goods in his car, and he was promptly arrested for interfering with an authorized seizure. *Id.* This Court determined that law enforcement had not yet seized the goods, and thus Hahn's conduct was not beyond the reach of the statute. While suggesting that officers may have "jointly possessed" the property, this Court found significant "the ease with which [Hahn] was able to gather up the property and move it to his car." *Id*. at 362.

[1] While at the time of *Hahn*, the offense was enumerated in Article 134, UCMJ, *Hahn*, 44 M.J. at 361, Congress later migrated the offense to Article 131e without substantial change. *See* National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 5444, 130 Stat. 2000, 2957 (2016). Accordingly, *Hahn* remains applicable to Article 131e, UCMJ. *See United States v. McDonald*, 78 M.J. 376, 380 (C.A.A.F. 2019) ("Congress is aware of existing law when it passes legislation" and "[t]hus we must take into account [this] contemporary legal context at the time the statute was passed.") (citations and quotation marks omitted).

Importantly, the interference need not "completely depriv[e]" someone of his or her possessory interests "to constitute a seizure subject to constitutional protections." *Presley v. City of Charlottesville*, 464 F.3d 480, 487 (4th Cir. 2006). Courts have found "meaningful interference" where government conduct was "disruptive" to an owner's possessory interests, *id.*, or suggested they would where conduct interfered with an owner's ability to access his property "at any time he might choose." *United States v. Hill*, 805 F.3d 935, 938 (10th Cir. 2015). These cases indicate that "[t]he intrusion on possessory interests occasioned by a seizure of one's personal effects can vary both in its nature and extent." *United States v. Place*, 462 U.S. 696, 705 (1983); *cf United States v. Hoffman*, 75 M.J. 120, 124 (C.A.A.F. 2016) (moving media to a different location inside a room during a consent search is not meaningful interference, which must be more than "inconsequential").

As it relates to data, some courts have focused on interference with one's access to define seizure. *See e.g.*, *In re Search Warrant No. 16-960-M-01*, 232 F. Supp. 3d 708, 720 (E.D. Pa. 2017) (finding no seizure in the transfer of data between servers because accused would have been unaware of its occurrence and access to data was unaltered); *see also United States v. Loera*, 333 F. Supp. 3d 172, 185 (E.D.N.Y. 2018) (collecting cases finding no cognizable seizure where the conduct did not alter the data or *interfere with an owner's ability to access the*

data). Other decisions recognize that the right to exclude access is an equal—if not paramount—consideration with data. *See e.g.*, *Standifer v. Best Buy Stores, L.P.*, 364 F. Supp. 3d 1286, 1298 (N.D. Ala. 2019) (reasoning that the right to exclude others is arguably what makes data valuable, and without that right, there is a deprivation of ownership). *Cf. Cedar Point Nursery v. Hadid*, 141 S. Ct. 2063, 2072 (2021) ("The right to exclude is 'one of the most treasured' rights of property ownership.") (citation omitted) *and United States v. Karo*, 468 U.S. 705, 729 (1984) (Stevens, J., dissenting) ("The owner of property, of course, has a right to exclude from it all the world, including the Government . . . .").

Argument

A. Law enforcement were not "endeavoring to seize" the digital content of Appellant's cell phone because the seizure was complete.

The seizure of Appellant's cell phone meaningfully interfered with Appellant's possessory interest in the digital content. For one, the seizure of the cell phone materially altered Appellant's access to its content. *Cf. In re Search Warrant No. 16-960-M-01*, 232 F. Supp. 3d at 720. Assuming Appellant could even access the same digital content from another source, it would have required Appellant to, at a minimum, obtain another electronic device and find an alternate means to access the internet *every time* she wanted access. This is a considerable disruption, especially considering that most individuals are "within five feet of their phones[—and thus access to its content—]most of the time . . . ." *Riley v.*

California, 573 U.S. 373, 395 (2014) ("the proverbial visitor from Mars might conclude [cell phones] were an important feature of human anatomy"). Put simply, Appellant could no longer access the content "any time [she] might choose." *Hill*, 805 F.3d at 938. This is a far cry from the "ease" with which the accused accessed and moved the property in *Hahn*. 44 M.J. at 362. This alone establishes "some meaningful interference."

