

**IN THE UNITED STATES ARMY
COURT OF CRIMINAL APPEALS**

UNITED STATES,
Appellee

**MOTION TO ATTACH DEFENSE
APPELLATE EXHIBIT A**

v.

Docket No. ARMY 20220575

Captain (O-3),
ROSS E. DOWNUM,
United States Army,
Appellant

Tried at Fort Hood, Texas, on 25 July,
19 August, and 7-10 November 2022
before a general court-martial
appointed by Commander,
Headquarters, 1st Cavalry Division,
Colonel Steven Henricks, Lieutenant
Colonel Scott Hughes, military
judges, presiding.

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

Pursuant to Rule 23(b) of this Court's rules, appellant moves to attach the
following document:

- **Def App. Ex. A:** Affidavit of Captain Ross Downum (appellant) – 4
September 2023

This document is necessary to this Court's evaluation of appellant's claim of
ineffective assistance of counsel.

WHEREFORE, appellant respectfully requests this Honorable Court grant
this Motion to Attach Defense Appellate Exhibit A.

[REDACTED]

DANIEL CONWAY
Civilian Appellate Defense Counsel

[REDACTED]

[REDACTED]

MATTHEW S. FIELDS
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060

[REDACTED]

PANEL NO. # 3

MOTION TO ATTACH DEFENSE
APPELLATE EXHIBIT A:

GRANTED: [REDACTED]

DENIED: _____

DATE: 18 January 2024

Defense Appellate Exhibit A

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AFFIDAVIT

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**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES
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Affidavit of CPT Ross Downum

My name is Ross Downum. I was the accused in this case.

I hired [REDACTED] as Civilian Defense Counsel (CDC) to represent me
at court-martial on 5 November 2021. My court-martial concluded on 10
November 2022, approximately one year later.

Leading up to the court martial, I knew that [REDACTED] had interviewed
[REDACTED] and [REDACTED]. I was aware that this interview was recorded,
though I did not listen to the recording. I got a general answer from [REDACTED]
when I asked how the interview went and if there were any concerns.

During the course of appellate review, I learned that [REDACTED] had stated during the audio-recorded pre-trial interview that he *did not* recall me mentioning anything about my drink on the night in question. In an email exchange during appellate review, which I was copied on, [REDACTED] stated that he was unaware at trial that [REDACTED] would deny the conversation about my drink. [REDACTED] said that, in pre-trial interviews, [REDACTED] had stated he *did* remember the conversation. However, this seems to directly contradict the fact that, in the audio-recorded pre-trial interview, [REDACTED] clearly said exactly the opposite. I am not aware of any documentation of additional pre-trial interviews where [REDACTED] had stated he *did* remember the conversation. I would have expected that, if such interviews existed, [REDACTED] would have used them at trial after [REDACTED] denied the prior conversation. My appellate defense attorney also asked [REDACTED] for documentation of any such interviews, and [REDACTED] did not respond.

[REDACTED] never informed me that [REDACTED] would contradict my version of events about the night in question. If I had known that [REDACTED] or [REDACTED] were going to contradict me and my recollection of events, that definitely would have factored that into my decision to testify at court-martial. I felt that I was not adequately armed with key knowledge prior to making several decisions leading to my court martial, specifically whether or not to testify. I was also quite upset and

surprised when, after my testimony, my own side called [REDACTED] who directly contradicted me. Certainly, impeaching my own testimony could not have been a defense strategy. I can only conclude that [REDACTED] went into trial without reviewing or remembering what [REDACTED] had said in the pre-trial interview.

I swear under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing statement is true to the best of my knowledge and belief.

[REDACTED]
~~Signature~~

09/04/2023
Date

Certificate of Service

I certify that a copy of the foregoing was sent via electronic submission to the Army Court of Criminal Appeals and the Government Appellate Division on 19 September 2023.



MATTHEW S. FIELDS
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060

