UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman CHRISTOPHER J. SENTANCE
United States Air Force

ACM 34693

7 January 2004

Sentence adjudged 11 April 2001 by GCM convened at Vandenberg Air Force Base, California. Military Judge: W. Thomas Cumbie.

Approved sentence: Bad-conduct discharge, confinement for 1 year and 3 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: William E. Cassara (argued), Colonel Beverly B. Knott, Major Terry L. McElyea, Major Patricia A. McHugh, and Major Jefferson B. Brown.

Appellate Counsel for the United States: Captain C. Taylor Smith (argued), Colonel LeEllen Coacher, and Lieutenant Colonel Lance B. Sigmon.

Before

BRESLIN, MOODY, and GRANT
Appellate Military Judges

OPINION OF THE COURT

BRESLIN, Senior Judge:

A general court-martial composed of officer and enlisted members tried the appellant at Vandenberg Air Force Base (AFB), California, on charges that he sexually assaulted three female service members and committed a simple assault upon a fourth female service member. He was convicted, contrary to his pleas, of three specifications of indecent assault, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The sentence adjudged and approved was a bad-conduct discharge, confinement for 1 year and 3 months, total forfeitures, and reduction to E-1.

The appellant raises several allegations of error. He contends: (1) That the court-martial lacked personal jurisdiction over the appellant; (2) That the military judge erred in refusing to sever the charges; (3) That the evidence is legally and factually insufficient to support the findings of guilt; and (4) That the sentence is inappropriately severe. We find no error and affirm.

I. Jurisdiction

At the time these charges arose, the appellant was stationed at Vandenberg AFB, California, assigned to the security forces squadron. He was completing his enlistment in the Air Force; the date set for the expiration of his term of service (ETS) was 12 November 2000.

In late July 2000, agents from the Air Force Office of Special Investigations (AFOSI) began investigating allegations that the appellant raped a fellow service member. On 1 August 2000, the AFOSI commander asked that the appellant be placed on administrative hold. In response to the request, on 7 August 2000 the military personnel flight placed the appellant on administrative hold for six months, expiring 1 February 2001. On 24 August 2000, AFOSI agents notified the appellant that he was a suspect, read him his rights under Article 31, UCMJ, 10 U.S.C. § 831, and attempted to interview him. The appellant exercised his rights and did not make a statement.

The appellant intended to separate from active duty in the Air Force, and indicated his desire to do so to military authorities. As the appellant's ETS date drew near, military authorities recognized that it would be necessary to extend his enlistment to complete court-martial action against him. The appellant was given a completed form requesting extension of his enlistment and instructed to sign it. He signed the form on 31 October 2000, extending his enlistment one month.

On 29 November 2000, the appellant's squadron commander preferred charges against the appellant. On 5 and 6 December 2000, the charges were formally investigated under Article 32, UCMJ, 10 U.S.C. § 832. The convening authority referred the charges to trial on 4 January 2001. Trial was originally scheduled for 27 February 2001, but was delayed for the investigation of additional charges. Authorities preferred additional charges on 8 March 2001, which were referred to trial on 22 March 2001. The court-martial convened on 2 April 2001.

During this period, the appellant continued to sign additional requests for extensions of his enlistment in one-month increments. He signed the extension requests on 12 December 2000, 11 January 2001, and 6 February 2001. In March 2001, the appellant refused to sign the request for extension of his enlistment. On 15 March 2001, authorities involuntarily extended his enlistment due to the pending court-martial.

The appellant never completed final out-processing from the Air Force. He never received a final accounting of pay and was never given a discharge certificate.

Immediately after arraignment, the appellant moved to dismiss the charges against him for lack of personal jurisdiction. The appellant asserted that the extensions of his enlistment were involuntary and of no effect. The military judge took evidence, heard argument, and entered findings of fact and conclusions of law. The military judge found that by reading him his rights, advising him that he was suspected of committing an indecent assault, and placing the appellant on administrative hold, the Air Force took sufficient action with a view towards court-martial for court-martial jurisdiction to attach. The military judge also found that holding the appellant for 17 days past his ETS for preferral of charges was not unreasonable. Accordingly, the military judge denied the motion. The appellant renews the argument before this Court.

Courts-martial have jurisdiction over members of the regular component of the armed forces, "including those awaiting discharge after expiration of their terms of enlistment." Article 2(a)(1), UCMJ, 10 U.S.C. § 802(a)(1). Rule for Courts-Martial (R.C.M.) 202(c)(1) provides:

> Court-martial jurisdiction attaches over a person when action with a view to trial of that person is taken. Once court-martial jurisdiction over a person attaches, such jurisdiction shall continue for all purposes of trial, sentence, and punishment, notwithstanding the expiration of that person's term of service or other period in which that person was subject to the code or trial by court-martial. When jurisdiction attaches over a servicemember on active duty, the servicemember may be held on active duty over objection pending disposition of any offense for which held and shall remain subject to the code during the entire period.