Even more so, the dearth of evidence as to the actual extent of Appellant's remote access suggests the seizure of the cell phone wholly dispossessed Appellant of any ability to access, use, manipulate, or maintain the data. *See Standifer*, 364 F. Supp. 3d at 1298. Appellant's ability to do nothing more than to "wipe" the data on the cell phone—an unauthorized act since law enforcement seized her cell phone—does not represent sufficient dominion over the cell phone or its content any more than an evicted occupant's illegal ability to set fire to a seized residence demonstrates a possessory interest. Thus, agents' seizure of Appellant's cell phone meaningfully interfered with Appellant's interests in its content.

The conclusion that a seizure occurred is further supported by Federal Rule of Criminal Procedure 41, which provides that a warrant to seize "electronically stored information" is executed when officials seize the storage device, *see* Fed. R. Civ. P. 41(e)(2)(B), including the seizure of "electronic information" on cell phones. *See United States v. Huart*, 735 F.3d 972, 974, n.2 (7th Cir. 2013) ("a

warrant for electronically stored information is executed when the information is seized or copied—here, when the Rock Valley staff *seized the phone*.") (emphasis added); *see also State v. Sanchez*, 476 P.3d 889, 893 (N.M. 2020) ("by seizing [a cell phone], law enforcement takes control of both the device and the data on that device"). "This rule "embodies standards which conform with the requirements of the Fourth Amendment." *United States v. Haygood*, 464 F.2d 756, 760 (D.C. Cir. 1972).

In sum, because agents could not have been "endeavoring to seize" digital content that had been, in fact, seized, this Court must set aside Appellant's conviction for violating Article 131e, UCMJ.

B. Even if the seizure was not complete, agents were not "endeavoring to seize" at the time of the wipe.

Endeavoring presupposes intent. Specifically, "endeavor" means "to attempt . . . by exertion of effort."[2] "Attempt" is further defined as "to make an effort to do, accomplish, solve, or effect."[3] In other words, the ordinary meaning of endeavor is to make an effort to accomplish by exertion of effort. *See also The American Heritage Dictionary* 462 (4th ed. 2007) (defining endeavor as a

[2] *See* Merriam-Webster Dictionary, available at https://merriam-webster.com/dictionary/endeavor (last visited Jul. 11, 2023).
[3] *See* Merriam-Webster Dictionary, available at https://www.merriam-webster.com/dictionary/attempt (last visited Jul. 11, 2023).

"conscientious or concerted effort toward an end; an earnest attempt"). This Court is obligated to construe a statute in accordance with its ordinary meaning. *United States v. Schmidt*, 82 M.J. 68, 76 (C.A.A.F. 2022) (citing *United States v. Pease*, 75 M.J 180, 184 (C.A.A.F. 2016)).

Thus, even if agents had not technically seized the digital content of the cell phone by placing the cell phone into what they presumed was a functioning Faraday bag, agents *believed*, as the Army Court found, they had taken the requisite steps to secure the data from outside manipulation, which would have constituted a seizure. *Strong*, 83 M.J. at 517. Therefore, any "endeavoring" on the part of the agents after that time would have been done *unknowingly*. *Id.* at 523 (Arguelles, J., dissenting). This runs contrary to endeavor's plain meaning of "conscientious effort."[4]

Therefore, even if the data was not seized with the cell phone, Appellant's conduct remains outside the scope of the charged specification, and this Court must set aside Appellant's conviction for Article 131e, UCMJ.

