

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

UNITED STATES, <i>Appellee</i>)	UNITED STATES' ANSWER TO SUPPLEMENT TO PETITION FOR GRANT OF REVIEW
v.)	
)	Crim. App. Dkt. No. 40441
Staff Sergeant (E-5))	
ZHUO H. ZHONG)	USCA Dkt. No. 25-0011/AF
United States Air Force)	
<i>Appellant.</i>)	18 November 2024

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

INTRODUCTION

The United States responds to Issue IV of Appellant's Supplement to Petition for Grant of Review in this Answer, and otherwise enters its general opposition to the other issues raised, with the understanding that this Court may grant review of some of the issues as trailers to United States v. Johnson, 2023 CCA LEXIS 330 (A.F. Ct. Crim. App. 9 August 2023) *pet. granted* 2024 CAAF LEXIS 561 (C.A.A.F. 24 September 2024). The United States relies on its briefs filed with the Air Force Court of Criminal Appeals (AFCCA) on 17 June 2024, unless requested to do otherwise by this Court.

This Court should not grant review of Issue IV because Appellant did not raise the 18 U.S.C. § 922 annotation on the Statement of Trial Results (STR) or

Entry of Judgment (EOJ) as a post-trial processing error under Article 66(d)(2) at the Court of Criminal Appeals (CCA) as required by United States v. Williams, CAAF LEXIS 501 (C.A.A.F. 2024). Since Appellant did not raise the issue under Article 66(d)(2) at AFCCA, there is nothing about AFCCA's actions with respect to Article 66(d)(2) for this Court to review.

ISSUES PRESENTED

I.

WHETHER THE COURT OF APPEALS FOR THE ARMED FORCES HAS STATUTORY AUTHORITY TO DECIDE WHETHER A CONVICTION IS FACTUALLY SUFFICIENT.

II.

WHETHER APPELLANT'S CONVICTION FOR INDECENT RECORDING IS FACTUALLY SUFFICIENT WHERE THE EVIDENCE DOES NOT PROVE THAT A VIDEO TAKEN ON THE CHARGED DATE DEPICTED A PRIVATE AREA OF T.M., AND STAFF SERGEANT ZHONG HAD A REASONABLE MISTAKE OF FACT AS TO CONSENT.

III.

WHETHER THE LOWER COURT ERRONEOUSLY INTERPRETED AND APPLIED THE AMENDED FACTUAL SUFFICIENCY STANDARD UNDER ARTICLE 66(D)(1)(B), UNIFORM CODE OF MILITARY JUSTICE.

IV.

WHETHER, IN LIGHT OF UNITED STATES V. WILLIAMS, ___ M.J. ___, CAAF LEXIS 501 (C.A.A.F. 2024), THE AIR FORCE COURT OF CRIMINAL APPEALS HAD JURISDICTION UNDER ARTICLE 66(D)(2), UNIFORM CODE OF MILITARY JUSTICE, TO PROVIDE APPROPRIATE RELIEF FOR THE ERRONEOUS FIREARM PROHIBITION ON THE INDORSEMENT TO THE ENTRY OF JUDGMENT.

V.

WHETHER THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES HAS JURISDICTION AND AUTHORITY TO DIRECT THE MODIFICATION OF THE 18 U.S.C. § 922 PROHIBITION NOTED ON THE INDORSEMENT TO THE ENTRY OF JUDGMENT.

VI.

WHETHER REVIEW BY THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES OF THE 18 U.S.C. § 922 PROHIBITION NOTED ON THE INDORSEMENT TO THE ENTRY OF JUDGMENT WOULD SATISFY THIS COURT'S PRUDENTIAL CASE OR CONTROVERSY DOCTRINES.

VII.

AS APPLIED TO STAFF SERGEANT ZHONG, WHETHER THE GOVERNMENT CAN PROVE THAT 18 U.S.C. § 922 IS CONSTITUTIONAL IN LIGHT OF RECENT PRECEDENT FROM THE SUPREME COURT OF THE UNITED STATES.

STATEMENT OF STATUTORY JURISDICTION

AFCCA reviewed this case under Article 66(d), UCMJ. 10 U.S.C. 866(d). If it grants review of this case, this Court will have jurisdiction over this matter under Article 67(a)(3), UCMJ. 10 U.S.C. 867(a)(3).

STATEMENT OF THE CASE

The United States generally accepts Appellant's statement of the case.

At AFCCA, Appellant argued that the 18 U.S.C. § 922 firearms prohibition was unconstitutional as applied to Appellant and that the court had jurisdiction to decide that issue under Article 66(d)(1). But Appellant did not request relief at AFCCA under Article 66(d)(2) on the grounds that the 18 U.S.C. § 922 firearms annotations on the Statement of Trial Results (STR) or Entry of Judgment (EOJ) constituted a post-trial processing error.

ARGUMENT

IV.

AFCCA HAD NO AUTHORITY TO CORRECT THE 18 U.S.C. § 922 ANNOTATION ON THE STATEMENT OF TRIAL RESULTS OR THE ENTRY OF JUDGMENT BECAUSE APPELLANT DID NOT RAISE OR DEMONSTRATE POST-TRIAL PROCESSING ERROR UNDER ARTICLE 66(D)(2) AT AFCCA.

Standard of Review

CCA are courts of limited jurisdiction, and this Court reviews the scope of a CCA's jurisdiction de novo. United States v. Brubaker-Escobar, 81 M.J. 471, 473-474 (C.A.A.F. 2021).

Law and Analysis

In this case, like in Williams, “Appellant did not raise the issue to the CCA and consequently did not trigger the CCA's correction authority under Article 66(d)(2), UCMJ.” 2024 CAAF LEXIS 501, *14. Because Appellant never raised the issue, nor met his burden to demonstrate error, AFCCA was not authorized to sua sponte review his case under Article 66(d)(2). 10 U.S.C. 866(d)(2). Thus, there is nothing about AFCCA's actions with respect to Article 66(d)(2) for this Court to review. Appellant's argument in Issue IV is without merit, and this Court should decline to review it.

CONCLUSION

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's petition for grant of review as to Issue IV.



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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was transmitted by electronic means to the Court and transmitted by electronic means with the consent of the counsel being served via email to frederick.johnson.11@us.af.mil 18 November 2024.



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CERTIFICATE OF COMPLIANCE WITH RULE 24(d)

This brief complies with the type-volume limitation of Rule 24(c) because this brief contains 895 words. This brief complies with the typeface and type style requirements of Rule 37.

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Dated: 18 November 2024