

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Senior Airman HEATH M. MCCASKILL
United States Air Force**

ACM S30536

27 October 2005

Sentence adjudged 9 October 2003 by SPCM convened at Osan Air Base, Republic of Korea. Military Judge: Dawn R. Eflein.

Approved sentence: Bad-conduct discharge, confinement for 3 months, and a reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Lieutenant Colonel Mark R. Strickland, Major Terry L. McElyea, Major Sandra K. Whittington, Captain Diane M. Paskey, Captain David P. Bennett, and Frank J. Spinner, Esq.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Michael E. Savage, Major John C. Johnson, Major Michelle M. McCluer, and Major Carrie E. Wolf.

Before

ORR, JOHNSON, and JACOBSON
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's reply thereto. The appellant challenges the legal and factual sufficiency of his conviction for indecent assault, unlawful entry, and indecent exposure, all in violation of Article 134, UCMJ, 10 U.S.C. § 934. The test for legal sufficiency is whether, when the evidence is viewed in the light most favorable to the government, any rational factfinder could have found 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 and making allowances for not having observed the witnesses, we ourselves are

convinced of the appellant'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)).

In his assignment of error, the appellant argues that the evidence presented at trial was legally and factually insufficient to sustain the findings of guilty to the specification of indecent assault because the victim, Airman First Class (A1C) JW was not a credible witness. He also contends that he had a viable mistake of fact defense to the unlawful entry specification because he believed that he had permission to enter her room. Finally, while the appellant admitted to climbing into bed with A1C JW and removing some of his clothing, he denies exposing himself to her.

After considering the evidence in the light most favorable to the prosecution, we are convinced beyond a reasonable doubt that the appellant's conviction is legally sufficient. After weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, we are convinced beyond a reasonable doubt of the appellant's guilt of the litigated offenses.

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, 10 U.S.C. § 866(c); *Reed*, 54 M.J. at 41. Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court