UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Master Sergeant JEFFREY D. BEATTY
United States Air Force

ACM 35523 (f rev)

29 August 2007

Sentence adjudged 25 October 2002 by GCM convened at Ellsworth Air Force Base, South Dakota. Military Judge: R. Scott Howard and Nancy J. Paul (*DuBay* hearing).

Approved sentence: Confinement for 18 months and reduction to E-1.

Appellate Counsel for Appellant: William E. Cassara, Esq. (argued), Colonel Beverly B. Knott, Colonel Carlos L. McDade, Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major Terry L. McElyea, Major James M. Winner, Major N. Anniece Barber, and Captain John S. Fredland.

Appellate Counsel for the United States: Captain Jefferson E. McBride (argued), Colonel LeEllen Coacher, Colonel Gary F. Spencer, Colonel Gerald R. Bruce, Lieutenant Colonel Robert V. Combs, Major Kevin P. Stiens, Major Nurit Anderson, and Major Matthew S. Ward.

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

UPON FURTHER REVIEW

PER CURIAM:

This case was remanded by the Court of Appeals for the Armed Forces for another legal and factual sufficiency review by this Court. *United States v. Beatty*, 64 M.J. 456, 459 (C.A.A.F. 2007). Our superior court found that it was not able to "determine from this record whether the court in fact considered JB's testimony in pretrial practice or in presentencing on the issue of her credibility." *Id.* C.A.A.F. explained that this Court's action was too ambiguous "in assessing JB's credibility for purposes of determining the

factual and legal sufficiency of the evidence." *Id.* This Court must now decide whether the evidence presented to the members was legally and factually sufficient to sustain the appellant's conviction for committing indecent acts with his daughter, JB, and taking indecent liberties with JB, when she was under 16 years of age.[1]

Legal and Factual Sufficiency

We may affirm only those findings of guilty that we determine are correct in law and fact and, on the basis of the entire record, should be approved. Article 66(c), UCMJ, 10 U.S.C. § 866(c). The test for legal sufficiency is whether, when the evidence is viewed in the light most favorable to the government, a rational factfinder could have found the appellant guilty of all the elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). The test for factual sufficiency is whether, after weighing the evidence and making allowances for not having personally observed the witnesses, this Court is convinced of the appellant's guilt beyond a reasonable doubt. *Reed*, 54 M.J. at 41 (citing *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987)).

Our superior court has established that the review of *findings* -- of guilt and innocence -- is limited to the evidence presented at trial. *United States v. Duffy*, 11 C.M.R. 20, 23 (C.M.A. 1953) (regarding convening authority's review); *United States v. Whitman*, 11 C.M.R. 179, 180 (C.M.A. 1953); *United States v. Lanford*, 20 C.M.R. 87, 95 (C.M.A. 1955); *see United States v. Bethea*, 46 C.M.R. 223, 224-25 (C.M.A. 1973); *United States v. Holt*, 58 M.J. 227, 232 (C.A.A.F. 2003).

Our review for both legal and factual sufficiency is de novo. *United States v. Ward,* 64 M.J. 79 (C.A.A.F. 2006) (stating "[T]he Court of Criminal Appeals conducts a de novo review of factual sufficiency." with respect to summary disposition); *see also United States v. Najera*, 52 M.J. 247, 249 (C.A.A.F. 2000).

In this case, we considered only the evidence before the members in findings in conducting our legal and factual sufficiency review of the findings of guilty. This evidence included the testimony of JB and the appellant, among others, and the documentary evidence admitted during the findings portion of trial. JB's detailed and accurate description of the appellant's unique piercings on the underside of his penis, the appellant's unsatisfactory explanation for the sexually suggestive emails that he sent JB from his deployed location, along with the other evidence presented to the members leads us to conclude a rational factfinder could have found the appellant guilty of all the

[1] Oral argument was heard on only this issue on 21August 2007. When our superior court "sets aside the decision of a Court of Criminal Appeals and remands for further consideration, [they] do not question the correctness of all that was done in the earlier opinion announcing that decision. All that is to be done on the remand is for the court below to consider the matter which is the basis for the remand and then to add whatever discussion is deemed appropriate to dispose of that matter in the original opinion." *United States v. Ginn*, 47 M.J. 236, 238, n.2 (C.A.A.F. 1997).

elements of the offenses beyond a reasonable doubt. *See Reed*, 54 M.J. at 41. Further, we too are firmly convinced of the appellant's guilt beyond a reasonable doubt. *See id.* The appellant's convictions for committing indecent liberties and indecent acts with JB are legally and factually sufficient.

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

AFFIRMED.

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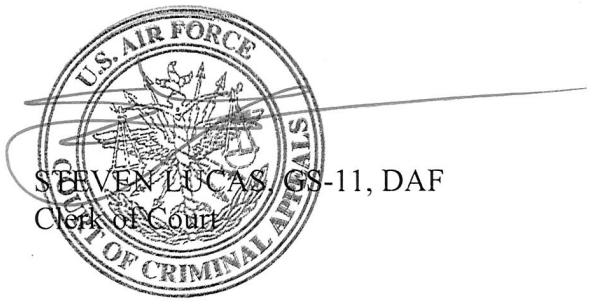

STEVEN LUCAS, GS-11, DAF
Clerk of Court