

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman AUSTON H. HORRAS
United States Air Force**

ACM 35101

26 February 2004

Sentence adjudged 6 March 2002 by GCM convened at Tinker Air Force Base, Oklahoma. Military Judge: Israel B. Willner (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 24 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major Maria A. Fried.

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

Before

PRATT, MALLOY AND GRANT
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 one specification of using 3,4-methylenedioxymethamphetamine (also known as "ecstasy") on divers occasions, one specification of using lysergic acid diethylamide (LSD) on divers occasions, one specification of distributing ecstasy on divers occasions, one specification of distributing LSD on divers occasions, and one specification of communicating a threat, in violation of Articles 112a and 934, UCMJ, 10 U.S.C. §§ 912a, 934. Consistent with his pleas, the military judge acquitted the appellant of one specification of wrongfully endeavoring to influence the testimony of a witness against him, in violation of Article 134, UCMJ.

The military judge sentenced the appellant to a dishonorable discharge, confinement for 24 months, reduction to E-1 and forfeiture of all pay and allowances.

The convening authority approved the sentence as adjudged on 20 April 2002. The case is now before us for mandatory review under Article 66(c), UCMJ, 10 U.S.C. § 866 (c).

On appeal, the appellant argues that the evidence is legally and factually insufficient to support his conviction for distributing ecstasy on divers occasions and that the military judge erred when he failed to give him additional credit for pretrial confinement based on the unduly harsh conditions of confinement. After carefully considering the entire record of trial and the briefs of the parties, we hold against the appellant on both issues.

I. Legal and Factual Sufficiency

In capsule form, the appellant argues that the evidence is legally and factually insufficient to support the finding that he distributed ecstasy on divers occasions because the witnesses against him were unworthy of belief. 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, 318-19 (1979); *United States v. Reed*, 54 M.J. 37 (C.A.A.F. 2000); Article 66(c), UCMJ. Here, there is sufficient competent evidence in the record of trial to find legal sufficiency to support the military judge's finding that the appellant distributed ecstasy on divers occasions.

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)); Article 66(c), UCMJ. Reasonable doubt, however, does not mean the evidence must be free from conflict. *United States v. Lips*, 22 M.J. 679, 684 (A.F.C.M.R. 1986). "The factfinders may believe one part of a witness' testimony and disbelieve another." *United States v. Harris*, 8 M.J. 52, 59 (C.M.A. 1979). Applying this standard, we, like the military judge at trial, are satisfied of the appellant's guilt beyond a reasonable doubt.

II. Pretrial Confinement Credit

While awaiting trial, the appellant was placed in pretrial confinement. Because no military confinement facility was reasonably available, the appellant was confined in two different civilian facilities near Tinker Air Force Base pursuant to agreements with local authorities. After hearing testimony from the appellant and the petty officer who was responsible for military members in pretrial confinement, the military judge found that the conditions of the appellant's pretrial confinement were reasonable, were not unduly rigorous and served legitimate governmental purposes. We agree with the military judge's findings and conclusions and hold that appellant is not entitled to pretrial

confinement credit in addition to that which he has already received. *United States v. Fricke*, 53 M.J. 149 (C.A.A.F. 2000); *United States v. Phillips*, 42 M.J. 346 (C.A.A.F. 1995).

III. Conclusion

We conclude 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

LAQUITTA J. SMITH
Documents Examiner