[4] The Army Court's opinion developed a new framework that chronologized the statutory terms as follows: about to seize, seizing, endeavoring to seize. *Strong*, 83 M.J. at 516. This does not follow common use of those words or the syntax of the statute, in chronological or reverse chronological order. Article 131e, UCMJ.

II.
WHETHER APPELLANT WAS PREJUDICED WHERE THE MJ FAILED TO INSTRUCT THE PANEL IN ACCORDANCE WITH THE PLAIN LANGUAGE OF THE CHARGE SHEET.

Standard of Review

Constructive amendment and fatal variance claims are reviewed de novo. *United States v. Davis*, 53 F.4th 833, 846 (5th Cir. 2022); *United States v. Treat*, 73 M.J. 331, 335 (C.A.A.F. 2014). Unpreserved errors are reviewed for plain error. *Schmidt*, 82 M.J. at 72.[5] To prevail under plain error review an appellant must demonstrate: (1) there was error (2) the error was clear or obvious, and (3) the error materially prejudiced a substantial right. *Schmidt*, 82 M.J. at 73.

Law

A. Constructive Amendment

An accused has a substantial right to be tried only for crimes charged in the indictment. *Stirone v. United States*, 361 U.S. 212, 217 (1960). Where jury instructions deviate from the indictment and broaden the bases for a conviction, an impermissible "constructive amendment" occurs, which is *per se* prejudicial. *See United States v. Holt*, 777 F.3d 1234, 1261 (11th Cir. 2015); *see also United States v. Peterman*, 841 F.2d 1474, 1477 (10th Cir. 1988) (stating that jury instructions

[5] The issue presented requires the parties to address prejudice and not whether appellant waived, or could waive, the ability to complain of the military judge's failure.

which deviate from the charge will be invalid where it denies an accused his rights, to include notice); *United States v. Syme*, 276 F.3d 131, 155, n.10 (3rd Cir. 2002) (holding a constructive amendment is plain and obvious error that is "presumptively prejudicial"); *United States v. Adamson*, 291 F.3d 606, 615 (9th Cir. 2002) ("a constructive amendment always requires reversal"). *But see United States v. Fletcher*, 121 F.3d 187, 192–93 (5th Cir. 1997) (declining to view constructive amendments as *per se* prejudicial following *United States v. Olano*, 507 U.S. 725, 731–34 (1993)) *and United States v. Remsza*, 77 F.3d 1039, 1044 (7th Cir. 1996) (same).

In *Howard v. Daggett*, the government charged Howard with traveling in interstate commerce and inducing two named individuals to engage in prostitution. 526 F.2d 1388, 1389 (9th Cir. 1975). Evidence came out at trial that Howard had relationships with other women besides those named in the indictment. *Id.* The judge's instructions omitted the names of the alleged prostitutes. *Id.* During deliberations, the jury asked about this distinction, and were told to disregard the additional language in the indictment as surplusage. *Id.* at 1389–90. Howard's conviction was overturned because the jury may have convicted him "of a charge not brought by the grand jury." *Id.*

The guarantee of an accused to be properly notified of crimes is inherent in the military, and often arises in the context of lesser included offenses [LIOs]. *See*

United States v. Rauscher, 71 M.J. 225, 227 (C.A.A.F. 2012). For example, in *United States v. Jones*, the Government charged Jones with rape, and over his objection, the military judge instructed on indecent acts as an LIO. 68 M.J. 465, 467–68 (C.A.A.F. 2010). After finding indecent acts was not an LIO, this Court reversed Jones' conviction because he could not have been on notice of what he had to defend against.[6] *Id*. at 473.

Similarly, in *United States v. Tunstall*, the Government charged Tunstall with aggravated assault for digitally penetrating the victim when she was incapable of declining participation. 72 M.J. 191, 193 (C.A.A.F. 2013). The military judge, without objection, instructed the members that committing an indecent act was an LIO of the charged offense. *Id.* As in *Jones*, this Court reversed Tunstall's conviction after finding that committing an indecent act was not an LIO because Tunstall "was neither charged with nor on notice of the offense of indecent acts under the [theory of liability the military judge instructed upon] until the military judge's instructions." *Id.* at 196.

