

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class JOSHUA L. THOMPSON
United States Air Force**

ACM 34967

28 January 2003

Sentence adjudged 9 January 2002 by GCM convened at Seymour Johnson Air Force Base, North Carolina. Military Judge: James L. Flanary.

Approved sentence: Bad-conduct discharge, forfeiture of \$333.00 pay, and reduction to E-1.

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

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

Before

BURD, ORR, W.E., and CONNELLY
Appellate Military Judge

OPINION OF THE COURT

CONNELLY, Judge:

On 8 January 2002, a general court-martial consisting of officer members, convicted the appellant, contrary to his pleas, of one specification of distribution of 3,4-methylenedioxymethamphetamine, commonly referred to as ecstasy, on divers occasions, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. His approved sentence consists of a bad-conduct discharge, forfeiture of \$333.00 pay, and reduction to E-1. The appellant challenges the factual sufficiency of his conviction.

At trial, both government witnesses testified under grants of testimonial immunity that the appellant provided them with ecstasy while in technical training school. Each witness acknowledged prior inconsistent statements. When confronted initially by agents

of the Air Force Office of Special Investigations (AFOSI), each witness denied use of ecstasy or knowledge of any ecstasy users. The appellant contends the testimony of both government witnesses is factually insufficient because both witnesses had previously lied to AFOSI agents and both were testifying under a grant of immunity.

“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,’ the court is ‘convinced of the accused’s guilt beyond a reasonable doubt.’” *United States v. Reed*, 54 M.J. 37, 41 (2000) (quoting *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987)). We have carefully reviewed the record of trial in this case. The two government witnesses were skillfully cross-examined by the appellant’s defense counsel. Each acknowledged his immunity grant and his prior inconsistent statements. Each testified that when initially confronted by AFOSI agents, he was scared and provided a false statement denying any knowledge of ecstasy use.

Frequently, the sole witnesses to illegal drug activity are other drug users. This fact does not preclude the testimony of drug abusers at trial. The testimony of the two government witnesses in this case is direct and credible. Under a grant of immunity, the only way the witnesses would run afoul of the law is to testify in an untruthful manner. After reviewing the record and taking into account that we did not see or hear the witnesses, we are convinced the testimony of the witnesses was worthy of belief and we are convinced of the appellant’s guilty beyond a reasonable doubt.

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

FELLECCIA M. BUTLER, TSgt, USAF
Chief Court Administrator