

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES,
Appellee

**BRIEF ON BEHALF OF
APPELLEE ON SPECIFIED
ISSUES**

v.

Docket No. ARMY 20230235

Specialist (E-4)
ROY A. WORDLAW,
United States Army,
Appellant

Tried at Fort Wheeler Army Airfield,
Hawaii, on 1 December 2022, 24
February 2023, and 24–27 April
2023, before a general court-martial
convened by Commander, 25th
Infantry Division, Lieutenant
Colonel Michael Korte, Military
Judge, presiding.

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

Specified Issue I

**WHETHER PROSECUTION EXHIBITS 1 & 2
INCLUDE EVIDENCE OF THE VICTIM'S SEXUAL
BEHAVIOR AND, IF SO, WHETHER THE
MILITARY JUDGE ERRED BY NOT FOLLOWING
MIL. R. EVIDENCE 412(c) BEFORE ADMITTING
THEM.**

Specified Issue II

**ASSUMING ERROR, WHETHER IT CAUSED
PREJUDICE TO APPELLANT.**

Statement of the Case

On 9 May 2024, appellant filed his brief with this honorable court, in part, alleging ineffective assistance of counsel. (Appellant's Br. 13). On 10 September 2024, appellee filed its reply. (Appellee's Br.). On 23 October 2024, this court specified two additional issues referenced in this brief. (Order, Specified Issues). On 25 October 2024, this court ordered the government to obtain affidavits from appellant's trial defense counsel to address the claims of ineffective assistance of counsel. (Order, Affidavits). Appellee moved to attach the affidavits and accompanying documents on 7 November 2024. (Gov. Mot. to Attach). On 18 November 2024, this court granted Appellee's motion to attach. (Ruling, Gov. Mot. to Attach). On 15 November 2024, appellant responded to this court's order. (Appellant's Specified Issues Br.).

Statement of Facts

At trial, neither party filed notice of intent to introduce evidence under Military Rule of Evidence [Mil. R. Evid.] 412. In sworn affidavits provided in response to this court's Order, both trial defense counsel stated this was a knowing and tactical decision discussed as early as February 2023. (Gov. App. Ex. 2, p. 3). Captain [CPT] AT stated (in part): "after discussion we concluded that MRE 412 evidence that would have come from that motion would have been more harmful to the Accused than helpful." (Gov. App. Ex. 1, p. 2). Captain MD reiterated: "I

believed, along with my co-counsel, that such evidence would have been more harmful than helpful to Defense's case; the evidence was a double-edged sword.” (Gov. App. Ex. 2, p. 3).

Regarding Prosecution Exhibits 1 and 2, when the prosecution moved to admit them, defense counsel did not object. (R. at 246, 249). In sworn affidavits, trial defense counsel both stated this was a knowing and tactical decision. (Gov. App. Ex. 1 and 2). The prosecution did not provide notice in accordance with Mil. R. Evid. 412(c)(1)(A), and the military judge did not hold a hearing prior to admitting the evidence in accordance with Mil. R. Evid. 412(c)(2). Prior to trial, the government and defense agreed that the government would move to admit the Prosecution Exhibits 1 and 2. “[The Defense was] going to admit the limited text messages[, Pros. Ex. 1 and 2,] to show prior consent to anal sex, but [CPT Tucker] believe[d] CPT Dannog and the Government had already discussed that the Government was going to admit them.” (Gov. App. Ex. 1, p. 3).

Prosecution Exhibits 1 and 2.

In early July 2020, appellant went to a field exercise and was gone for approximately two weeks. (R. at 242–43). On 17 July 2020, the day before the sexual assault, Ms. [REDACTED] and appellant discussed their plan to have sex when appellant returned from the field. (R. at 244; Pros. Ex. 1 and 2).

In those messages, both parties expressed their desire to have sex with one another upon appellant's return on 18 July 2020—the date of the sexual assault. (Pros. Ex. 1 and 2). However, Ms. [REDACTED] was adamant that she did not want to have anal sex in the car—"Easy babe [laughing emoji] I'm down with [f***ing] hard but easy on the ass lol[.]" (Pros. Ex. 1, p. 1).