By contrast, in *United States v. Armstrong*, this Court affirmed a conviction after finding a deviation from the charge sheet. 77 M.J. 465 (C.A.A.F. 2018). There, however—unlike in *Jones* or *Tunstall*—the defense had requested

[6] While *Jones* referred to "variance," the decision concerned a "constructive amendment." *See United States v. McMurrin*, 70 M.J. 15, 19, n.3 (C.A.A.F. 2011).

instructions related to the not-an-LIO before the presentation of evidence. *Id.* at 473. This Court reasoned that the "manner in which a case was contested may reveal whether an accused was prejudiced by an erroneous consideration of an offense[,]" and that record showed Armstrong "had notice of how he needed to defend himself at the start of the case." *Id*. at 473.

B. Variance

"A variance between pleadings and proof exists when evidence at trial establishes the commission of a criminal offense by the accused, but the proof does not conform strictly with the offense alleged in the charge." *United States v. Allen*, 50 M.J. 84, 86 (C.A.A.F. 1999) (citing *United States v. Lee*, 1 M.J. 15, 16 (C.M.A. 1975)). This Court has found a material variance in numerous circumstances such as changing the name of an aircraft to the movement of a unit, *Treat*, 73 M.J. at 336, enlarging the dates of an offense by 279 days, *United States v. Simmons*, 82 M.J. 134, 136 (C.A.A.F. 2022), and substituting the mechanism of touching from a tongue to a hand. *United States v. Reese*, 76 M.J. 279, 300–01 (C.A.A.F. 2017).

"Prejudice can arise from a material variance in a number of ways." *United States v. Teffeau*, 58 M.J. 62, 67 (C.A.A.F. 2003). These ways include an appellant being misled as to what he should be defending against to the extent he was unprepared for trial, the variance changes the nature or identity of the offense

to the point an appellant was denied the opportunity to defend against the charge, or an appellant remains at risk of another prosecution for the same conduct. *Id.*

Argument

The military judge failed to instruct the panel on the charge as written. Instead of instructing the panel that to convict Appellant the panel must find Appellant was interfering with the seizure of the "digital content of her cellphone" as per the charge sheet, the military judge referred—throughout all three elements—only to Appellant's "cell phone." His failure to properly instruct was plain and obvious error. *Syme*, 276 F.3d at 155 (finding plain and obvious error in a constructive amendment); *see also United States v. Mckee*, 506 F.3d 225, 229 (3rd Cir. 2007). Whether this error is viewed as a constructive amendment or a material variance, *see Adamson*, 291 F.3d at 615 ("The line between a constructive amendment and a variances is at times difficult to draw."), Appellant suffered prejudice and the finding must be set aside.

A. Constructive Amendment

The military judge's error constituted an impermissible constructive amendment to the prejudice of Appellant's substantial rights because it broadened the bases for conviction to grounds Appellant could not have been prepared to defend. *Holt*, 777 F.3d at 1261. The panel is presumed to follow the military judge's instructions. *See United States v. Quezada*, 82 M.J. 54, 59 (C.A.A.F.

2021). This permitted, even encouraged, the panel to convict Appellant for her initial refusal to hand over the physical cell phone to law enforcement. (JA 38). This was not the Government's theory of liability, and "[a]n appellate court cannot affirm a criminal conviction on the basis of a theory of liability not presented to the trier of fact." *United States v. Nicola*, 78 M.J. 223, 227 (C.A.A.F. 2019) (quoting *United States v. Ober*, 66 M.J. 393, 405 (C.A.A.F. 2008). *See also McMurrin*, 70 M.J. at 20 ("[Appellant] was not charged with the offense of which [she] was convicted, the specification was not amended in accordance with Rule for Court-Martial 603, nor did [she] defend [herself] on the theory that while [she] was not guilty of [wiping her cell phone she] was guilty of [scuffling over the cell phone.]").

As in *Howard*, the Government charged Appellant with specifically wiping the data from her phone, but at trial elicited evidence regarding a scuffle over the phone, and then briefly touched on the scuffle during argument. (JA 29, 38, 58). Encouraging the panel "to consider evidence respecting [another act] was to allow the [panel] to convict of a charge not brought by the [Government]." *Howard*, 526 F.2d, 1390. And unlike in *Armstrong*, Appellant was not prepared to defend against this theory. 77 M.J. at 473. This constructive amendment must be set aside.

B. Variance

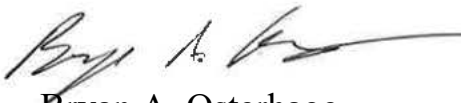
Even if the military judge's failure is viewed as a variance, as argued *supra*, it allowed Appellant to be convicted for acts with which the Government did not charge her and which she could not be prepared to defend. While the scuffle over the phone was not the focus of the Government's argument, Appellant's demeanor was mentioned. (JA 38, 58). More importantly, the scuffle is the event to which the plain language of the military judge's instructions oriented the panel. This encouraged the panel to convict Appellant for something—about which they heard evidence—that was not the theory of the Government's case. This is impermissible. *Nicola*, 78 M.J. at 227.

Similarly, it misled Appellant as she prepared a defense and deprived her of an opportunity to meaningfully defend this charge. *Teffeau*, 58 M.J. at 67. Appellant's defense counsel presented several theories as to why someone would wipe data from their cell phone, ranging from naked videos, to dating apps, to cross-dressing. (JA 63). If what Appellant should have been defending against was the physical scuffle over the cell phone, there are several plausible theories as to why Appellant may have resisted. Perhaps Appellant did not understand what was happening—after all, she had just been in a serious accident and was likely rattled—and just wanted to make sure the seizure was actually authorized. This would tend to disprove the third element that Appellant knew the seizure was

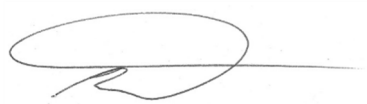
authorized. Perhaps—before losing her cell phone and the data on it—she wanted to copy down important information like her calendar and emergency contact numbers, or perhaps she needed to transfer money to another bank account or a family member in need before losing the cell phone and thus her ability to do so. These facts would cut against the requirement in the second element that she was trying to prevent the seizure. The Government's charging decision combined with the military judge's instructions deprived Appellant of the ability to present these defenses and she suffered because of it.

WHEREFORE, Appellant respectfully requests this Court set aside The Specification of Charge III and remand to the Army Court to order a new sentencing hearing.

Sean Patrick Flynn
Major, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060
(703) 693-0674
USCAAF Bar Number 37529



Bryan A. Osterhage
Major, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
USCAAF Bar Number 36871



Jonathan F. Potter, Esq.
Senior Appellate Counsel
Defense Appellate Division
USCAAF Bar Number 26450

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1. This brief complies with the type-volume limitation of Rule 24(b) because it contains 4,406 words.

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SEAN PATRICK FLYNN
Major, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
9275 Gunston Road
Fort Belvoir, Virginia 22060
703-693-0674
USCAAF Bar No. 37529

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the forgoing in the case of *United States v. Strong*, Crim. App. Dkt. No. 20200391, USCA Dkt. No. 23-0107/AR was electronically filed with the Court and served on the Government Appellate Division, the Army Court of Criminal Appeals, and the Defense Appellate Division on July 14, 2023.

SEAN PATRICK FLYNN
Major, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
9275 Gunston Road
Fort Belvoir, Virginia 22060
703-693-0674
USCAAF Bar No. 37529