

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Senior Airman JOSEPHINE L. LAGRIMAS
United States Air Force**

ACM 35043

21 January 2004

Sentence adjudged 11 December 2001 by GCM convened at Hanscom Air Force Base, Massachusetts. Military Judge: Sharon A. Shaffer (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 5 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major Maria A. Fried.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Lori M. Jemison (legal intern).

Before

PRATT, GRANT, and CONNELLY
Appellate Military Judges

OPINION OF THE COURT

CONNELLY, Judge:

The appellant was found guilty, contrary to her pleas, of one specification of wrongful use on divers occasions of 3,4-methylenedioxymethamphetamine (ecstasy), in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. She was found not guilty of one specification of wrongful use on divers occasions of marijuana. A general court-martial composed of a military judge sentenced her to a bad-conduct discharge, confinement for five months and reduction to airman basic. On appeal, the appellant challenges the legal and factual sufficiency of the evidence.

We may affirm only those findings that we find are correct in law and fact and determine, on the basis, of the entire record, should be approved. Article 66(c), UCMJ, 10 U.S.C. § 866(c). The test for determining the legal sufficiency of the evidence is whether, considering the evidence in the light most favorable to the prosecution, a rational fact finder could have found all the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). 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 convinced of the accused's guilt beyond a reasonable doubt. *Reed*, 54 M.J. at 41 (citing *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987)).

The government presented circumstantial evidence of the appellant's ecstasy use on six occasions at clubs in Boston, Hartford and New York. There is no testimony of any witness actually observing the appellant ingesting ecstasy, nor is there any chemical analysis proving that any substance ingested by appellant was, in fact, ecstasy. Without such evidence, the appellant submits the government has not proven her guilt beyond a reasonable doubt.

The circumstantial evidence showed that, on four occasions, the appellant provided money to buy ecstasy prior to visiting the various clubs. She was provided ecstasy and when later asked whether she had felt the effects of ecstasy, she replied the "pill was good" and that she had been "rolling."^{*} The appellant provided advice to her friends as to how to use ecstasy, *e.g.* drink lots of orange juice to keep serotonin levels up and use a lollipop or pacifier to prevent teeth grinding. While at the various clubs, her friends testified that the appellant exhibited conduct consistent with ecstasy use. This evidence is both legally and factually sufficient to support a conviction of wrongful use of ecstasy on divers occasions.

* "Rolling" is a term used by individuals to mean that they are experiencing the effects of ecstasy.

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; *Reed*, 54 M.J. at 41. Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator