

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Senior Airman CHARLES W. ODOM
United States Air Force**

ACM 35478

6 January 2005

Sentence adjudged 10 December 2002 by GCM convened at Elmendorf Air Force Base, Alaska. Military Judge: Anne L. Burman (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 12 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, Major Kyle R. Jacobson, and Major Andrea M. Gormel.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, Major Shannon J. Kennedy, and Captain C. Taylor Smith.

Before

ORR, MOODY, and CONNELLY
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

CONNELLY, Judge:

The appellant was tried by a military judge sitting as a general court-martial. The appellant pled guilty to desertion, dereliction in the performance of his duties, and wrongful use of cocaine, in violation of Articles 85, 92, and 112a, UCMJ, 10 U.S.C. §§ 885, 892, 912a. Contrary to his pleas, the appellant was also convicted of missing movement, in violation of Article 87, UCMJ, 10 U.S.C. § 887. The sentenced adjudged and approved was a bad-conduct discharge, confinement for 12 months, forfeiture of all

pay and allowances, and reduction to E-1. The appellant contends that the evidence is factually and legally insufficient to sustain a conviction for missing movement.

The appellant was an air surveillance technician assigned to Elmendorf Air Force Base, Alaska, as part of a 20-person crew on an E-3 AWACS (airborne warning and control system) aircraft. The appellant was directed to report at 0600 hours on 6 September 2002 to fly a NORAD Alert mission whose purpose was to cover for a ground radar that was not operational. The appellant failed to report. The mission launched despite the appellant's absence. The appellant's duties were handled by the senior surveillance technician and the air surveillance officer. The mission both departed and returned to Elmendorf, taking a little more than five hours to complete. The appellant was apprehended in the early morning hours of 9 September 2002 attempting to leave Alaska by commercial air.

This court "may affirm a conviction only if it concludes, as a matter of factual sufficiency, that the evidence proves appellant's guilt beyond a reasonable doubt." *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002). The test for legal sufficiency 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. Turner*, 25 M.J. 324 (C.M.A. 1987).

Article 87 of the Uniform Code of Military Justice sets forth the four elements that must be proven to sustain a conviction for missing movement:

- (1) That the accused was required in the course of duty to move with a ship, aircraft or unit;
- (2) That the accused knew of the prospective movement of the ship, aircraft or unit;
- (3) That the accused missed the movement of the ship, aircraft or unit; and
- (4) That the accused missed the movement through design or neglect.

Manual for Courts-Martial, United States (MCM), Part IV, ¶ 11b (2002 ed.). The explanation to Article 87 defines movement:

"Movement" as used in Article 87 includes a move, transfer, or shift of a ship, aircraft, or unit involving a substantial distance and period of time. Whether a particular movement is substantial is a question to be determined by the court-martial considering all the circumstances. Changes which do not constitute a "movement" include practice marches of a short duration with a return to the point of departure, and minor changes in location of

ships, aircrafts, or units, as when a ship is shifted from one berth to another in the same shipyard or harbor or when a unit is moved from one barracks to another on the same post.

MCM, Part IV, ¶ 11c(1).

In the instant case, the appellant missed a real-world NORAD mission, whose purpose was to cover for radar that was not operational. The appellant's AWACS aircraft supported NORAD in defending the United States from hostile aircraft. The appellant's duties on the flight were significant: serving as an air surveillance technician. The appellant's duties had to be performed by the senior surveillance technician and the air surveillance officer. The mission lasted more than five hours in length and covered an appreciable distance. The evidence presented at the court-martial proves this mission was a substantial movement and the appellant was properly convicted. *See United States v. Graham*, 16 M.J. 460 (C.M.A. 1983); *United States v. Quezada*, 40 M.J. 109 (C.M.A. 1994).

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); *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