

**DEPARTMENT OF THE AIR FORCE
UNITED STATES AIR FORCE TRIAL JUDICIARY**

UNITED STATES v. SSGT KINYADA J. JOHNSON 552d Operations Support Squadron (ACC) Tinker Air Force Base, OK	DEFENSE MOTION TO COMPEL PRODUCTION OF EXPERT CONSULTANT – FORENSIC TOXICOLOGIST 26 January 2026
---	--

COMES NOW, the Accused, SSgt Kinyada J. Johnson, by and through counsel, and pursuant to the Fifth and Sixth Amendments to the U.S. Constitution, Article 46 of the Uniform Code of Military Justice (UCMJ), and Rules for Courts-Martial (RCM) 703(d), 905(b)(4), and 906(b)(7), respectfully moves this Honorable Court to compel the Government to provide the Defense with the assistance of a qualified forensic toxicologist expert consultant, specifically, Dr. [REDACTED]. This request was previously submitted to Trial Counsel on 14 January 2025, and purportedly forwarded to the General Court-Martial Convening Authority (GCMCA) with a legal office recommendation for approval at an unknown date and is still pending decision as of the filing of this motion. Government has obtained their own expert toxicologist as of 26 January 2026. Accordingly, the Defense now seeks judicial intervention to ensure SSgt Johnson's right to a fair trial and equal access to necessary resources.

The Defense does not request a 39(a) proceeding for this motion.

FACTS

1. On 10 September 2025, SSgt Johnson was accused of one charge and one specification of wrongful use of THC-9 in violation of Article 112a, Uniform Code of Military Justice. The charges were referred to a special court-martial on 19 December 2025. See Attachment 1.
2. On 14 January 2025, Defense submitted an expert witness request for Dr. [REDACTED] and included his CV and feed schedule because Dr. [REDACTED] is available during the week of 9 February 2026, when trial is docketed. Government confirmed receipt of this request on 14 January 2026. See Attachment 2.
3. Government counsel has made verbal proffers over the past 12 days that they have recommended approval of Defense's expert request.

4. Government notified Defense on 26 January 2026 of their intended expert forensic toxicologist testimony. See Attachment 3.

5. Without this expert assistance, Defense will be unable to adequately investigate, develop, or present a central defense theory.

BURDEN OF PROOF AND PERSUASION

6. The burden of persuasion in this matter rests with the Defense as the moving party. R.C.M. 905(c)(2)(A). The burden of proof is a showing that the testimony of the witness would be relevant and necessary. R.C.M. 703(d)(2)(A).

LAW

7. Article 46, UCMJ, provides that trial counsel, defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with appropriate regulations. “[A]s a matter of military due process, service members are entitled to...expert assistance when necessary for an adequate defense.” *United States v. Garries*, 22 M.J. 288, 290 (C.M.A. 1986).

8. RCM 703(d) provides that upon a proper showing of necessity, the Government must authorize and fund expert witnesses or consultants for the Defense, regardless of a member’s ability to pay for the services. Simply providing a defense attorney is not enough to satisfy the Sixth Amendment right to counsel. *Louisiana v. Madison*, 345 So.2d 485 (La. 1977). The assigned counsel must be reasonably effective in investigating, strategizing, presenting, and arguing the case. *Strickland v. Washington*, 466 U.S. 668 (1984).

9. Additionally, in *Garries*, the Court held that denial of necessary expert assistance undermines the fairness of proceedings. In *United States v. Bresnahan*, 62 M.J. 137 (C.A.A.F. 2005), the Court emphasized that necessity is not limited to rebuttal of Government experts but extends to any area where the Defense cannot adequately investigate or prepare without expert support.

10. The Court has articulated a three-part test for determining necessity: (1) why the expert is needed; (2) what the expert would accomplish for the Defense; and (3) why defense counsel cannot adequately gather and present the evidence without the expert. *United States v. Gonzalez*, 39 M.J. 459, 461 (C.M.A. 1994); *United States v. Ford*, 51 M.J. 445, 455 (C.A.A.F. 1999).

11. Entitlement of expert assistance is not limited to whether the expert will testify. Rather, the entitlement exists “before trial to aid in the preparation of [the defense] upon a demonstration of necessity.” *United States v. Lee*, 64 M.J. 213, 217 (C.A.A.F. 2006).

ARGUMENT

12. Under RCM 703(d), an accused is entitled to expert assistance when it is necessary for an adequate defense. The Court of Appeals for the Armed Forces has explained that to compel such assistance, the defense must show: (1) why the expert is needed; (2) what the expert would accomplish for the defense; and (3) why counsel cannot obtain the same evidence by other means. *Gonzalez*, at 461. The Defense meets all three prongs here.

Why the expert assistance is needed

13. Courts-martial with charges involving complex drug tests include highly technical, scientific evidence that counsel are unable to adequately assess without expert assistance. Here, the discovery includes nearly a dozen litigation packages from the Air Force Drug Testing Laboratory, and Defense cannot decipher the technical implications of the testing without an expert forensic toxicologist.

14. Additionally, appointment of a forensic toxicologist is routine in cases involving alleged drug use in the Air Force; Defense's motion to compel this expert is based on Government's proffer that approval is anticipated of Dr. [REDACTED] and Defense's desire to comply with the scheduling order extension deadline for motions.

15. Finally, as evidenced in Attachment 3, Government has security their own forensic toxicology expert but has not acted on Defense's request, which was sent 12 days prior to this filing. If Government is obtaining a forensic toxicologist, Defense is certainly also entitled to a forensic toxicologist.

What the expert assistance would accomplish for the accused

16. As stated above, an expert forensic toxicologist would allow SSgt Johnson to work with his attorneys to consult an expert in drug testing and reporting to assess the nearly one dozen technically-heavy litigation packages, which average about 40 pages each. With an expert's assistance, SSgt Johnson will be better prepared to prepare his defense against the Government's case in chief.

Why the defense counsel is unable to gather and present the evidence that the expert assistant would be able to develop

17. Defense Counsel has experience litigating similar cases. However, Defense lacks the specialized toxicology training necessary to evaluate complex drug reports, interpret data, or render opinions about the impacts of the drug reports. As CAAF has recognized, counsel cannot be expected to develop or present technical or scientific evidence without expert assistance. *United States v. Ndanyi*, 45 M.J. 315, 319 (C.A.A.F. 1996).

18. Furthermore, should expert testimony be ultimately needed, the Defense cannot present the evidence ourselves. The Defense believes that the expert analysis and consultation will not only

provide valuable information to be used in formulating a defense in this case, but it is absolutely vital to SSgt Johnson's trial.

Anticipated Government Arguments and Rebuttal

19. The Government will likely argue that SSgt Johnson's alleged drug use was knowing and repeated (on divers occasions). Whether SSgt Johnson knowingly used illegal controlled substances on two or more occasions, is inextricably tied to the validity and reliability of the testing reports provided by Government during discovery.

20. Without such expert assistance, the Defense cannot fully and adequately assess Government's case and evidence. Courts have repeatedly recognized that expert assistance is required whenever complex scientific or technical issues are central to the defense. *Id.*

21. Therefore expert toxicologist is necessary to assess and interpret the Government's evidence and ensure that SSgt Johnson receives the fair trial guaranteed by the Constitution and the UCMJ.

REQUEST FOR RELIEF

22. The Defense respectfully requests that this Honorable Court compel production of an expert consultant in the field of forensic toxicology, specifically Dr. [REDACTED].

Respectfully submitted on 26 January 2026.

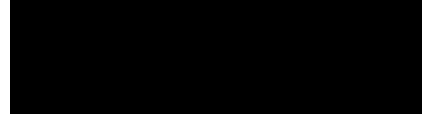
[REDACTED]
MARY CLAIRE RIZZARDI, Capt, USAF
Defense Counsel

(3) Attachments:

1. Redacted Charge Sheet, dated 19 December 2025, 2 pages
2. Defense Request for Expert Consultant, dated 14 January 2026, 2 pages
3. Government's Notice for Expert Testimony, dated 26 January 2026, 2 pages

CERTIFICATE OF SERVICE

I hereby certify that I e-mailed a copy of the Defense Motion to Compel Production (with all attachments) to the Trial Counsel and the Military Judge on 26 January 2026.



MARY CLAIRE RIZZARDI, Capt, USAF
Defense Counsel