

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA v. MAJID SHOUKAT KHAN	AE 028G RULING Defense Motion for Reconsideration of AE 028C Denying Motion to Compel Production of <i>Brady</i> Material 26 June 2019
--	--

1. In AE 028D,¹ the Defense requested reconsideration of the Commission’s ruling in AE 028C² denying the Defense motion to compel the Government to produce *Brady* material.³ The Defense presented three (3) arguments as to why the Commission ignored or misapprehended controlling law and applicable facts in its ruling followed by a summary of the arguments in the original motion. The Government response, AE 028E,⁴ argued the Defense request should be denied. “The Defense offers no new facts or evidence for the Military Judge to review, no new law or change in existing law for the Military Judge to consider, nor any persuasive reasoning to conclude that the ruling in AE 028C was either clearly erroneous or caused manifest injustice. Rather, the Defense simply rehashes the same failed legal arguments previously presented to the Commission in AE 028, AE 028B, and its recent oral argument on this issue.” (AE 028E at 1). The Defense filed a Reply⁵ on 3 June 2019 arguing the Government is incorrect in the response.
2. The Commission may grant reconsideration of any ruling (except the equivalent of a finding of not guilty) prior to authentication of the record of trial.⁶ Either party may move for

¹ AE 028D, Defense Motion for Reconsideration of AE 028C Denying Motion to Compel Production of *Brady* Material, filed 20 May 2019.

² AE 028C, Ruling, Defense Motion to Compel Production of *Brady* Material, dated 15 April 2019.

³ See *Brady v. Maryland*, 373 U.S. 83 (1963).

⁴ AE 028E, Government Response to Defense Motion for Reconsideration of AE 028C Denying Motion to Compel Production of *Brady* Material, filed 29 May 2019.

⁵ AE 028F, Defense Reply to Motion for Reconsideration of AE 028C Denying Motion to Compel Production of *Brady* Material, filed 3 June 2019.

⁶ Rule for Military Commission (R.M.C.) 905(f).

reconsideration, but granting of the request is in the Military Judge's discretion. Generally, reconsideration should be based on a change in the facts or law, or instances where the ruling is inconsistent with case law not previously briefed. Reconsideration may also be appropriate to correct a clear error or prevent manifest injustice.⁷ Motions for reconsideration are not appropriate to raise arguments that could have been, but were not, raised previously and arguments the Commission has previously rejected.⁸ Nor are motions for reconsideration appropriate for the proffer of evidence available when the original motion was filed, but, for unexplained reasons, not proffered at that time.⁹

3. The Commission finds the Defense has failed to proffer new facts, cite new law or provide argument sufficient to demonstrate a clear error or manifest injustice. The Defense in its reconsideration motion is arguing why the Commission's ruling is wrong by returning to the reasoning in the original motion.¹⁰

4. Accordingly, the Defense motion to reconsider the Commission's ruling in AE 028C is **DENIED**.

So **ORDERED** this 26th day of June, 2019.

//s//
DOUGLAS K. WATKINS
COL, JA, USA
Military Judge

⁷ See *U.S. v. Libby*, 429 F. Supp. 2d 46 (D.D.C. 2006); *U.S. v. McCallum*, 885 F. Supp. 2d 105 (D.D.C. 2012).

⁸ See *U.S. v. Booker*, 613 F. Supp. 2d 32 (D.D. C. 2009); *U.S. v. Bloch*, 794 F. Supp. 2d 15, 19 (D.D.C. 2011).

⁹ See *Bloch*, 794 F. Supp. 2d at 19–20.

¹⁰ AE 028, Defense Motion to Compel Production of *Brady* Material, filed 25 February 2019.