

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Senior Airman ANTHONY J. SMITH  
United States Air Force**

**ACM 36534**

**22 December 2006**

Sentence adjudged 5 August 2005 by GCM convened at Pope Air Force Base, North Carolina. Military Judge: Ronald A. Gregory.

Approved sentence: Bad-conduct discharge and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Captain Kimberly A. Quedensley, and Captain Timothy M. Cox.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Lieutenant Colonel Robert V. Combs, and Major Kimani R. Eason.

Before

**BROWN, JACOBSON, and SCHOLZ  
Appellate Military Judges**

**PER CURIAM:**

Contrary to his pleas, the appellant was found guilty of wrongfully using Percocet on divers occasions in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. He was found not guilty of wrongfully using cocaine and marijuana. A general court-martial comprised of officer and enlisted members sentenced the appellant to a bad-conduct discharge, restriction to the limits of Pope Air Force Base for 30 days, and reduction to the grade of E-1. The convening authority approved the findings and sentence as adjudged, with the exception of the restriction, which he did not approve. On appeal, the appellant asserts that the evidence supporting his conviction is legally and factually insufficient.\* We find his assignment of error to be without merit and we affirm.

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\* The assignment of error was filed pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

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, 319 (1979); *United States v. Quintanilla*, 56 M.J. 37, 82 (C.A.A.F. 2001); *United States v. Turner*, 25 M.J. 324 (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 325.

After carefully reviewing the record, we conclude that there is sufficient competent evidence in the record of trial to support the member's findings. The testimony of one of the two fact witnesses, RL, was credible and compelling, and the testimony of NM, though less compelling, tended to corroborate the testimony of RL. Although trial defense counsel was able to point out minor inconsistencies in RL's testimony, he did not waver in regard to the essential facts – that he personally observed the appellant use Percocet. Neither was trial defense counsel able to present convincing reasons why either of the two witnesses would lie in regard to the allegations. Thus, we are personally convinced of the appellant's guilt beyond a reasonable doubt. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *Turner*, 25 M.J. at 325.

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

LAQUITTA J. SMITH  
Documents Examiner