

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

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|-------------------------------|---|----------------------|
| UNITED STATES |) | No. ACM 40261 |
| <i>Appellee</i> |) | |
| |) | |
| v. |) | |
| |) | ORDER |
| Jason D. ORT |) | |
| First Lieutenant (O-2) |) | |
| U.S. Air Force |) | |
| <i>Appellant</i> |) | Panel 1 |

On 25 January 2022, Appellant was tried by a general court-martial at Joint Base Andrews-Naval Air Facility Washington, Maryland. He was convicted, consistent with his pleas, of five specifications of knowingly making recordings of the private areas of individuals without their consent and under circumstances in which they had a reasonable expectation of privacy, in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c; and one specification of attempting to do the same to another individual, in violation of Article 80, UCMJ, 10 U.S.C. § 980.¹

During the preliminary hearing, Preliminary Hearing Officer (PHO) Exhibit 23 was provided to and reviewed by the PHO. On page 5 of the preliminary hearing report, the PHO described the exhibit as a compact disc, 30 seconds in length, undated. The description for this exhibit was, “11-05-49_2m.” The preliminary hearing report describes the “Location of Original” for this exhibit as “316 Wing/JA.” The PHO sealed PHO Exhibits 20–25.

Upon this court’s review of the record, we noted an issue with PHO Exhibit 23 in the original record of trial filed with the court. Specifically, the disc is blank. Thus, it appears that PHO Exhibit 23, and by extension the preliminary hearing report as a whole, has not been properly attached to the record. See Rule for Courts-Martial (R.C.M.) 1112(f)(1)(A).²

¹ All references in this order to the UCMJ and Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2019 ed.).

² Specifically, the preliminary hearing report shall be attached to the record of trial if not used as a trial exhibit. The court notes that neither the preliminary hearing report nor PHO Exhibit 23 appear to have been used as an exhibit at trial.

On 2 August 2022, this court ordered the Government to show good cause as to “why this court should not remand this record for completion and correction.” On 19 August 2022, the Government responded to the court’s order, recommending that the case “be returned to the military judge to correct the record in accordance with R.C.M. 1112(d).”

Accordingly, it is by the court on this 31st day of August, 2022,

ORDERED:

The record of trial in Appellant’s case is returned to the Chief Trial Judge, Air Force Trial Judiciary, for correction under R.C.M. 1112(d) to account for the correct version of sealed PHO Exhibit 23, and any other portion of the record that is determined to be missing or defective hereafter, after consultation with the parties. *See* Article 66(g), UCMJ, 10 U.S.C. § 866(g); R.C.M. 1112(d)(2)–(3). Thereafter, the record of trial will be returned to this court for completion of its appellate review under Article 66(d), UCMJ, 10 U.S.C. § 866(d).

The record of trial will be returned to the court not later than **30 September 2022**. If the record cannot be returned to the court by that date, the Government will inform the court in writing not later than 28 September 2022 of the status of the Government’s compliance with this order.



FOR THE COURT

A handwritten signature in black ink, appearing to read "Anthony F. Rock".

ANTHONY F. ROCK, Maj, USAF
Deputy Clerk of the Court