

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

No. ACM 40535

UNITED STATES

Appellee

v.

Eric W. SINGLETON

Staff Sergeant (E-5), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary

Decided 30 April 2025

Military Judge: Tyler B. Musselman.

Sentence: Sentence adjudged on 17 June 2023 by GCM convened at Moody Air Force Base, Georgia. Sentence entered by military judge on 17 July 2023: Dishonorable discharge, confinement for 1 year and 6 months, forfeiture of all pay and allowances, and reduction to E-2.

For Appellant: Major Jordan L. Grande, USAF; Captain Samantha M. Castanien, USAF.

For Appellee: Lieutenant Colonel J. Peter Ferrell, USAF; Lieutenant Colonel Jenny A. Liabenow, USAF; Lieutenant Colonel G. Matt Osborn, USAF; Major Brittany M. Speirs, USAF; Mary Ellen Payne, Esquire.

Before ANNEXSTAD, DOUGLAS, and PERCLE, *Appellate Military Judges*.

Judge DOUGLAS delivered the opinion of the court, in which Senior Judge ANNEXSTAD and Judge PERCLE joined.

**This is an unpublished opinion and, as such, does not serve as
precedent under AFCCA Rule of Practice and Procedure 30.4.**

DOUGLAS, Judge:

A general court-martial consisting of officer and enlisted members convicted Appellant, contrary to his pleas, of two specifications of sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920.^{1,2} The members sentenced Appellant to a dishonorable discharge, confinement for one year and six months, forfeiture of all pay and allowances,³ and reduction to E-2. The convening authority took no action on the findings or the sentence.

Appellant raises two issues on appeal: whether (1) Appellant’s convictions are factually sufficient, and (2) Appellant was deprived of his constitutional right to a unanimous verdict.⁴

As to issue (2) Appellant is not entitled to relief. *See United States v. Anderson*, 83 M.J. 291 (C.A.A.F. 2023) (holding that a military accused does not have a right to a unanimous verdict under the Sixth Amendment,⁵ the Fifth Amendment’s due process clause, or the Fifth Amendment’s component of equal protection⁶), *cert. denied*, 144 S. Ct. 1003 (2024).

We address issue (1) below. Finding no error that materially prejudiced Appellant’s substantial rights, we affirm the findings and sentence.

I. BACKGROUND

Appellant joined the Air Force in December 2011. By the time of his court-martial, Appellant had served almost 11 years and deployed twice—to Qatar in 2013 and to Jordan from 2018 to 2019. The conduct underlying Appellant’s

¹ All references to the punitive articles of the UCMJ and their definitions are to the *Manual for Courts-Martial, United States* (2019 ed.). All other references to the UCMJ and Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2024 ed.).

² Appellant was acquitted of two specifications of domestic violence (Specifications 1 and 2 of Charge II) and one specification of assault consummated by a battery upon a child under 16 (Specification of Charge III) in violation of Articles 128b and 128, UCMJ, 10 U.S.C. §§ 928b, 928, respectively.

³ The Statement of Trial Results and the entry of judgment describe this part of the sentence as “[t]otal forfeitures of all pay and allowances.” Appellant claims no prejudice from this irregularity, and we find none.

⁴ Issue (2) was personally raised by Appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

⁵ U.S. CONST. amend. VI.

⁶ U.S. CONST. amend. V.

conviction occurred in his residence in Lowndes County, Georgia. While stationed at Moody Air Force Base (AFB), he met SJ.⁷ They were married in March 2021. They lived together with both their child and another young child SJ had from a previous relationship.

A. SJ's Testimony

In March 2021, the same month she and Appellant were married, SJ delivered her second child. She suffered from complications due to medication. She had heavy post-partum bleeding and cramping in the first month post-delivery. During the second month post-delivery, the bleeding and cramping subsided, but was still existent.

About one month post-delivery, during a duty day, Appellant went home for lunch, as was usual. On this day, SJ made chicken sautéed in balsamic vinegar with asparagus and sliced French bread. After they were finished eating lunch, SJ took their plates to the sink and began washing the dishes.