In Prosecution Exhibit 2, Ms. [REDACTED] reiterated that she did not want to engage in anal sex in the car. (Pros. Ex. 2, p. 2, 3, 4, 5) (E.g., "Omg babe. You know no ass in the car."). Despite Ms. [REDACTED]'s repeated denials to engage in anal sex in the car or on the beach, appellant persisted, threatening to end the relationship, and accusing Ms. [REDACTED] of being unfaithful. (Pros. Ex. 2, p. 2, 3, 4, 5) (E.g., "[F****] that. I'm putting it in your ass in the car. End of discussion."). Ms. [REDACTED] ultimately relented stating—"I'm not even trying to fight[.] Well do but *I'll lead it as last time[.]*" (Pros. Ex. 2, p. 7) (emphasis added).

Standard of Review

"When an appellant does not raise an objection to the admission of evidence at trial, [this court] must first determine whether the appellant waived or forfeited the objection." *United States v. Jones*, 78 M.J. 37, 44 (C.A.A.F. 2018). Whether an accused has waived an issue is reviewed de novo. *United States v. King*, 83 M.J. 115, 120 (C.A.A.F. 2023) (citation omitted). "[F]orfeiture is the failure to make the timely assertion of a right" *United States v. Davis*, 79 M.J. 329, 331

(C.A.A.F. 2020), whereas “[w]aiver can occur either by operation of law . . . or by the intentional relinquishment or abandonment of a known right.” *Jones*, 78 M.J. at 44. “In making waiver determinations, [this court will] look to the record to see if the statements signify that there was a ‘purposeful decision’ at play.”

United States v. Gutierrez, 64 M.J. 374, 377 (C.A.A.F. 2007) (quoting *United States v. Smith*, 50 M.J. 451, 456 (C.A.A.F. 1999)).

Law

Military Rules of Evidence 412 generally prohibits the introduction of evidence pertaining to the victim’s sexual behavior or predisposition. Mil. R. Evid. 412(a). However, there are three exceptions to this general prohibition. Mil. R. Evid. 412(b). A party intending to admit such evidence under any of these exceptions must file a written motion at least 5 days prior to entry of pleas . . . unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial.” *Id.* at (c)(1)(A). “Before admitting evidence under this rule, the military judge *must* conduct a hearing, which shall be closed.” *Id.* at (c)(1)(B)(2) (emphasis added).

The purpose of Mil. R. Evid. 412 is to “shield victims of sexual assaults from the often embarrassing and degrading cross-examination and evidence

presentations common to [sexual offense prosecutions].”¹ Prior to the rape-shield laws, “defense lawyers were permitted great latitude in bringing out intimate details about a rape victim’s life. Such evidence quite often serves no real purpose and only results in embarrassment to the rape victim and unwarranted public intrusion into her private life.” *United States v. Sanchez*, 44 M.J. 174, 178 (C.A.A.F. 1996) (quoting 124 Cong. Rec. 34912 (1978)).

The Court of Appeals for the Armed Forces [CAAF] has found that the procedural requirements under Mil. R. Evid. 412 apply both to the defense and government. *United States v. Banker*, 60 M.J. 216, 223 (C.A.A.F. 2004); *see also United States v. Carista*, 76 M.J. 511, 513 (Army Ct. Crim. App. 2017). However, the purpose of the rule remains, “at least in part, [] to provide victims due process before discussing their sexual history in open court.” *Carista*, 76 M.J. at 516.

Although an accused is entitled to the same notice due to victims of an intent to introduce evidence, *Banker*, 60 M.J. at 219, 223, “[a]ppellant[s] lack[] standing on appeal to claim any violation of [a victim’s] procedural rights under Mil. R. Evid. 412.” *Carista*, 76 M.J. at 516.

¹ *Manual for Courts-Martial*, United States, Analysis of the Military Rules of Evidence app. 22 at A22-35 (2008 ed.) [hereinafter *Drafters’ Analysis*]; *see also United States v. Banker*, 60 M.J. 216, 219 (C.A.A.F. 2004) (noting Mil. R. Evid. 412 was intended to encourage victim cooperation in courts-martial and to prevent embarrassment, invasion of privacy, and the infusion of sexual innuendo into the factfinding process).

