

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

First Lieutenant RUDOLPH A. WIECHERT III
United States Air Force

ACM 36390

19 September 2007

Sentence adjudged 22 January 2005 by GCM convened at Seymour-Johnson Air Force Base, North Carolina. Military Judge: Lance B. Sigmon (sitting alone).

Approved sentence: Dismissal, confinement for 12 months, and a reprimand.

Appellate Counsel for Appellant: Frank J. Spinner, Esq. (argued), Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major Sandra K. Whittington, Major Anniece Barber, and Captain Griffin S. Dunham.

Appellate Counsel for the United States: Major Donna S. Rueppell (argued), Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Jamie L. Mendelson.

Before

FRANCIS, SOYBEL, and BRAND
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with his plea, the appellant was convicted of one specification of failure to obey a lawful order on divers occasions and two specifications of conduct unbecoming an officer, in violation of Articles 92 and 133, UCMJ, 10 U.S.C. §§ 892, 933. Contrary to his plea, he was convicted of one specification of indecently assaulting Airman First Class (A1C) CKC, in violation of Article 134, UCMJ, 10 U.S.C. § 934.¹

¹ The appellant was charged with attempted rape, Article 80, UCMJ, 10 U.S.C. § 880, but found guilty of the lesser included offense of indecent assault, Article 134, UCMJ.

The approved sentence consists of a dismissal, confinement for 12 months, and a reprimand.

The issue on appeal is whether the evidence is legally and factually sufficient to sustain the finding of guilty to the lesser included offense of indecent assault. More specifically, the appellant avers that because A1C CKC made numerous inconsistent statements, was contradicted by other witnesses, and had a motive to misrepresent, the evidence was insufficient to sustain a conviction. We heard oral argument on 12 September 2007.

Background

On 22 June 2004, the appellant and several others were playing Spades. After closing down the beer tent, the group decided to move the game to A1C CKC's room, but only three individuals arrived; A1C CKC, Staff Sergeant T, and the appellant. Since they needed four people for Spades, they instead talked, drank rum and cokes, and listened to music. At some point, the appellant began touching A1C CKC's leg.² She left the room and got another officer, Captain Z, to run interference because she was uncomfortable. The party finally broke up and everyone went on their way. According to A1C CKC, she heard a knock at her door about 10-20 minutes later, and when she opened it, the appellant pushed his way in. He started kissing her and groping her breasts, buttocks, and vaginal area until he finally had her on the bed. After struggling, she was able to get away. She then opened the door and told the appellant if he didn't leave, she would scream. He left. She did not report the incident, but did tell two captains that the appellant had been acting inappropriately and they needed to talk to him.

Analysis

The test for factual sufficiency is whether this Court is convinced beyond a reasonable doubt of the appellant's guilt, after weighing all the evidence and making allowances for not having personally observed the witnesses. *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Legal sufficiency requires us to determine whether, considering the evidence in the light most favorable to the government, any reasonable fact finder could have found all of the essential elements beyond a reasonable doubt. *Id.* See also *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002); *United States v. Sills*, 56 M.J. 239, 240-41 (C.A.A.F. 2002).

After reviewing the record of trial, the post-trial submissions by counsel, the oral arguments of counsel, and carefully considering the appellant's assertion, we conclude the evidence is legally and factually sufficient to sustain the conviction for the lesser

² This was the substance of one of the conduct unbecoming specifications.

included offense of indecent assault. *See United States v. Traylor*, 40 M.J. 248, 249 (C.M.A. 1994).

Conclusion

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 findings and sentence are

AFFIRMED.

OFFICIAL

The seal of the U.S. Air Force Court of Criminal Appeals is circular. It features an eagle with wings spread, perched on a globe. The words "U.S. AIR FORCE" are at the top and "COURT OF CRIMINAL APPEALS" are at the bottom. A signature is written across the seal.
STEVEN LUCAS, GS-11, DAF
Clerk of Court