

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

UNITED STATES,	)	APPELLEE’S OPPOSITION TO
Appellee	)	APPELLANT’S MOTION TO
	)	SUPPLEMENT THE RECORD
v.	)	
	)	Crim.App. No. 201400373
Darin G. LOPEZ,	)	
Intelligence Specialist Second	)	USCA Dkt. No. 17-0291/NA
Class (E-5)	)	
U.S. Navy	)	
Appellant	)	

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

Pursuant to Rule 30(b) of this Court’s Rules of Practice and Procedure, the United States respectfully opposes Appellant’s Motion to Supplement the Record of April 26, 2017.

A. Military appellate courts presumptively do not expand the Record beyond that developed in the trial court.

The Court of Appeals for the Armed Forces is not a factfinding body. *United States v. Pierce*, 40 M.J. 149, 151 (C.M.A. 1994). “Military appellate courts return cases to the trial level when it becomes necessary to develop facts not contained within the record of trial and where affidavits do not suffice.” *United States v. Campbell*, 57 M.J. 134, 138 (C.A.A.F. 2002); *see United States v. Ginn*, 47 M.J. 236, 242 (C.A.A.F. 1997) (establishing seven-prong test for determining whether affidavits submitted to appellate courts merit remand to trial court for

further expansion of the record of trial, or rather may be disposed of outright on appeal).

Appellant offers no affidavit to support how the document he now proffers supports his claim of ineffective assistance of counsel. *Ginn*, 47 M.J at 248. Instead, his counsel merely asserts in a Motion that the Verizon Wireless statement is “relevant to appellant’s allegation of ineffective assistance of counsel.” (Appellant Mot. Suppl. R., Apr. 26, 2017).

But Appellant fails to show how the document is relevant. He points to no statute, case, or rule that would allow this Court to consider the Verizon Wireless statement on its own merits. Moreover, he fails to demonstrate when he received the document, as he would be required to at a trial court, beyond vaguely claiming that review at the lower court was “complete.”

And he makes no claim that it is an Article 73, UCMJ, “newly discovered evidence” issue. Notably, these are his *own* cell phone records from 2012, that he claims were not available to him until 2017. He provides no affidavit to support this claim.

Appellant’s conclusory Motion fails to establish good cause to further expand the Record. This Court should deny the Motion.



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**Certificate of Filing and Service**

I certify that the original and required number of copies of the foregoing was delivered to the Court and that a copy was delivered to defense counsel on May 1, 2017.



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