

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Airman First Class MICHAEL F. GATES  
United States Air Force**

**ACM 35841**

**29 September 2005**

Sentence adjudged 19 December 2003 by GCM convened at Shaw Air Force Base, South Carolina. Military Judge: Lance B. Sigmon.

Approved sentence: Bad-conduct discharge, confinement for 60 days, forfeiture of \$795.00 pay per month until the bad-conduct discharge is executed, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Terry L. McElyea, Major Sandra K. Whittington, and Major L. Martin Powell.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Carrie E. Wolf.

Before

**BROWN, MOODY, and FINCHER  
Appellate Military Judges**

**PER CURIAM:**

We have examined the record of trial, the assignment of error, and the government's response thereto. Finding no error, we affirm.

The appellant contends that the evidence is factually insufficient to sustain his conviction for wrongful use of cocaine. 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. *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987); *see also United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002); *United States v. Sills*, 56 M.J. 239, 240-41 (C.A.A.F. 2002).

We conclude that there is sufficient competent evidence in the record of trial to support the court-martial's findings. After weighing the evidence and making allowances for not having personally observed the witnesses, we are ourselves convinced beyond a reasonable doubt that the appellant knowingly and wrongfully used cocaine. *See Turner*, 25 M.J. at 325; *Washington*, 57 M.J. at 399; Article 66(c), UCMJ, 10 U.S.C. § 866(c). *See also United States v. Green*, 55 M.J. 76, 80 (C.A.A.F. 2001); *United States v. Maxwell*, 38 M.J. 148, 150-51 (C.M.A. 1993); *United States v. Gonzales*, 37 M.J. 456, 457 (C.M.A. 1993).

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

ANGELA M. BRICE  
Clerk of Court