

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

Appellee

**MOTION TO VIEW AND
PHOTOCOPY SEALED
MATERIALS**

v.

Docket No. ARMY 20220345

Private First Class (E-3)

ANTHONY M. ELMORE,

United States Army,

Appellant

Tried at Fort Bragg, North Carolina,
on 17 February, 31 March, 27-30 June
2022, before a general court-martial
appointed by the Commander,
Headquarters, 82nd Airborne
Division, Colonel J. Harper Cook,
Military Judge, presiding.

TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES ARMY COURT OF CRIMINAL APPEALS

COMES NOW the undersigned appellate defense counsel, pursuant to Rules 6.9(a) and 23 of this court's Rules of Appellate Procedure and moves to photocopy and view sealed materials contained in the record of *United States v. PFC Elmore*. The undersigned appellate civilian defense counsel seeks to examine the following portions of the record reviewed in pre-trial hearings and subsequently sealed pursuant to Military Rule of Evidence (Mil. R. Evid.) 412 and Rule for Court-Martial 1113:

1. Appellate Exhibits: II, II-A, III, III-A, III-B, VIII, VIII-A, IX, IX-A, XIII.

2. Audio and Transcript: Closed sessions from 31 March, 27 June, and 28 June 2022; pages 43-88; 450-455.

This is not a request to review material protected under Mil. R. Evid. 513.

In the present case, review of the materials sealed pursuant to Mil. R. Evid. 412 is consistent with appellate civilian defense counsel's obligations under Army Reg. 27-26, Legal Services: Rules of Professional Conduct for Lawyers (28 June 2018) and is reasonably necessary to allow counsel to evaluate the material in order to adequately advise appellant.

Undersigned civilian appellate defense counsel was retained on 25 April 2023. Both appellate defense counsels must review this material to determine whether issues exist that merit presentation to this court as part of its Article 66, UCMJ, review. However, Mr. Robert Feldmeier lives overseas and currently has no planned trips to the area before appellant's brief is due to this court. Requiring civilian counsel to travel to Fort Belvoir, Virginia, to view the sealed records would cause an undue hardship.

Both undersigned counsels acknowledge their professional and ethical obligations to protect the sealed material. Undersigned civilian appellate defense counsel also acknowledges his duty, upon completion of his review, to return the sealed record material completely and without alteration to the Clerk of Court's possession.

WHEREFORE, appellate defense counsel respectfully requests this court grant the instant motion.

PANEL NO. 2


MOTION TO VIEW AND
PHOTOCOPY SEALED
MATERIAL

GRANTED: As to viewing ONLY

DENIED: As to photocopying

DATE: 28 April 2023


ROBERT FELDMEIER
Civilian Appellate Defense Counsel



TUMENTUGS D. ARMSTRONG
Captain, Judge Advocate
Defense Appellate Division

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army
Court and Government Appellate Division on April 26, 2023.



MELINDA J. JOHNSON
Paralegal Specialist
Defense Appellate Division