



Admissibility of Duplicated Audio Without Originals: Supreme Court Ruling

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On February 27, 2025, the Korean Supreme Court overturned and remanded a lower court decision that had denied the admissibility of an audio recording and its transcript in a criminal case. The Supreme Court held that, even in the absence of the original, a copy of the audio file may still be admissible as evidence if its identity with the original can be sufficiently established.

1. Facts

Defendants 1 and 2 were indicted on charges of conspiring to defraud the Complainant by deceiving him and unlawfully obtaining KRW 270 million in cash under the pretense of payment for shares and other purposes. Defendant 2 was additionally accused of defrauding the Complainant of KRW 30 million under the pretense of a loan and subsequently filing a false accusation against the Complainant by claiming non-repayment, despite having already been repaid. In support of the charges, the prosecutor submitted copies of recorded phone conversations between the Defendants and the Complainant as evidence.

The audio recordings in question were made by the Complainant using his mobile phone during conversations with the Defendants. The Complainant transferred the original audio files (with file extensions such as '3gp' or 'm4a') initially saved on his phone to his computer or an external hard drive, and subsequently deleted most of the original files from the phone. He also converted some of the recordings into 'mp3' format to enable playback on devices other than the mobile phone. Later, the Complainant copied a portion of these saved recordings (hereinafter referred to as "the copies of the recordings in this case") from his computer or external hard drive onto a CD, which he then submitted to the investigative authorities.

2. Trial Proceedings

The Defendants argued that the duplicated audio recordings in question did not contain their voices, that they had never engaged in such conversations with the Complainant, and further asserted that the recordings had been edited or manipulated. The District Court admitted the recordings as evidence and found the Defendants guilty. However, the Appellate Court overturned the conviction, ruling that, since the original recordings no longer existed, the authenticity of the duplicates could not be verified, and therefore, the evidence was inadmissible. The Supreme Court, however, reached a different conclusion from the Appellate Court.

The Supreme Court reaffirmed the general principle that identity with the original should, in principle, be established through direct comparison methods such as hash value analysis. However, in this case, the Court found that such identity had been sufficiently demonstrated based on the following factors:

- i. Expert voice analysis indicated that the voices in the duplicated recordings were likely those of the Defendants, and no traces of editing were detected;
- ii. The original recordings were compressed files created using the mobile phone's built-in recording function, which are not easily subject to editing or manipulation;
- iii. Hash values from certain original files recovered through digital forensics on the Complainant's mobile phone matched those of the duplicated recordings.

Based on these findings, the Supreme Court concluded that the duplicated recordings were proven to be identical to the originals and therefore admissible as evidence and accordingly reversed the Appellate Court's ruling.

3. Implications

The Korean Supreme Court has previously held that electronic media containing recorded conversations—such as audio files—are, by their nature, typically not accompanied by the signature or seal of the author or speaker and are inherently susceptible to editing or manipulation, whether intentional or due to the use of particular technologies. Accordingly, in cases involving either the original recording or a copy made from the original, the copy must be proven to be an exact replica of the original, without any artificial alteration or editing during the copying process, in order to be admissible as evidence. In the absence of such proof, the evidence cannot be presumed admissible (See Supreme Court Decision 2006Do8869, rendered on March 15, 2007 (admissibility denied where a digital recording was copied onto a compact disc), and Supreme Court Decision 2012Do7461, rendered on September 13, 2012 (determined admissible where a digital recording was copied to a computer)).

Further, the Supreme Court previously held that whether a copy faithfully reflects the original without artificial modification must be assessed based on a comprehensive evaluation of various factors, including testimony or statements from individuals involved in the creation, transmission, and storage of the file; comparison with the hash value generated immediately after the creation of the original or copy; and the results of forensic verification or expert examination of the recording (See Supreme Court en banc Decision 2014Do10978, rendered on January 22, 2015 (Lee Seok-ki sedition case)).

Accordingly, while the Supreme Court decision of February 27, 2025 does not overturn prior precedents or establish a new legal doctrine, it is significant in that the Supreme Court adopted a more affirmative stance toward recognizing the

evidentiary admissibility of duplicated audio recordings where the original no longer exists. The ruling indicates that, in investigative and judicial proceedings, the mere absence of the original file should not automatically preclude the admissibility of a duplicate. Rather, admissibility is to be determined based on a holistic assessment of various factors—such as witness testimony, expert analysis, and forensic verification—regarding the authenticity and consistency of the duplicated recording with the original.

Accordingly, it has become more critical than ever to proactively assess the evidentiary admissibility of duplicated audio recordings at the early stages of a case through digital forensics. In order to establish admissibility, it is essential to maintain the credibility and reliability of the chain of custody—particularly through consistent and verifiable statements, log records, and other documentation related to the storage and transfer of the recordings.

If you require assistance with securing the admissibility of digital evidence or with its analysis and processing, please feel free to contact the Shin & Kim Digital Forensics Center at 02-316-1664 or forensic@shinkim.com.

[\[Korean version\]](#) 원본이 현존하지 않는 녹음파일 사본의 증거능력: 대법원 2025. 2. 27. 선고 2022도1864 판결

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