UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class MATHEW A. ALBRECHT
United States Air Force

ACM 34330

19 March 2002

Sentence adjudged 28 September 2000 by GCM convened at Minot Air Force Base, North Dakota. Military Judge: Gregory E. Pavlik (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 5 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel James R. Wise, Lieutenant Colonel Timothy W. Murphy, Major Jeffrey B. Miller, and Captain Shelly W. Schools.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel Lance B. Sigmon, and Captain Adam Oler.

Before

SCHLEGEL, ROBERTS, and PECINOVSKY
Appellate Military Judges

OPINION OF THE COURT

ROBERTS, Judge:

The appellant was convicted, pursuant to his pleas, of disobeying a lawful order, carnal knowledge, sodomy, and indecent acts with females under 16 years of age, in violation of Articles 92, 120, 125 and 134, UCMJ, 10 U.S.C. §§ 892, 920, 925, 134. He avers on appeal that the evidence is legally insufficient to support his conviction of both specifications of committing indecent acts with 15-year-old girls because they engaged in private, heterosexual conduct. We find no merit in the appellant's assigned error and affirm.

This Court has the duty to determine the legal and factual sufficiency of the evidence. Article 66(c), UCMJ, 10 U.S.C. § 866(c). We may approve only those findings of guilt that we determine to be correct in both law and fact. "The test for [legal sufficiency] is whether, considering the evidence in the light most favorable to the prosecution, a reasonable factfinder could have found all the essential elements beyond a reasonable doubt." *United States v. Turner*, 25 M.J. 324 (C.M.A. 1987) (citing *Jackson v. Virginia*, 443 U.S. 307 (1979)); *United States v. Ladell*, 30 M.J. 672, 673 (A.F.C.M.R. 1990). In our view, a reasonable fact finder could conclude beyond a reasonable doubt that the appellant committed the offenses to which he pled guilty.

The appellant asks this Court to ignore one of the elements of the indecent acts offenses. He states on appeal that "[p]utting aside the issue of the age [of the two girls], nothing about [his] conduct cited in the [indecent acts specifications] was indecent in and of itself." This argument is akin to claiming that if we ignore the element of an offense, then it is no longer a criminal offense. Unfortunately for the appellant, he does not get to pick and choose elements of offenses that he believes should apply to his case, and he referenced no authority for this Court to allow him to do so.

Even more astounding about the appellant's claims on appeal, is his assertion that he was immature, and the two 15-year-old girls "recognized as much." He further claimed that

> [t]here was nothing unusual, much less indecent, about these two teenagers dating and engaging in mild heterosexual behavior in a private setting . . . . Most reasonable people expect that teenaged young men will date teenaged young women, and that often times young couples will engage in sexual exploration and experimentation. If society did not at least tolerate this type of conduct, many high school seniors would be facing hard time for their conduct with freshman and sophomore girls.

Congress made military offenses of "all disorders and neglects to the prejudice of good order and discipline in the armed forces, [and] all conduct of a nature to bring discredit upon the armed forces." Article 134, UCMJ, 10 U.S.C. § 934. The President made it a criminal offense in the military for an individual to commit indecent acts with a child in the very first edition of the *Manual for Courts-Martial, United States*, 1951, ¶ 213d(3). We have seen few other cases in which an individual's misconduct best exemplifies the need for this criminal offense. Although his trial defense counsel argued that the appellant did not prey on the young girls, evidence in the record of trial, including the appellant's own sworn statements during the providence inquiry, convinces us to the contrary.

The appellant pursued the young girls at the Minot Air Force Base bowling alley. He knew the victims were 15. He "groomed" the young victims by making such

comments as telling one girl she was "the most beautiful girl I've ever seen," and answering telephone calls with such comments as "hey sexy," "hey babe," and "hey princess." After gaining the girls' confidence, the appellant took them back to his dormitory room and performed the indecent acts. He also performed the indecent acts on one of the victims in an automobile, in public, while they were driving. Another of the indecent acts took place in public, in a hotel parking lot. On at least one occasion, Security Forces personnel knocked on the appellant's door looking for one of the girls who was in the appellant's room. The appellant did not answer the door, and after the Security Forces personnel left, he attempted to take the young girl out a back entrance to the dormitory where they were caught. Finally, the victims were dependents of active duty military members.

We are not persuaded by the appellant's assertion on appeal that he was a social peer of the two high school freshmen. The appellant's actions were far more than "teenagers dating and engaging in mild heterosexual sexual behavior in a private setting." He was not a social peer of any of the girls whom he pursued and lured into sexual relationships. Furthermore, we do not believe that society expects the Air Force to "at least tolerate" the appellant's conduct so that "many high school seniors" would not face hard time for their conduct with freshman and sophomore girls. By the appellant's own admission, his conduct was either prejudicial to good order and discipline or brought discredit upon the military. He stated,

> In my mind, it's brought a lot of discredit towards the military due to M.M. being a minor; I was above the age of 18; her friends knew about this; anyone else who might have known about this may have looked down on the Air Force as being not so good. Also, her father was in the military; she was a dependent; and it could have caused many distractions throughout his career, knowing this is happening with another airman.

Finally, we note that this case is a guilty plea, and we find no substantial basis in law or fact to overturn the trial judge's acceptance of the appellant's guilty plea. *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991). We also find that the trial judge did not abuse his discretion in accepting the appellant's guilty plea. *United States v. Eberle*, 44 M.J. 374, 375 (1996). The appellant's attempt to impeach his guilty plea on appeal by characterizing his criminal misconduct with 15-year-old girls as little more than "teenagers dating and engaging in mild heterosexual behavior in a private setting" is little more than a "collateral style" attack on his court-martial conviction. *United States v. Ingham*, 42 M.J. 218, 224 (1995). The appellant conceded in writing and under oath that his actions with the 15-year-old victims were indecent. Therefore, we will not now countenance "post-trial speculation" on this issue. *United States v. Grimm*, 51 M.J. 254, 257 (1999).

The findings are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ; *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

LAURA L. GREEN
Clerk of Court