

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Senior Airman JOHN P. DAUGHERTY
United States Air Force**

ACM 34819

21 January 2004

Sentence adjudged 14 September 2001 by GCM convened at Yokota Air Base, Japan. Military Judge: David F. Brash.

Approved sentence: Bad-conduct discharge, confinement for 30 days, forfeiture of \$600.00 pay per month for 6 months, and reduction to E-1.

Appellate Counsel for Appellant: Major Jefferson B. Brown.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Lori M. Jemison (legal intern).

Before

PRATT, GRANT, and CONNELLY
Appellate Military Judges

OPINION OF THE COURT

CONNELLY, Judge:

The appellant was convicted, contrary to his pleas, of one specification of wrongful introduction of psilocyn onto a military installation, one specification of wrongful use of psilocyn on divers occasions, one specification of wrongful use of 3,4-methylenedioxymethamphetamine (ecstasy) on divers occasions, one specification of wrongful distribution of psilocyn, one specification of wrongful use of methamphetamine on divers occasions, and one specification of wrongful introduction of methamphetamine onto a military installation on divers occasions, all in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The sentence adjudged and approved was a bad-conduct discharge, confinement for 30 days, forfeiture of \$600.00 pay per month for 6 months, and reduction to E-1.

The appellant argues that his convictions for wrongful introduction of psilocyn and methamphetamine onto a military installation are factually and legally insufficient. The appellant contends there was no evidence presented that the controlled substances were actually brought onto a military installation.

We may affirm only those findings of guilty that we find are correct in law and fact and determine, 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, considering the evidence in the light most favorable to the government, a rational trier of fact could have found the elements of the crime 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 all the evidence in the record of trial and recognizing that we did not see or hear the witnesses, including the appellant, as did the trial court, we are 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)).

The government's case consisted primarily of a five-page written statement authored by the appellant during an interview with an agent from the Air Force Office of Special Investigations. In the statement, the appellant acknowledged that he brought mushrooms (psilocyn) "home" and "threw [the mushrooms] away down the toilet the next day." He further admitted to purchasing methamphetamine on two occasions and taking it to "[his] room" and snorting it.

The appellant was assigned to Yokota Air Base (AB), Japan. On the first page of appellant's statement, he listed his local address as "PSC 78 Box 2467 96326 Dorm 421 Rm 323." From the appellant's statement, we conclude that the appellant was living in a dormitory room on Yokota AB, Japan. Thus his references to "home" in his statement referred to his dormitory room on Yokota AB. When the appellant brought psilocyn and methamphetamine to his room, he introduced the controlled substances onto a military installation. The evidence presented is legally and factually sufficient to sustain the convictions.

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 findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator