UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman ALEXANDER L. YOUNG
United States Air Force

ACM S30652

28 April 2006

Sentence adjudged 6 April 2004 by SPCM convened at Nellis Air Force Base, Nevada. Military Judge: Nancy J. Paul (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 4 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major Sandra K. Whittington, Major David P. Bennett, and Philip D. Cave, Esq.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Michelle M. McCluer.

Before

BROWN, MOODY, and FINCHER
Appellate Military Judges

PER CURIAM:

We examined the record of trial, the assignments of error raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and the government's reply thereto. Finding no error, we affirm.

The appellant contends the evidence is legally and factually insufficient to sustain his conviction of wrongful communication of a threat, in violation of Article 134, UCMJ, 10 U.S.C. § 934. 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 offense 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). 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. *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987).

We conclude there is *overwhelming* evidence in the record of trial to support the court-martial's finding of wrongfully communicating a threat to kill A1C S. *See United States v. Greig*, 44 M.J. 356, 357-58 (C.A.A.F. 1996); *United States v. Phillips*, 42 M.J. 127, 129-31 (C.A.A.F. 1995); *United States v. Gillully*, 32 C.M.R. 458, 460-61 (C.M.A. 1963); *Manual for Courts-Martial, United States (MCM)*, Part IV, ¶ 110b (2005 ed.).[*] We are also convinced of the appellant's guilt beyond a reasonable doubt. *See Turner*, 25 M.J. at 325; Article 66(c), UCMJ, 10 U.S.C. § 866(c).

The appellant also contends that the staff judge advocate's advice concerning his military service prior to the charged offenses was erroneous. We disagree. Even if we were to determine it was erroneous, we conclude there has not been a colorable showing of possible prejudice. *See United States v. Capers*, 62 M.J. 268, 269 (C.A.A.F. 2005); *United States v. Scalo*, 60 M.J. 435, 437 (C.A.A.F. 2005); *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000). Finally, we hold that the approved sentence is not inappropriately severe. *See United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988).

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.

Judge FINCHER participated in this decision prior to his reassignment.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator

[*] This provision is the same as in the previous edition of the *MCM* that was in effect at the time of trial.