

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class JOANNA R. KERBS
United States Air Force**

ACM 35774

12 August 2005

Sentence adjudged 1 October 2003 by GCM convened at McConnell Air Force Base, Kansas. Military Judge: Steven B. Thompson (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 7 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Terry L. McElyea, Major James M. Winner, and Major Jennifer K. Martwick.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Tracey L. Printer.

Before

BROWN, ORR, and MOODY
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 legally and factually insufficient to sustain her conviction for two specifications of assault (Specifications 2 and 3 of Charge II).¹ 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, 318-19 (1979);

¹ Specification 2 of Charge II alleged the appellant committed an assault "by pointing a dangerous weapon at [the victim], to wit: a knife." Specification 3 of Charge II alleged the appellant unlawfully grabbed the victim "by her shirt, scratch[ed] her chest and pull[ed] her hair with her hands."

United States v. Quintanilla, 56 M.J. 37 (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 324 (citing *Jackson v. Virginia*, 443 U.S. at 319).

We conclude that there is sufficient competent evidence in the record of trial to support the court-martial's findings. The victim's testimony in this case was credible and we are convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325; Article 66(c), UCMJ, 10 U.S.C. § 866(c). See also *United States v. Marbury*, 50 M.J. 526 (Army Ct. Crim. App. 1999), *aff'd*, 56 M.J. 12 (C.A.A.F. 2001).

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