Argument

At trial, the government trial counsel, without objection and after conversations with defense counsel, admitted Prosecution Exhibits 1 and 2. (R. at 246, 249; Gov. App. Ex. 1, p. 3). Although both exhibits contained graphic details about appellant's plan to engage in sexual acts the following day, the majority of that evidence was *not* prohibited under Mil. R. Evid. 412 as it seemingly referenced a plan (and reluctance to certain aspects of that plan) to engage in the very sexual acts that were the subject of appellant's trial. Mil. R. Evid. 412(d) ("The term 'sexual predisposition' refers to a victim's mode of dress, speech, or lifestyle that does not directly refer to sexual activities or thoughts that may have a sexual connotation for the fact finder."). Mil. R. Evid. 412(d).

Because this evidence was not offered to prove "other sexual behavior; or . . . a victim's sexual predisposition" but rather consent, or the lack thereof, this evidence was not prohibited under Mil. R. Evid. 412(a). *See Carista*, 76 M.J. at 513 n.2 ("As the advisory committee notes to Federal Rule of Evidence 412(a)(1) make clear, '[t]he word 'other' is used to suggest some flexibility in admitting evidence 'intrinsic' to the alleged sexual misconduct.'" (citing Advisory Committee Notes, 1994 Amendments, Fed. R. Evid. 412))).

However, the second half of the victim's statement eventually acquiescing to anal sex: ". . . *I'll lead it as last time[,]*" was evidence of "other sexual behavior;

or . . . predisposition, and therefore required notice and a closed hearing prior to being admitted into evidence.² Mil. R. Evid. 412(c)(1)(A); (Pros. Ex. 2, p. 7).

Although the military judge erred in not holding a closed hearing prior to admitting this evidence, appellant waived this error . “[A] valid waiver leaves no error for [this court] to correct on appeal.” *United States v. Davis*, 79 M.J. 329, 331 (C.A.A.F. 2020). Regardless of waiver, there was no material prejudice to appellant’s substantial rights.

1. Appellant waived any claim of error at trial.

Waiver is the “intentional relinquishment or abandonment of a known right.” *United States v. Olano*, 507 U.S. 725, 733 (1993) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). “The first limitation on appellate authority under Rule 52(b) is that there indeed be an ‘error.’ Deviation from a legal rule is ‘error’ unless the rule has been waived.” *Id.* at 732. “While [historically] broad plenary

² The prosecution’s failure to provide notice or redact this statement prior to seeking its admission was error which likely contributed to the military judge’s failure to hold a closed hearing prior to the statement’s admission. Although this omission was error, there was no prejudicial impact to appellant. After all, appellant originally claimed it was the omission of this evidence that caused his counsel to be ineffective. (Appellant’s Br. 21, 30). Rather, the only potential prejudice was to the victim, who had a procedural due process right “before discussing their sexual history in open court.” *Carista*, 76 M.J. at 516. This is a right that the government and this court should take seriously. “While a victim’s interests are often in accord with those of the prosecution, such solidarity of purpose cannot be presumed.” *Id.* at 513. However, considering the current procedural posture of the case and without prejudice to appellant, there is no harm for this court to correct on appeal.

authority allow[ed] this court to review issues that were waived, “under the current version of Article 66, effective 1 January 2021, [this court] no longer retain[s] the ‘should be approved’ discretion to reach waived claims.” *United States v. Strong*, 83 M.J. 509, 524 n.19 (Army Ct. Crim. App. 2023) (Arguelles, J., dissenting).

However, even under the old standard “[this court has] held that exercising that unique power is more likely to occur only in those cases which ‘have disadvantaged the accused in a manner that the CCA determines needs correction,’ or a court-martial in which ‘the perception of unfairness in the trial may have the actual effect of undermining good order and discipline.’” *United States v. Olson*, 2021 CCA LEXIS 160, at *10–11 (Army Ct. Crim. App. 1 Apr. 2021) (citing *United States v. Conley*, 78 M.J. 747, 752 (Army Ct. Crim. App. 2019)).

Where the court finds “no evidence of impropriety, government overreach or excess, or other matter that might weigh in favor of noticing a waived issue,” relief is not warranted. *Conley*, 78 M.J. at 753. This is not a case of government overreach or impropriety, but rather one in which an appellant seeks to use evidence that he considered to be central to his defense to overturn his conviction. The factors that this court contemplated in *Conley* simply do not exist in this case. *Id.* Here, defense welcomed a trial strategy that included the admission of the text messages to show that the victim consented to sexual acts, or that appellant had a reasonable mistake of fact as to the victim’s consent.

