UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class ANDREW J. RAVENELLE
United States Air Force

ACM 36295

25 August 2006

Sentence adjudged 21 January 2005 by GCM at Nellis Air Force Base, Nevada. Military Judge: Print R. Maggard.

Approved sentence: Bad-conduct discharge, confinement for 60 days, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major John N. Page III.

Appellate Counsel for the United States: Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Michelle M. McCluer.

Before

ORR, MATHEWS, and THOMPSON
Appellate Military Judges

PER CURIAM:

The appellant was convicted, contrary to his pleas, of one specification each of indecent assault and indecent acts with another, in violation of Article 134, UCMJ, 10 U.S.C. § 934, by a general court-martial composed of officer and enlisted members. His approved sentence consists of a bad-conduct discharge, confinement for 60 days, forfeiture of all pay and allowances, and reduction to the grade of E-1. On appeal, he contends that the military judge applied an erroneous standard in granting a prosecution challenge for cause against one of the members of his court-martial, and that the evidence was factually and legally insufficient to sustain his conviction. Finding neither error nor prejudice, we affirm.

Prosecution Challenge for Cause

The military judge, during his preliminary questions to the members, asked the following question: "Has anyone or any member of your family, or anyone close to you personally ever been the victim of an offense similar to any of those charged in this case?" Two members indicated that they had some such involvement; the remainder did not. During individual voir dire, however, one of those members who had answered negatively, Staff Sergeant (SSgt) C, revealed that she had "heard stories" about similar incidents. When questioned directly about those stories, SSgt C revealed for the first time that a childhood friend -- one with whom she still kept in touch -- had been similarly victimized while serving in the Army.

Expressing concern over her apparent lack of candor, the trial counsel challenged SSgt C for cause. The military judge, noting that the question was "central" to the appellant's court-martial, likewise expressed concern: ". . . . she didn't answer. She did answer when asked directly, but that's a little bit down the road and if it hadn't been asked, we wouldn't know now." Citing "the liberal grant mandates," the military judge excused SSgt C over the trial defense counsel's objection.

Several months after the conclusion of the appellant's trial, our superior appellate court held that the "liberal grant" rule does not extend to challenges for cause by the United States. *United States v. James*, 61 M.J. 132, 139 (C.A.A.F. 2005). The appellant now contends that, because the military judge cited a since-overruled standard, he is entitled to a new trial. We disagree. There is nothing in the *James* decision which indicates the Court of Appeals for the Armed Forces intended it to be applied to cases already tried.

Even if we were to apply *James* retroactively, we would uphold the military judge's decision to excuse SSgt C. Analyzing the challenge de novo, we find that SSgt C was not forthright in her initial responses to the military judge, and that this lack of candor alone was sufficient basis to grant a challenge for cause. *See United States v. Modesto*, 43 M.J. 315, 318-19 (C.A.A.F. 1995) (appellate courts "consistently [have] required member honesty in *voir dire* to permit a fair member-selection process") (citing *United States v. Rosser*, 6 M.J. 267, 273 (C.M.A. 1979) (court critical of member's "lack of candor" that "falls far short of the full disclosure mandated by . . . general principles of military law"); *United States v. Lake*, 36 M.J. 317, 323 (C.M.A. 1993) (court explicitly rejects "reticence" by court members)).

Sufficiency of the Evidence

We review the appellant's claims of legal and factual insufficiency de novo, examining all of the evidence admitted at trial. *See* Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002). The test for legal sufficiency is whether, considering the evidence in the light most favorable to the government, any reasonable factfinder could have found the appellant guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *United States v. Quintanilla*, 56 M.J. 37, 82 (C.A.A.F. 2001); *United States v. Turner*, 25 M.J. 324 (C.M.A. 1987). The test for factual sufficiency is whether, after weighing the evidence in the record of trial and allowing for the fact that we did not personally see and hear the witnesses, we ourselves are convinced of his guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325.

The appellant claims that the government's account of the events that led to his court-martial, as recounted by the victim, was not credible, and that the victim herself was not a credible witness. The members apparently concluded otherwise, and so do we. The evidence, which included testimony from the victim and photographs taken by others as the appellant was in the act of committing his crimes, was more than sufficient to enable a rational trier of fact to find the appellant guilty. Furthermore, we are satisfied beyond a reasonable doubt that the appellant is, in fact, guilty.

Conclusion

The 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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator