UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman DENAYA S. STAPLETON
United States Air Force

ACM S31762

14 July 2011

Sentence adjudged 18 November 2009 by SPCM convened at Osan Air Base, Republic of Korea. Military Judge: Mark Allred (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 45 days, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Gail E. Crawford, Lieutenant Colonel Darrin K. Johns, and Major Michael S. Kerr.

Appellate Counsel for the United States: Colonel Don M. Christensen, Colonel Derence V. Fivehouse, and Gerald R. Bruce, Esquire.

Before

BRAND, GREGORY, and ROAN
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

GREGORY, Senior Judge:

A special court-martial composed of military judge alone convicted the appellant contrary to her pleas of three specifications of larceny and one specification of forgery in violation of Articles 121 and 123, UCMJ, 10 U.S.C. §§ 921, 923. The court sentenced her to a bad-conduct discharge, confinement for 45 days, and reduction to the grade of E-1. The convening authority approved the sentence adjudged. The appellant raises two issues: (1) Whether the evidence is insufficient to support conviction of any charged

offense; and (2) Whether the sentence is inappropriately severe.[1] Finding no error to the substantial prejudice of the appellant, we affirm.

Sufficiency of the Evidence

We review issues of legal and factual sufficiency de novo. *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002). The test for factual sufficiency is whether, after weighing the evidence and making allowances for not having observed the witnesses, we ourselves are convinced of the appellant's guilt beyond a reasonable doubt. *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000) (citing *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987)). In conducting this unique appellate role, we take "a fresh, impartial look at the evidence," applying "neither a presumption of innocence nor a presumption of guilt" to "make [our] own independent determination as to whether the evidence constitutes proof of each required element beyond a reasonable doubt." *Washington*, 57 M.J. at 399.

"The test for legal sufficiency of the evidence is 'whether, considering the evidence in the light most favorable to the prosecution, a reasonable factfinder could have found all the essential elements beyond a reasonable doubt.'" *United States v. Humpherys*, 57 M.J. 83, 94 (C.A.A.F. 2002) (quoting *Turner*, 25 M.J. at 324). "[I]n resolving questions of legal sufficiency, we are bound to draw every reasonable inference from the evidence of record in favor of the prosecution." *United States v. Barner*, 56 M.J. 131, 134 (C.A.A.F. 2001). Our assessment of legal sufficiency is limited to the evidence produced at trial. *United States v. Dykes*, 38 M.J. 270, 272 (C.M.A. 1993).

Turning first to the larceny of the $1,000.00 travel voucher; the appellant resided in an enlisted dormitory on Osan Air Base, Republic of Korea, where she was assigned to the 51st Operations Group. Airman First Class (A1C) MW resided in the same dormitory across the hall from the appellant who had the door code to A1C MW's room. A1C MW had a $1,000.00 travel voucher that was awarded as a prize in a base poker tournament which he secured by hiding under his mattress. When he discovered the voucher missing, he reported it to his flight chief and provided a statement to Staff Sergeant (SSgt) MW of the Security Forces Office of Investigations (SFOI). During a subsequent search of the appellant's dormitory room, SFOI investigators found the voucher hidden in her make-up bag underneath her sink.

Concerning the IPod theft, Airman (Amn) JM testified that she shared an office with the appellant and accidently left her IPod behind in the office one day when she went to exercise. She returned to the office and asked the appellant if she had seen it; the appellant replied that she had not. Two months later, the IPod was found attached to the

[1] Both issues are raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

appellant's computer in her dormitory room. The serial number matched the purchase documents retained by Amn JM.

We next consider the evidence of forgery and theft of government property. The appellant's duties included serving as her unit's Automated Data Processing Equipment (ADPE) custodian which involved, among other things, properly accounting for unit computer equipment and turning in computer equipment that was no longer in use to the central ADPE office at Osan. Each returned equipment item requires an accompanying 51 FW Form 74, *ADPE Disposition and Control* (1 April 1999), which is signed by the central ADPE custodian when the equipment item is turned in.

In August 2009, the appellant went to the Osan ADPE office with five disposition control forms listing various items of computer equipment but no equipment. She told Senior Airman (SrA) BLS, the central account custodian, that she had turned the computers into his office earlier and needed to have the account updated. SrA BLS first checked the warehouse for the listed equipment and found none of it. Nor did his office have the originals of the forms which would have been provided when the equipment was turned in. SrA BLS examined the forms which purported to have his signature and noticed some discrepancies, and he testified that he did not sign the forms presented by the appellant.

SFOI initiated an investigation concerning the suspected forgery of disposition control forms as well as the missing $1,000.00 voucher. SSgt MW and other Security Forces members searched the appellant's dormitory room. They found a government laptop computer under her bed behind a clothes basket. The serial number matched that of a laptop computer belonging to the 51st Maintenance Group at Osan, and identified SSgt TW and SrA LS as primary and alternate custodians of the property.

Considering the evidence in the light most favorable to the prosecution, a reasonable factfinder could have found all the essential elements of each offense beyond a reasonable doubt. After weighing the evidence de novo and making allowances for not having observed the witnesses, we ourselves are convinced of the appellant's guilt beyond a reasonable doubt. The proof presented by the prosecution shows overwhelming evidence of the appellant's guilt of each offense: each item of stolen property was found in the appellant's possession, the stolen voucher was hidden in her make-up bag, and the stolen computer was hidden under her bed behind a clothes basket. We find incredible (1) her claim that someone else forged the forms which she herself brought to the central ADPE office, (2) her claim that someone gave her the stolen IPod which disappeared from the office where she worked and which was found plugged into her computer, (3) her claim that A1C MW lied about the $1,000.00 travel voucher which was found hidden

in her dormitory room, and (4) her claim that she lawfully had possession of the government laptop found hidden under her bed.[2]

Sentence Appropriateness

The appellant argues that her sentence is inappropriately severe and requests that we not affirm the adjudged and approved bad-conduct discharge. We review sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We make such determinations in light of the character of the offender, the nature and seriousness of his offenses, and the entire record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006), *aff'd*, 65 M.J. 35 (C.A.A.F. 2007). Additionally, while we have a great deal of discretion in determining whether a particular sentence is appropriate, we are not authorized to engage in exercises of clemency. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). After carefully examining the submissions of counsel, the appellant's military record, and all the facts and circumstances surrounding the offenses of which she was convicted, we find the appellant's sentence entirely appropriate.

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); *Reed*, 54 M.J. at 41. Accordingly, the approved findings and the sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS
Clerk of the Court

[2] Attached to an affidavit submitted in support of her appeal, the appellant provided an AF IMT 1297, *Temporary Issue Receipt* (1 July 1987), purporting to transfer the laptop to her. She signed as both issuer and recipient, but, as Pros. Ex. 13 shows, she is not the custodian of the property. She claims in her affidavit that this document was unavailable at trial.