While she was washing dishes, Appellant approached SJ from behind. He stated he had had a long, difficult day at work. He then put his left hand inside SJ's pants, under her underwear and with two of his fingers, penetrated her vagina. She told him, "[N]o[,] not right now," because she was still bleeding and was still very uncomfortable. She tried pushing his hand away and pushing him off her. Appellant responded that it was her "wifely duty to take care of her husband." She told him, "[N]o." With his fingers still penetrating her vagina, he stated, "[I]t w[ill] be quick," and pulled down her thin, fabric, leggings. Appellant unfastened his belt, which had a quick "pinch" release, and could be opened with one hand. He pulled down his own (operational camouflage pattern) pants with his right hand. Appellant leaned against SJ, pinning her against the counter. SJ remembered the kitchen faucet still had flowing water into the sink, and her son started crying. SJ told him "[N]o" again. She needed to check on the baby. Again, Appellant stated it would not take long, and that he needed to get back to work anyway. Appellant then grabbed SJ's hip and penetrated SJ's vagina with his penis. At some point, Appellant pulled his penis out from SJ's vagina and ejaculated on her back. He explained that he did not "need [his] easy bake oven getting pregnant." He asked her to get him a paper towel from above the sink; he adjusted himself, pulled up his pants, and returned to work.

SJ checked on her son and bathed herself. She was in pain and felt disgusting. Her vaginal bleeding worsened. As discussed in more detail *infra*, SJ

⁷ SJ was a civilian. Out of respect for her privacy, we do not use any further identifying information in this opinion.

shared these events with her therapist, and her brother AJ, but did not formally allege these crimes until 15 October 2021 when she was speaking with a member of the base legal office.⁸ SJ and Appellant divorced in December 2021.

B. The Testimony of SJ's Brothers

1. AJ

AJ, one of SJ's two brothers lived near her and Appellant. SJ and AJ were close, seeing each other about twice per week. Appellant and AJ also became friends. In early 2021, when Appellant and AJ were driving in a vehicle together and talking, Appellant confided, "I have to force everything with your sister." AJ testified Appellant's statement made him feel awkward. In the vehicle, at the time of Appellant's statement, AJ asked Appellant, "[W]hat do you mean?" AJ pointed out that although Appellant and SJ were married, he still has to ask her to have sex. Appellant responded, "I shouldn't have to ask my wife to have sex with her." AJ testified that Appellant had a grin on his face, which is what his face looked like when he disagreed with anyone in a conversation.

Additionally, AJ confirmed that SJ told him in July 2021 that Appellant had sexually assaulted her. AJ spoke with their father, and also believed that he, AJ, had reported the allegations to law enforcement at that time. However, law enforcement did not have record of this disclosure.

2. Technical Sergeant CJ

SJ's other brother, Technical Sergeant (TSgt) CJ, was in the Air Force but stationed at a different base. TSgt CJ and SJ were very close. When they were younger, SJ, as a younger sister, was very attached to TSgt CJ and they did almost everything together. After TSgt CJ joined the Air Force, they did not talk as frequently but remained very close. At trial, TSgt CJ opined his sister was a "truthful" person. Before October 2021, TSgt CJ had not heard of Appellant committing sexual assaults upon SJ. Had he heard those allegations, he would have reported them to law enforcement.

C. Defense Witnesses

1. Expert Testimony: Mrs. NW

⁸ Appellant was alleged to have committed assault consummated by a battery against SJ's first child, which was the basis of Charge III and its specification. Appellant was acquitted of this offense; *see* n.2 *supra*. As part of the investigation into that alleged offense, SJ interviewed with law enforcement approximately three times between 14 July 2021 and 19 July 2021. SJ did not allege sexual assault during any of these interviews.

During their marriage, Appellant and SJ began counseling to improve their communications, primarily about their sexual relations. SJ and Appellant also received individual counseling. Their marriage counselor, Mrs. NW also counseled SJ individually. Mrs. NW was a civilian licensed clinical social worker in the area. She testified for the Defense and was recognized as an expert in clinical social work.

SJ and Appellant began their counseling services with Mrs. NW on 20 May 2021 and continued seeing her through 24 June 2021. Individually, Mrs. NW saw SJ five times in this timeframe. Appellant was counseled individually by another provider within the same clinic. After each of SJ's and Appellant's individual counseling sessions, they would transition to their joint marriage counseling session with Mrs. NW.

Mrs. NW determined, provisionally, that SJ had a diagnosis of borderline personality disorder (BPD). Mrs. NW explained that by "provisional" she meant that it was an initial diagnosis, but she would need more time to assess and treat SJ before a final diagnosis could be determined. As Mrs. NW explained in her testimony, symptoms of BPD generally include a real or perceived sense of abandonment, intense interpersonal relationships, impulsivity, and emotional dysregulation, among others. A person with BPD could perceive events inaccurately. A person with BPD can manifest manipulation, such as telling only part of the story, or "catastrophizing." Additionally, Mrs. NW testified that SJ never disclosed she had been sexually assaulted by Appellant. SJ disputed this account in her testimony. Further, SJ was unaware of any diagnosis by Mrs. NW, provisional or otherwise. SJ testified she was unaware that she was in a treatment plan with Mrs. NW.

2. Law Enforcement: Special Agent DK

On 15 October 2021, Staff Sergeant (SSgt) TP, a member of the base legal office, purportedly posed a question to SJ required by his paralegal checklist. SSgt TP called SJ to inform her of the closure of a separate investigation. In response to an unknown question, SJ reported the sexual assaults, of which Appellant was later convicted. Consequently, SSgt TP called the Air Force Office of Special Investigations (OSI). Special Agent (SA) DK was assigned lead agent in the sexual assault investigation. Before 15 October 2021, there was no record of any law enforcement agency being notified of SJ's allegations of sexual assault by Appellant.

II. DISCUSSION

In his appeal, Appellant challenges the factual sufficiency of his convictions. Appellant argues that SJ is not "credible" and that the sexual assaults,

as she described them, were a physical impossibility. We disagree with both arguments and find his convictions factually sufficient.

A. Law

We review questions of factual sufficiency when an appellant asserts an assignment of error and shows a specific deficiency in proof. *United States v. Harvey*, 85 M.J. 127, 129 (C.A.A.F. 2024) (citing Article 66(d)(1)(B)(i), UCMJ, 10 U.S.C. § 866(d)(1)(B)(i), *Manual for Courts-Martial, United States* (2024 ed.) (2024 *MCM*)).

Article 66(d)(1), UCMJ, provides:

(B) FACTUAL SUFFICIENCY REVIEW.

(i) In an appeal of a finding of guilty under subsection (b), the Court may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.

(ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—

(I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and

(II) appropriate deference to findings of fact entered into the record by the military judge.

(iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

10 U.S.C. § 866(d)(1) (2024 *MCM*). The factual sufficiency standard applies to courts-martial in which every finding of guilty in the entry of judgment is for an offense occurring on or after 1 January 2021. *See* The National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 542(e)(2), 134 Stat. 3388, 3612–13 (1 Jan. 2021).

“[T]he requirement of ‘appropriate deference’ when a CCA ‘weigh[s] the evidence and determine[s] controverted questions of fact’ . . . depend[s] on the nature of the evidence at issue.” *Harvey*, 85 M.J. at 130 (second and third alterations in original). This court has the discretion to determine what level of deference is appropriate. *Id.*

“[T]he quantum of proof necessary to sustain a finding of guilty during a factual sufficiency review is proof beyond a reasonable doubt, the same as the

quantum of proof necessary to find an accused guilty at trial.” *Id.* at 131 (internal quotation marks omitted).

For this court “to be ‘clearly convinced that the finding[s] of guilty was against the weight of the evidence,’ two requirements must be met.” *Id.* at 132. First, we must decide that evidence, as we weighed it, “does not prove that the appellant is guilty beyond a reasonable doubt.” *Id.* Second, we “must be clearly convinced of the correctness of this decision.” *Id.*

“[T]he factfinder at the trial level is always in the best position to determine the credibility of a witness.” *United States v. Peterson*, 48 M.J. 81, 83 (C.A.A.F. 1998).

To convict Appellant of sexual assault of SJ as charged in Specification 1 of Charge I in this case, the Government was required to prove that at or near Lowndes County, Georgia, between on or about 1 March 2021 and on or about 30 April 2021: (1) Appellant committed a sexual act upon SJ by penetrating her vulva with his finger, with an intent to gratify his sexual desire; and (2) the sexual act was without her consent. *See Manual for Courts-Martial, United States* (2019 ed.) (*MCM*), pt. IV, ¶ 60.a.(b)(2)(A).

To convict Appellant of sexual assault of SJ as charged in Specification 2 of Charge I in this case, the Government was required to prove that at or near Lowndes County, Georgia, between on or about 1 March 2021 and on or about 30 April 2021: (1) Appellant committed a sexual act upon SJ by penetrating her vulva with his penis; and (2) the sexual act was without her consent. *See* 10 U.S.C. § 920(b)(2)(A); *MCM*, pt. IV, ¶ 60.b.(2)(d).

The term “sexual act” includes both “the penetration, however slight, of the penis into the vulva . . .” and “the penetration, however slight, of the vulva . . . by any part of the body . . . with an intent . . . to gratify the sexual desire of any person.” *MCM*, pt. IV, ¶ 60.a.(g)(1)(A), (C).

“‘[C]onsent’ means a freely given agreement to the conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent A current or previous dating or social or sexual relationship by itself . . . does not constitute consent.” *MCM*, pt. IV, ¶ 60.a.(g)(7)(A). “All the surrounding circumstances are to be considered in determining whether a person gave consent.” *MCM*, pt. IV, ¶ 60.a.(g)(7)(C).

Mistake of fact occurs where “the accused held, as a result of ignorance or mistake, an incorrect belief” that the other person consented to the sexual conduct. Rule for Courts-Martial (R.C.M.) 916(j)(1). An honest and reasonable mistake that the victim consented to the charged sexual act is an affirmative defense to sexual assault. *United States v. McDonald*, 78 M.J. 376, 379 (C.A.A.F. 2019). “If a mistake is honest yet ‘patently unreasonable,’ the defense is una-

available to an appellant.” *United States v. Rodela*, 82 M.J. 521, 526 (quoting *United States v. Davis*, 76 M.J. 224, 230 (C.A.A.F. 2017)). The ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances. R.C.M. 916(j)(1).

B. Analysis

We have carefully weighed the evidence. We have given appropriate deference to the fact that the trial court saw and heard the witnesses and additional evidence. We find the Government presented convincing evidence of Appellant’s guilt beyond a reasonable doubt.

During Appellant’s court-martial, SJ testified and specifically described how Appellant walked up behind her, while he was home for lunch and penetrated her vulva with his fingers and then with his penis, while she repeatedly told him, “No.” The testimony of a single witness may be sufficient to meet the Government’s burden of proof “so long as the members find that the witness’s testimony is relevant and is sufficiently credible.” *United States v. Rodriguez-Rivera*, 63 M.J. 372, 383 (C.A.A.F. 2006) (citations omitted). Given the findings in this case, the court members evidently found SJ’s testimony to be generally credible. Moreover, the Government also supplemented SJ’s testimony with other evidence, including, *inter alia*, testimony from her brothers. Crucially, her brother AJ described a conversation he had with Appellant in early 2021 where Appellant stated generally that he did not believe he needed to ask his wife, SJ, for sex. Moreover, her other brother TSgt CJ testified he believed his sister was a truthful person.

Appellant’s argument at trial and on appeal, that SJ is not credible, is not supported by the evidence. We have considered the testimony of all the witnesses. We are not persuaded by the argument that SJ is not credible because she was provisionally diagnosed with BPD. Nor do we believe SJ is less credible because she did not immediately, formally report the sexual assaults to OSI at Moody AFB. Further, we are not persuaded by an argument that the sexual assaults could not have occurred in the manner SJ described because of physical impossibility. Finally, we do not find a mistake of fact defense applicable as we do not find Appellant could have had an honest and reasonable mistake of fact.

We assume without deciding that Appellant properly made a request for a factual sufficiency review by asserting a specific showing of a deficiency of proof as required under Article 66(d)(1)(B)(i), UCMJ, *supra*. However, having given appropriate deference to the fact that the members saw and heard the witnesses and other evidence, the court is not clearly convinced that Appellant’s conviction was against the weight of the evidence. Therefore, the convictions are factually sufficient.

III. CONCLUSION

As entered, the findings are correct in law and fact, Article 66(d), UCMJ (2024 *MCM*). In addition, the sentence, as entered, is correct in law and fact, Article 66(d), UCMJ (*MCM*), and no error materially prejudicial to the substantial rights of Appellant occurred, Articles 59(a), UCMJ, 10 U.S.C. § 859(a). Accordingly, the findings and sentence are **AFFIRMED**.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court