UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant MICHAEL S. DRIGGERS
United States Air Force

ACM 35084

8 September 2003

Sentence adjudged 12 February 2002 by GCM convened at Sheppard Air Force Base, Texas. Military Judge: Steven A. Hatfield (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 20 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Jeffrey A. Vires, and Captain Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Major Linette Romer.

Before

VAN ORSDOL, PRATT, and MALLOY
Appellate Military Judges

PER CURIAM:

A general court-martial composed of a military judge sitting alone convicted the appellant, in a mixed plea case, of six specifications of violating a general regulation by wrongfully developing personal relationships with trainees, four specifications of adultery and one specification of communicating a threat, in violation of Articles 92 and 134, UCMJ, 10 U.S.C. §§ 892, 934. Consistent with his plea, the military judge acquitted the appellant of one specification of wrongfully attempting to develop a personal relationship with and making sexual advances toward a student, in violation of Article 92, UCMJ. Additionally, the convening authority withdrew one specification of assault, in violation of Article 128, UCMJ, 10 U.S.C. § 928, after arraignment.

All of the offenses stemmed from the appellant's misconduct while assigned as a pharmacy instructor at Sheppard Air Force Base (AFB), Texas. Contrary to clear directives on the subject of instructor-trainee relationships, the appellant used his instructor position to develop sexual relationships with young, female airmen who were in training to be pharmacy technicians. All of these airmen arrived at Sheppard AFB directly from basic military training. At the time of the relationships, the appellant was married; hence, the adultery specifications.

The military judge sentenced the appellant to a bad-conduct discharge, confinement for 20 months, and reduction to E-1. The convening authority approved the sentence as adjudged on 8 April 2002. The case is now before us for mandatory review under Article 66(c), UCMJ, 10 U.S.C. § 866(c). In a single assignment of error, the appellant argues that the evidence is legally and factually insufficient to support his conviction for communicating a threat, in violation of Article 134, UCMJ. We disagree.

We may affirm only those findings that we find are correct in law and fact and determine, on the basis of the entire record, should be affirmed. Article 66(c), UCMJ. The offense of communicating a threat does not require the government to prove that the accused actually intended to carry out the threatened injury. *United States v. Phillips*, 42 M.J. 127 (1995). "The offense is complete when one wrongfully communicates to another 'an avowed present determination or intent to injure presently or in the future.'" *United States v. Gilluly*, 32 C.M.R. 458, 460-61 (C.M.A. 1963) (quoting *United States v. Holiday*, 16 C.M.R. 28, 30 (C.M.A. 1954)(citations omitted)); *United States v. Greig*, 44 M.J. 356, 357 (1996). After considering both the language of the appellant's statement concerning the subject of the communication and all the circumstances surrounding it (the appellant believed the subject of the communication was responsible for the investigation leading to the other charges against him), we are satisfied that a reasonable factfinder could conclude beyond a reasonable doubt that the language communicated a threat. *Phillips*, 42 M.J. at 130. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *United States v. Reed*, 54 M.J. 37, 41 (2000). Unlike the situation in *United States v. Cotton*, 40 M.J. 93 (C.M.A. 1994), we see nothing in the surrounding circumstances to suggest that the appellant's words were spoken in jest or were idle banter. Indeed, like the military judge below, we are satisfied of the appellant's guilt beyond a reasonable doubt, after weighing the evidence and making allowances for not having observed the witnesses ourselves. *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Accordingly, we find that the evidence is factually and legally sufficient to support the military judge's finding of guilty on this specification.

We conclude that 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.

OFFICIAL

HEATHER D. LABE
Clerk of Court