

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman Basic JAMIE A. FREDRICKSON
United States Air Force**

ACM 34923

11 September 2003

Sentence adjudged 5 December 2001 by GCM convened at Andersen Air Force Base, Guam. Military Judge: David F. Brash (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 30 months, and forfeiture of all pay and allowances.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major Jefferson B. Brown.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Major Tracey L. Printer.

Before

BRESLIN, STONE, and MOODY
Appellate Military Judges

OPINION OF THE COURT

MOODY, Judge:

The appellant was tried by general court-martial at Andersen Air Force Base (AFB), Guam. He was found guilty, in accordance with his pleas, of failure to go, sleeping on post as a sentinel, larceny, wrongful appropriation, forgery, and housebreaking, in violation of Articles 86, 113, 121, 123, and 130, UCMJ, 10 U.S.C. §§ 886, 913, 921, 923, 930. The appellant was found guilty, contrary to his pleas, of committing an indecent act with a child, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The court-martial, consisting of a military judge sitting alone, sentenced him to a dishonorable discharge, confinement for 30 months, and forfeiture of all pay and allowances. The convening authority approved the sentence as adjudged. The appellant

submitted one assignment of error, pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), whether the indecent act is supported by legally and factually sufficient evidence. Finding no errors prejudicial to the appellant's substantial rights, we affirm.

We may affirm only those findings of guilt that we find correct in law and fact and that we 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 any rational trier of fact, when viewing the evidence in the light most favorable to the government, could have found the appellant guilty of all 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 (2000). Our superior court has determined that the test for factual sufficiency is whether, after weighing the evidence and making allowances for not having 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)).

In the case sub judice, the appellant was babysitting the eight-year-old victim and other children while in a tent on a beach on Andersen AFB, Guam. According to the victim, the appellant brought her to the air mattress on which he was sleeping and touched her private parts, putting his hand under her clothes. The victim described the appellant as "moving" his hand as he touched her. She stated that the appellant subsequently threatened to spank her if she told her mother and that this made her feel "scared."

We acknowledge that the record contains evidence of false statements by the victim. One in particular concerned an alleged second incident of indecent acts against the appellant, which she subsequently recanted. However, her description of the incident for which the appellant was convicted is detailed, inherently plausible, and on the whole internally consistent. Upon cross examination, the defense did not directly challenge the victim's description of this incident, only her memory as to the time of day in which it occurred.

The victim's testimony is corroborated by her mother, who stated that she entered the tent and saw the victim and the appellant sleeping on the same air mattress. The mother further testified that afterwards the victim seemed anxious at night, checking locks on windows and doors prior to going to bed, and sleeping with the light on. In addition, the appellant made an inconsistent statement to the Air Force Office of Special Investigations initially denying ever touching the victim, and then subsequently acknowledging that on one occasion he had touched her privates, though outside her clothing, and that such touching was "bad."

We find that there is sufficient evidence to convince a rational trier of fact beyond a reasonable doubt that the appellant is guilty of the offense of committing an indecent act with a child, in violation of Article 134, UCMJ, and that the case is, therefore, legally

sufficient. Furthermore, weighing all the evidence admitted at trial and mindful of the fact that we have not heard the witnesses, this Court is convinced beyond a reasonable doubt that the appellant is guilty of the offense.

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. *Id.*; Article 66(c), UCMJ. Accordingly, the findings and sentence are

AFFIRMED

OFFICIAL

HEATHER D. LABE
Clerk of Court