2. Even if this court finds the issue was forfeited and not waived, there was no prejudice to appellant.

The purpose of exclusion under Mil. R. Evid. 412 is to protect the rights of the victim, which is relevant when considering any remedy. *Banker*, 60 M.J. at 219. The tension between Mil. R. Evid. 412 and an accused's rights has always been balancing the intent to "shield victims of sexual assaults from often embarrassing and degrading cross-examination," *Gaddis*, 70 M.J. at 252, and an accused's right to present relevant evidence to his theory of the case. *Ellerbrock*, 70 M.J. at 318. Here, the admitted evidence appropriately addressed those two concerns, even if the military judge failed to adhere to the procedural safeguards of Mil. R. Evid. 412(c). Seemingly, the parties agreed the evidence was admissible and did not attempt to introduce evidence that would likely be excluded. (Gov. App. Ex. 1 and 2).

"[T]he government bears the burden of demonstrating that the admission of erroneous evidence was harmless." *United States v. Finch*, 79 M.J. 389, 398 (C.A.A.F. 2019)). Here, the defense did not preserve any claim that the military judge erroneously admitted the evidence. However, even assuming that this error was merely forfeited, appellant cannot show prejudice. "For preserved nonconstitutional evidentiary errors, the test for prejudice is 'whether the error had a substantial influence on the findings.'" *Id.* (quoting *Frost*, 79 M.J. at 111). When reviewing prejudice, this court balances: "(1) the strength of the

Government’s case, (2) the strength of the defense case, (3) the materiality of the evidence in question, and (4) the quality of the evidence in question.” *Frost*, 79 M.J. at 111 (quoting *United States v. Kohlbeke*, 78 M.J. 326, 334 (C.A.A.F. 2019)).

A. The prosecution’s case was strong.

Turning to the factors laid out in *Frost*: here, the government’s case was strong. The issue the panel had to decide was whether Ms. [REDACTED] truthfully reported a physical and sexual assault or whether she fabricated the assault out of scorned love. These were the competing theories that the counsel for each party put forth. (R. at 585, 597). These were the only two theories that the evidence substantially supported.

The panel found Ms. [REDACTED]’s account credible and rejected appellant’s theory of the case. (R. at 632). Text messages and independent testimony supported Ms. [REDACTED]’s account. (Pros. Ex. 1 and 2; R. at 222–234, 380–409). The text messages on 17 July 2020, established that Ms. [REDACTED] was eager and willing to engage in certain consensual sexual acts with appellant. (Pros. Ex. 1 and 2) (“It’s going to some explosive feelings when our bodies hit [laughing, drooling, heart emojis]”). She did not deny this. (R. at 328). However, Ms. [REDACTED] drew clear lines and boundaries regarding anal intercourse in the car.³ (Pros. Ex. 1 and 2).

³ This was a fact that would have been further established had trial defense counsel attempted to admit additional text messages of prior consensual sexual activity between Ms. [REDACTED] and appellant. (Def. App. Ex. B).

Appellant's intent to take what he wanted regardless of Ms. ■■■'s express wishes was also made apparent from the text messages. (Pros. Ex. 1, p. 2; Pros. Ex. 2, p. 2). Ms. ■■■ confronted appellant and outcried to three separate friends within twenty-four hours of the physical and sexual assault. (R. at 222–234, 380–409). Ms. ■■■ consented to a SAFE within approximately forty-eight hours of the assaults. (R. at 447–78). The SAFE produced evidence of injuries consistent with physical and sexual abuse. (R. at 447–78; Pros. Ex. 5, 11, 12).

The circumstances surrounding the sexual assault were dissimilar to any alleged prior consensual encounter. (Def. App. Ex. A). Ms. ■■■ was drunk, she had just vomited, and was feeling unwell. (R. at 224). Appellant was angry at Ms. ■■■ because she went to a party without his knowledge. (R. at 250, 252). His anger manifested itself in him striking Ms. ■■■ repeatedly in the face prior to the sexual assault. (R. at 252). Photographic evidence supported these injuries. (Pros. Ex. 4). The panel found that the totality of this evidence disproved consent and overcame any alleged reasonable mistake of fact based on a prior plan or consensual sexual activity. (R. at 572, 632).

B. The defense's case was weak.

In contrast, the defense's case was weak. The defense is best summarized as even if sexual acts did occur, they were consensual, and the victim lied about it to exact revenge upon appellant. (R. at 602). This defense was not believable,

especially when confronted with the victim's documented injuries and immediate outcry. Trial defense counsel presented the evidence from Prosecution Exhibits 1 and 2 and argued it to their benefit.⁴ (R. at 217–18, 262, 268, 328, 597; Pros. Ex. 1 and 2). Despite this evidence of prior consensual sexual acts, the panel rejected appellant's theory. (R. at 632).

The evidence against appellant was substantially the same without the evidence of prior consensual sexual activities. For example, there is no indication or plausible argument that appellant, the victim, or any other witness would have testified differently had there been a closed hearing regarding the evidence prior to trial. However, what is evident from both trial defense counsel's affidavits and the allied papers is that had defense attempted to introduce additional evidence of prior sexual activity, it would have potentially opened the door to propensity evidence under Mil. R. Evid. 413.⁵ This is not a case where appellant was somehow

⁴ Defense counsel, in their opening statement, clearly stated that appellant and Ms. [REDACTED] were going to the same location that they had previously gone to in order to have sex. (R. at 217–18). "They had been talking about meeting up and having sex. . . . So, they talked about meeting up. How they frequently did, where basically, Ms. [REDACTED] would use her car. The two of them would go to Mokule'ia Beach, near Dillingham Air Field, and they would camp there or sleep together on the beach in her car." (R. at 218).

⁵ "There were many inflammatory and negative text messages between the AV and the [appellant], many of which showed the [appellant] belittling the AV, threatening her, or telling her he was going to have sex with her however he wanted whether she wanted to or not." (Gov. App. Ex. 1, p. 4). "I was also concerned that had Defense gone further down the road of AV's and [appellant] sexual past, that the AV would have later testified about occasions when

prevented from presenting his theory of the case. Rather, both parties made argument that the evidence in Prosecution Exhibits 1 and 2 proved their theory of the case. The panel rejected appellant's theory and convicted him.

C. The materiality of the evidence is irrelevant considering it was before the panel and they convicted appellant.

The materiality and quality of the evidence in question—whether appellant and the victim had prior consensual anal sex—does not weigh in favor of material prejudice to appellant. *Frost*, 79 M.J. at 111. The very fact that both trial and appellate defense counsel believed this evidence benefited their case directly cuts against the materiality and quality of the admitted evidence materially prejudicing appellant.⁶ *Frost*, 79 M.J. at 111.

3. Appellant's claims of prejudice are unsupported.

At trial, appellant offered no objection to the proffered evidence (R. at 246, 249); but argues the alleged omission of the evidence was prejudicial on appeal. (Appellant's Br. 21, 30). However, when confronted with the fact that the evidence was admitted, appellant raises a new basis for prejudice that is unsupported by the statements of trial defense counsel in their sworn affidavits—

[appellant] would do things without her consent. [Appellant] had pulled out her NuvaRing . . . without her knowing . . . [and] record[ed] sexual acts with her and shared them on Snapchat, all without her consent. . . ." (Gov. App. Ex. 2, p. 4).

⁶ "The invited error doctrine prevents a party from creating error and then taking advantage of a situation of his own making on appeal." *United States v. Martin*, 75 M.J. 321, 325 (C.A.A.F. 2016).

that he lacked appropriate notice. (Appellant’s Specified Issues Br. 5; Gov. App. Ex. 1 and 2). Ultimately, appellant’s claim that holding a closed hearing would have had some material impact on defense counsel’s strategy is unfounded. (Appellant’s Specified Issue Br. 5).

Similar to this case, in *United States v. Carista*, this court found that it was error for the military judge to admit evidence of the victim’s sexual behavior when proper notice was not given, and good cause was not shown. 76 M.J. at 517. Dissimilar to appellant’s case, the defense in *Carista* objected to the admission of the evidence. *Id.* The court found that there was no material prejudice to appellant because, although he objected at trial, he failed to articulate any prejudice stemming from the lack of notice. *Id.*; *see also United States v. Geranen*, 2023 CCA LEXIS 323, *23 (Army Ct. Crim. App. 1 Aug. 2023) (“Appellant now argues the very information defense counsel sought to introduce at trial in support of their strategy should have been excluded and that it was error for the military judge not to sua sponte provide a limiting or curative instruction. Finding appellant waived any objection . . . there is nothing left for us to correct on appeal.”) (citations omitted).

