

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman APRIL M. HILL
United States Air Force

ACM 37054

17 September 2008

Sentence adjudged 18 April 2007 by GCM convened at Hurlburt Field, Florida. Military Judge: Donald Plude.

Approved sentence: Bad-conduct discharge, confinement for 4 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland, Major Shannon A. Bennett, and Captain Phillip T. Korman.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, Major Steven R. Kaufman, and Captain Jefferson E. McBride.

Before

BRAND, FRANCIS, and JACKSON
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

Contrary to her pleas, a panel of officers and enlisted members sitting as a general court-martial convicted the appellant of one specification of making a false official statement and one specification of larceny of military property of a value over \$500, in violation of Articles 107 and 121, UCMJ, 10 U.S.C. §§ 907, 921. The convening authority approved the findings and a sentence consisting of a bad-conduct discharge, four months confinement, and a reduction to E-1. On appeal, the appellant asserts that the evidence is legally and factually insufficient to sustain her false official statement and larceny convictions. Finding no error, we affirm.

Background

In November 2004, the appellant was reassigned to a remote tour to Kunsan Air Base, Republic of Korea. Prior to her departure, she told her estranged husband, who was living in Texas at the time, to search for a job in a big city so they would receive more money for their basic allowance for housing (BAH). Using the Internet, the appellant searched for New York City jobs for her husband and provided him with the New York City address of a location to ostensibly rent.

Upon arriving in Korea, the appellant completed a Permanent Change of Station (PCS) In-Processing Worksheet and a Family Separation Allowance (FSA) application (DD Form 1561), where she indicated that her husband resided at the New York City address. At the time the appellant completed these forms, she knew her husband was residing in Texas. As a result of her actions, the federal government overpaid the appellant approximately \$11,900 in BAH allowances.

Discussion

Legal and Factual Sufficiency

We review issues of legal and factual sufficiency de novo. *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002). The test for legal sufficiency of the evidence 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. Humpherys*, 57 M.J. 83, 94 (C.A.A.F. 2002) (quoting *United States v. Turner*, 25 M.J. 324 (C.M.A. 1987)). “[I]n resolving questions of legal sufficiency, we are bound to 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). Our assessment of legal sufficiency is limited to the evidence produced at trial. *United States v. Dykes*, 38 M.J. 270, 272 (C.M.A. 1993). 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 accused’s guilt beyond a reasonable doubt.” *Turner*, 25 M.J. at 325. Review of the evidence is limited to the entire record, which includes only the evidence admitted at trial and exposed to the crucible of cross-examination. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Bethea*, 46 C.M.R. 223, 224-25 (C.M.A. 1973).

False Official Statement Specification

The following evidence is legally and factually sufficient to support the appellant's conviction for making a false official statement: (1) the appellant's PCS In-Processing Worksheet and FSA application (DD Form 1561), wherein she indicated her husband resided at a New York City address; (2) the appellant's confession that at the time she

completed the PCS In-Processing Worksheet and FSA application she knew her husband did not live in New York City; (3) Western Union records highlighting several money transfers between the appellant in Korea and her husband in Texas; and (4) the appellant's husband's testimony that he lived in Texas during the time period the appellant was in Korea, that he never lived in New York, and that he never told the appellant he lived in New York.

Larceny Specification

The four pieces of evidence listed above also support the appellant's larceny conviction. We find that this evidence in conjunction with Senior Airman JC's testimony that the appellant received BAH at the much higher New York City rate while stationed in Korea, and the appellant's leave and earning statements which show she received BAH as though her husband lived in New York City, are legally and factually sufficient to support the appellant's conviction for larceny.

In short, we have considered the evidence produced at trial in a light most favorable to the government and find that a reasonable fact finder could have found, beyond a reasonable doubt, all of the essential elements of the specifications of which the appellant was convicted. Moreover, we have carefully considered the evidence under the factually sufficient standard and are convinced beyond a reasonable doubt that the accused is guilty of the charges and specifications of which she was convicted.

Conclusion

The approved 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, 10 U.S.C. 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and the sentence are

AFFIRMED.

OFFICIAL



STEVEN LUCAS, YA-02, DAF
Clerk of the Court