

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

UNITED STATES,  
*Appellee*

**SUPPLEMENTAL MOTION TO  
ATTACH DOCUMENTS**

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**

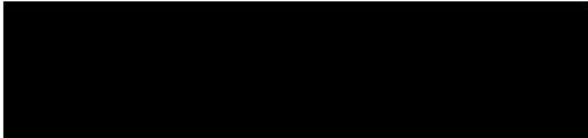
Pursuant to Rule 23(b) of this Court's rules, appellant moves to attach the following documents:

- **Def. App. Ex. B:** Emails between appellate defense counsel and trial defense counsel.
- **Def. App. Ex. C:** Audio-recorded pretrial interview of BL

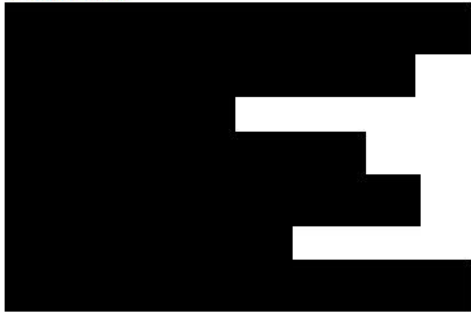
These documents are necessary to this Court's evaluation of appellant's claim of ineffective assistance of counsel. In its answer, the government criticizes appellant for not attaching Def. App. Ex. B. Appellant complies with the government request and moves to attach it. Similarly, the government questions the contents of Def. App. Ex. C. Attaching the recording itself should clarify any

confusion as to its contents, so all sides can operate on a common understanding of the underlying facts.

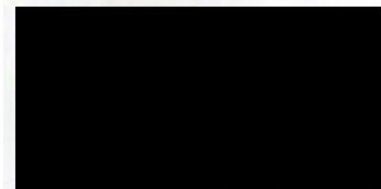
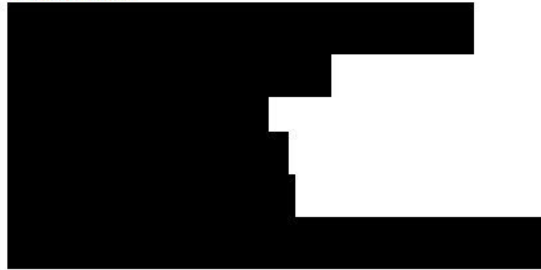
**WHEREFORE**, appellant respectfully requests this Honorable Court grant this Motion to Attach Documents.



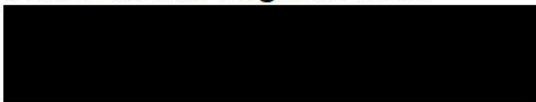
DANIEL CONWAY  
Lead Civilian Appellate Defense  
Counsel



SCOTT HOCKENBERRY  
Assistant Civilian Appellate Defense  
Counsel



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



GRANTED: 

DENIED: \_\_\_\_\_

DATE: 18 January 2024

**APPENDIX**

**From:** [REDACTED]  
**Subject:** RE: CPT Ross Downum Appeal  
**Date:** Wednesday, August 9, 2023 4:30:00 PM  
**Attachments:** [REDACTED]

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[REDACTED]

Appreciate the quick response. Copy all. Do you have any documentation of past interviews of [REDACTED] where he confirmed remembering the conversation?

Full disclosure, the only interview I see documented is the audio-recorded phone call with [REDACTED] and [REDACTED] – I believe from July – and [REDACTED] states in that interview that he does not remember the conversation. Basically consistent with his later testimony at trial.

[REDACTED]

Respectfully,

[REDACTED]  
Attorney-At-Law  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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**From:** [REDACTED] >  
**Sent:** Wednesday, August 9, 2023 3:38 PM  
**To:** [REDACTED] >  
**Cc:** [REDACTED]  
**Subject:** RE: CPT Ross Downum Appeal

“Did you know that [REDACTED] would deny this conversation?” No, in fact [REDACTED] had said he DID remember the conversation in past interviews. It was the bombshell that you describe.

Ross was upset. He and my co-counsel wanted us to re-ask. I was against the idea because, as you know, if you re-ask, the repeated “wrong” answer only reinforces the bad information.

I relented, against my instincts, and re-asked. [REDACTED] affirmed his position that he did not have a memory of that conversation. I do not think it was as fatal as to make the government's case, Ross had a lot of good evidence, but it was not helpful.

Semper Fi, [REDACTED]

[REDACTED]

[REDACTED]

LEGAL DISCLAIMER/WARNING (in plain English): This email discusses legal matters. If it is not for you, please do not retain it. If you retain it, you could be violating the law, and revealing the message's contents to someone else could be a further violation of the law. So, if this message is not for you, please delete it, and notify the sender. Thank you.

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**From:** [REDACTED]  
**Sent:** Wednesday, August 9, 2023 1:48 PM  
**To:** [REDACTED] >  
**Cc:** [REDACTED] >  
**Subject:** RE: CPT Ross Downum Appeal

[REDACTED],

A negative side of the evidence in this case was the contradiction between [REDACTED] testimony and [REDACTED] testimony. Ross testified that he immediately spoke to [REDACTED] about his concern with his drink. [REDACTED] said this conversation didn't happen and, if it had, he would have remembered it. So you have a direct contradiction of [REDACTED] story on an important point by an unbiased witness. That just doesn't look good. Obviously.

I wouldn't be doing my job if I didn't ask about it. Did you know that [REDACTED] would deny this conversation? Did you inform [REDACTED] about it so [REDACTED] could weigh the wisdom of testifying given his testimony would be contracted by another witness? Did you consider any options to limit the evidence to avoid the contradiction?

If there's relevant background here or tactical considerations at play, it would be vastly preferable to know in advance.

[Redacted]

Respectfully,

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

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**From:** [Redacted]  
**Sent:** Monday, July 10, 2023 7:24 AM  
**To:** [Redacted] >  
**Cc:** [Redacted] >  
**Subject:** RE: CPT Ross Downum Appeal

Yes sir, eROT attached. Much appreciated.

Respectfully,

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

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**From:** [Redacted] >  
**Sent:** Monday, July 10, 2023 4:57 AM  
**To:** [Redacted].com >  
**Cc:** Ross D [Redacted]  
**Subject:** RE: CPT Ross Downum Appeal

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was electronically submitted to Army Court and Government Appellate Division on November 30, 2023.



**MICHELLE L.W. Surratt**  
**Paralegal Specialist**  
**Defense Appellate Division**