Here, appellant not only *purposefully* did not object, but he argues on appeal that the very evidence that was admitted was critical to his defense. (Gov. App. Ex. 1 and 2; Appellant’s Br. 21, 30). When applying the analysis from *Carista*,

there was no prejudice because: “1) appellant was well aware of the evidence from pretrial discovery, 2) appellant sought to use some of the evidence in their theory of the case,⁷ 3) even without the statements, the evidence against appellant was substantially the same. . . .” *Carista*, 76 M.J. at 517.

A. Appellant does not have a right to a closed hearing, only notice.

Appellant’s assertion that he was prejudiced by the absence of a closed hearing because it would have “flushed out” the text messages and the victim’s testimony is unsupported. (Appellant’s Br. 5–6). First, this is not the intended purpose of the closed hearing. The purpose of the closed hearing is “at least in part, [] to provide victims due process before discussing their sexual history in open court.” *Carista*, 76 M.J. at 513. Second, appellant has no standing to assert procedural rights designed to protect the victim. *Id.*

B. Appellant’s claim that his defense lacked notice is without merit.

Appellant’s claim that the prejudice stemmed from a lack of notice or ability to prepare is directly contradicted by the defenses’ affidavits filed in response to the claim of ineffective assistance of counsel. (Appellant’s Specified

⁷ “Ms. [SW] says that [appellant] had all of her, where she said that they would be doing everything they talked about. This was not a surprise to Ms. [SW]. This was not new to her. Remember, that they met on Tinder, they had been in an intimate relationship for almost 6 months.” (R. at 597). Trial defense counsel argued although appellant’s spermatozoa was found on a towel in Ms. SW’s car, “that could have been there for months.” (R. at 602).

Issues Br. 5; Gov. App. Ex. 1 and 2). Although the notice requirements under Mil. R. Evid. 412 apply to both parties, *Banker*, 60 M.J. at 223, here there was no lack of notice or unfair surprise. (Gov. App. Ex. 1 and 2). This argument is based on the faulty premise that “defense hoped to avoid *any discussion* of appellant and SW’s previous sexual history.” (Appellant’s Specified Issues Br. 5) (emphasis added). Rather, trial defense counsel stated:

The fact that they planned to have sex that night was within the text messages that CPT [MD] had spoken to the Government about admitting. . . . Their sexual history and ‘intimate’ relationship were addressed in other ways, and we were satisfied they were proven sufficiently to advance our theory while minimizing the negatives. We were going to admit the limited text messages to show prior consent to anal sex, but [CPT AT] believe[d] CPT [MD] and the Government had already discussed that the Government was going to admit them.

(Gov. App. Ex. 1, p. 2).

As explained elsewhere in this affidavit, Defense was treading a fine line with the texts between the AV and [appellant]. . . . I thought that with the texts we had, including the one from the AV on 19 July 2020, considering Defense’s overall strategy, we had enough to support our theory of consent or mistake of fact as to consent, without opening the Defense to the risk that the Prosecution would exploit [appellant’s] dismissiveness with his knowledge and experience of the only conditions when the AV would consent to anal sex.


(Gov. App. Ex. 2, p. 4).

In other words, the admission of Prosecution Exhibits 1 and 2 were not “at odds with Captain MD’s entire strategy.” (Appellant’s Specified Issue Br. 5). A closed hearing would not have altered or changed this strategy—this is not speculation but based on the unequivocal statements of


trial defense counsel.⁸ As stated, trial defense counsel were fully aware of all the text messages, but they “were satisfied [evidence of the prior consensual encounters] were proven sufficiently to advance [their] theory while minimizing the negatives.” (Gov. App. Ex. 1, p. 2). The defense team got exactly what they planned for; they were not prejudiced by the admission of evidence, even if it was admitted without proper procedure under Mil. R. Evid. 412(c).

Conclusion


WHEREFORE, the government respectfully requests this honorable court affirm the findings and sentence.



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CPT, JA
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Appellate Division



RICHARD E. GORINI
COL, JA
Chief, Government
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MARC B. SAWYER
MAJ, JA
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⁸ On the other hand, appellant’s assertion that a closed hearing would have impacted his decision to testify is, at best, speculation. (Appellant’s Specified Issues Br. 5–6).

CERTIFICATE OF SERVICE, U.S. v. WORDLAW (20230235)

I certify that a copy of the foregoing was sent via electronic submission to the Defense Appellate Division at [REDACTED] - [REDACTED]@*army.mil* on the 22nd day of November, 2024.

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