

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JEFFREY P. BLACKMON
United States Air Force

ACM 36826

14 February 2008

Sentence adjudged 3 February 2006 by GCM convened at Minot Air Force Base, North Dakota. Military Judge: Joseph E. Cole.

Approved sentence: Bad-conduct discharge, confinement for 2 years, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland and Major Chadwick A. Conn.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Major Donna S. Rueppell.

Before

WISE, BRAND, and HEIMANN
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

Contrary to his plea of not guilty to rape, the appellant was convicted of the lesser included offense of carnal knowledge, in violation of Article 120, UCMJ, 10 U.S.C. § 920. He was acquitted of all other specifications and charges. The approved sentence consists of a bad-conduct discharge, confinement for 2 years, total forfeitures, and reduction to E-1.

The issue on appeal is whether the evidence was legally and factually sufficient to support the a finding of guilty as to the lesser included offense of carnal knowledge with KB, who was 14 years old at the time.

Background

Upon the imprisonment of the appellant's mother, he moved in with his father, step-mother, step-brother and two half-sisters (KB and AB). When the appellant was 15 years old and AB was 13 years old, they were found in a compromising situation¹ and the appellant was eventually sent to live with his grandfather.²

After graduating high school, the appellant enlisted and went off to attend Basic Training and technical training. He returned home in Oct 2004. During this short visit, according to KB, the appellant raped her. This incident was not reported immediately.

At trial, the incident between the appellant and AB was presented to the members in accordance with Military Rules of Evidence 413 and 414, UCMJ. The appellant avers the only reason he was convicted of carnal knowledge with KB is because of the evidence of sexual conduct with AB. Further, there is no evidence in the record that supports the findings as to carnal knowledge since the members obviously didn't believe KB. They did not find the appellant guilty of rape contrary to KB's testimony that it was by force and without consent. Additionally, they acquitted him of threatening KB during this same incident.

Discussion

The test for factual sufficiency is whether this Court is convinced beyond a reasonable doubt of the appellant's guilt, after weighing all the evidence and making allowances for not having personally observed the witnesses. *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). The test for legal sufficiency is whether considering the evidence in the light most favorable to the government, any reasonable factfinder could have found all of the essential elements beyond a reasonable doubt. *Id.* at 324. In resolving questions of legal sufficiency, we must "draw every reasonable inference from the evidence of record in favor of the prosecution." *United States v. Barner*, 56 M.J. 131, 134 (C.A.A.F. 2001) (citations omitted).

After reviewing the record of trial, it is clear the members were convinced that sexual intercourse occurred with a child over the age of 12 and under the age of 16 but they were not convinced it was by force. Further, after weighing all the evidence, we, ourselves, are convinced of the appellant's guilt.

¹ The two were engaged in sexual intercourse, whether it is was consensual or not was a matter of controversy.

² It took a few months to make the arrangements.

Conclusion

The findings and the sentence 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 Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings, and sentence, are

AFFIRMED.

OFFICIAL



STEVEN LUCAS, GS-11, DAF
Clerk of the Court