

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class JOSE A. COSSIO JR.
United States Air Force**

ACM 36206

24 August 2006

Sentence adjudged 16 December 2004 by GCM convened at Hurlburt Field, Florida. Military Judge: W. Thomas Cumbie (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 10 months, fine of \$750.00, an additional 3 months of confinement if the fine is not paid, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Christopher S. Morgan.

Appellate Counsel for the United States: Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Captain Daniel J. Breen.

Before

BROWN, JACOBSON, and SCHOLZ
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignments of error, and the government's reply thereto. The test for legal sufficiency is whether, considering the evidence in the light most favorable to the government, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *United States v. Quintanilla*, 56 M.J. 37, 82 (C.A.A.F. 2001); *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). The test for factual sufficiency is whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, we are ourselves convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325 (citing *Jackson*, 443 U.S. at 319).

Despite the appellant's contentions to the contrary, we conclude there is overwhelming evidence in the record of trial to support the court-martial's findings of guilty of wrongful communication of a threat and computer fraud and abuse, both in violation of Article 134, UCMJ, 10 U.S.C. § 934. We are also convinced of the appellant's guilt of these offenses beyond a reasonable doubt. *See id.*; *see also United States v. Grieg*, 44 M.J. 356, 357 (C.A.A.F. 1996); *United States v. Phillips*, 42 M.J. 127, 129 (C.A.A.F. 1995); Article 66(c), UCMJ, 10 U.S.C. § 866(c).

Appellant's remaining assignments of error alleging unlawful command influence are without merit.¹ We are convinced beyond a reasonable doubt that no apparent or actual unlawful command influence occurred in this case. *See United States v. Simpson*, 58 M.J. 368, 374 (C.A.A.F. 2003); *United States v. Dugan*, 58 M.J. 253, 258 (C.A.A.F. 2003); *United States v. Stoneman*, 57 M.J. 35, 41 (C.A.A.F. 2002); *United States v. Biagase*, 50 M.J. 143, 151 (C.A.A.F. 1999); *United States v. Bertie*, 50 M.J. 489, 490 (C.A.A.F. 1999); and *United States v. White*, 48 M.J. 251, 254 (C.A.A.F. 1998).

CONCLUSION

The approved findings and 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 approved findings and sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator

¹ These issues are raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).