

Appendix B

Motion to Pre-Admit Evidence

Referenced in **Chapter 4 – Opening Statement**, an example Motion to Pre-Admit Evidence follows. Reminder—it is an example, not a template, you should use it as a jumping-off point in crafting your own motion, but you should not copy it slavishly. Who knows how old and out-of-date it will be by the time you read this. But I have had some success with a version of this and it facilitates the important use of props during opening statement, so put together something like it.

----- **TEMPLATE** -----

**DEPARTMENT OF THE AIR FORCE
USAF TRIAL JUDICIARY**

UNITED STATES

v.

SECOND LIEUTENANT [REDACTED]
[REDACTED]
[REDACTED]

GOVERNMENT MOTION TO
PRE-ADMIT

[DATE]

The Accused faces charges of aggravated sexual assault under Article 120, UCMJ. During the investigation, he made incriminating statements while talking with the Victim in a “pretext” telephone conversation. The Government intends to offer a recording of that pretext telephone conversation, and verbatim transcript of the same, in its case-in-chief. As such, the Government request pre-trial admission of this evidence under M.R.E. 102, 104 and R.C.M. 906(b)(13).

FACTS:

1. On [REDACTED], [REDACTED] (“Victim”) and [REDACTED] (“Accused”) participated in a phone call. That phone call was recorded and coordinated with the Air Force Office of Special Investigations (AFOSI) 11 Field Investigative Service. Special Agent (SA) [REDACTED], SA [REDACTED], and SA [REDACTED] acted on behalf of AFOSI.
2. On [REDACTED], the Victim contacted the Accused three times. The first time, the Accused answered but did not have time to talk. The second time, the Accused’s phone went to voicemail. The third time, the Accused and the Victim had a conversation that lasted approximately 28 minutes. The recording includes a privacy statement from the Victim, and each participant identified himself or herself. The recording itself is the complete and accurate recording of their conversation. No additions or deletions have been made. The recording device was capable of recording, and the operator of the equipment was competent, as evidenced by the existence of the recording.
3. The call was recorded using the Callyo technology. Callyo technology allows a three-way phone call to be recorded. The case agent, in this instance SA [REDACTED], initiates and controls the call. Once the phone call is initiated, the software saves the recording on a web-based platform. Each OSI office has a Callyo login. The agent can then log into the website and download the file, burning an evidence copy of the disc.

LAW & ARGUMENT

4. M.R.E. 104 empowers the military judge to make determinations of “the admissibility of evidence.” R.C.M. 906(b)(13) contemplates a pretrial hearing to resolve these issues, in the interest of avoiding “unjustifiable expense and [trial] delay.” M.R.E. 102. Therefore, the Government requests that the military judge hold a hearing under Article 39a, U.C.M.J., to resolve any objections to and rule on the admissibility of the following evidence:

a. Prosecution Ex. 1: Recording of phone call, dated [REDACTED]

(i) Description: P.E. 1 is a compact disc containing the audio recording of three phone calls between the Victim and the Accused on [REDACTED].

(ii) Foundation: SA [REDACTED] would testify that the recording device was capable of recording; that the operator was competent; that the recording is authentic and correct; that no changes, additions, or deletions have been made; that the recording was properly preserved; that the speakers were identified; and that the statements were voluntarily made. The Victim would testify that the recording is authentic and correct; that no changes, additions, or deletions have been made; that the speakers were identified; and that the statements were voluntarily made.

(iii) Basis of admissibility: M.R.E. 901(b)(6).

(iv) Relevance: Corroborates sexual intercourse between the Accused and the Victim between on or about [REDACTED] and on or about [REDACTED].

b. Prosecution Ex. 2: Transcript of recording of phone call, dated [REDACTED]

(i) Description: P.E. 2 is a 21-page document. It is a verbatim transcript of P.E. 1.

(ii) Foundation: SA [REDACTED] would testify that the recording device was capable of recording; that the operator was competent; that the recording is authentic and correct; that no changes, additions, or deletions have been made; that the recording was properly preserved; that the speakers were identified; and that the statements were voluntarily made. The Victim would testify that the recording is authentic and correct; that no changes, additions, or deletions have been made; that the speakers were identified; that the statements were voluntarily made, and that P.E. 2 is a true and accurate transcript of the conversation. SSgt [Paralegal] would testify that she prepared the transcript, had trial and defense counsel review it and identify errors, corrected all identified errors, and that the end product, P.E. 2, is a verbatim transcript of P.E. 1.

(iii) Basis of admissibility: M.R.E. 901(b)(6); see also United States v. Craig, 60 M.J. 156 (C.A.A.F. 2004).

(iv) Relevance: Corroborates sexual intercourse between the Accused and the Victim between on or about [REDACTED] and on or about [REDACTED].

RELIEF REQUESTED

The United States respectfully requests that the Court approve its request for a pre-trial session under Article 39a, U.C.M.J., to address those issues of pre-admission to which the Defense may object.

Respectfully submitted,

//Signed//

[REDACTED], Capt, USAF
Assistant Trial Counsel