The discussion of this rule further provides that, "a servicemember is subject to court-martial jurisdiction until lawfully discharged or, when the servicemember's term of service has expired, the government fails to act within a reasonable time on objection by the servicemember to continued retention." R.C.M. 202(c)(1), Discussion.

We concur with the determination of the military judge that the initiation of the formal criminal investigation and placing the appellant on administrative hold was action with a view to trial, which attached court-martial jurisdiction. *United States v. Self*, 13 M.J. 132, 138 (C.M.A. 1982); *United States v. Douse*, 12 M.J. 473 (C.M.A. 1982). *See United States v. Hout*, 41 C.M.R. 299, 303 (C.M.A. 1970) (Darden, J., concurring) (interrogation and placement on administrative hold was action with a view to trial was sufficient for court-martial jurisdiction to attach). Court-martial jurisdiction "continues after the end of the term of enlistment if such jurisdiction has previously attached." *United States v. Hutchins*, 4 M.J. 190, 191 (C.M.A. 1978) (citing William Winthrop,

Military Law and Precedents 90, 91 (2d ed. 1920 reprint)). We also agree with the military judge's determination that the government acted within a reasonable time after the appellant's ETS date to prefer charges against the appellant. *United States v. Poole*, 30 M.J. 149, 151 (C.M.A. 1990); *United States v. Fitzpatrick*, 14 M.J. 394, 398 (C.M.A. 1983). For these reasons, we find no error.

II. Severance

At the outset of the trial, the appellant moved to sever the charges of rape, forcible sodomy, and indecent assault regarding Airman First Class (A1C) LC from the additional charges alleging indecent assault upon A1C JC and Petty Officer Third Class (PO3) JG, and simple assault upon A1C CP. The appellant asserted that allowing all these offenses to be tried at once would result in a manifest injustice to the appellant, because evidence of one crime would impermissibly "spill over" to the other, similar offenses. After hearing evidence and argument, the military judge denied the motion to sever the charges.

It is customary in military practice to try all known charges against an accused at a single trial. R.C.M. 601(e)(2); *United States v. Simpson*, 56 M.J. 462, 464 (C.A.A.F. 2002); *United States v. Keith*, 4 C.M.R. 34, 40 (C.M.A. 1952). A military judge may grant a motion to sever the charges "only to prevent manifest injustice." R.C.M. 906(b)(10); *United States v. Duncan*, 53 M.J. 494, 497 (C.A.A.F. 2000). We review a military judge's ruling for abuse of discretion. *United States v. Southworth*, 50 M.J. 74, 76 (C.A.A.F. 1999); *United States v. Foster*, 40 M.J. 140, 148 (C.M.A. 1994); *United States v. Curry*, 31 M.J. 359, 374 (C.M.A. 1990).

To determine whether the military judge abused his discretion, we apply the three-pronged test set out in *Southworth*, 50 M.J. at 76. We concur with the military judge's conclusion that, even if the charges relating to A1C LC were tried separately, evidence of the indecent assaults of A1C JC and PO3 JG would be admissible in evidence under Mil. R. Evid. 413 and 403 to show the appellant's willingness to engage in sexual acts with the victims regardless of their lack of consent and to demonstrate his absence of mistake regarding their lack of consent. *United States v. Wright*, 53 M.J. 476, 482 (C.A.A.F. 2000).

The military judge also gave the defense-requested "spillover" instruction. *Southworth*, 50 M.J. at 76. This instruction was given during voir dire, after an evening recess, and during instructions on the findings. We also note that, despite recognizing that the evidence of other sexual assaults was admissible under Mil. R. Evid. 413, the military judge refused to allow the prosecution to argue that it showed the appellant's propensity to commit the offenses.

Finally, we are not persuaded that the findings reflect an "impermissible crossover" by the members. *Id.; United States v. Curtis*, 44 M.J. 106, 128 (C.A.A.F. 1996). The appellant was acquitted of all the offenses involving A1C LC as charged; he was convicted only of the indecent assault that the parties agreed was a lesser-included offense of the alleged rape. The members were required to determine whether the victim consented or reasonably manifested her lack of consent, and whether the appellant was mistaken about her consent. The fact that they found the appellant guilty only of the last in the series of alleged offenses is consistent with the proper exercise of their duty to convict only when they are convinced of guilt beyond a reasonable doubt. Unlike the situations our superior court encountered in *United States v. Hogan*, 20 M.J. 71, 72-73 (C.M.A. 1985) and *United States v. Haye*, 29 M.J. 213, 215 (C.M.A. 1989), we find no merger of the evidence relating to each offense. *United States v. Guthrie*, 53 M.J. 103, 106 (C.A.A.F. 2000). Accordingly, we find the military judge did not abuse his discretion in denying the appellant's motion to sever the charges.

III. Legal and Factual Sufficiency of the Evidence

The appellant maintains that the evidence is legally and factually insufficient to support the convictions. He argues that the testimony of the three victims is incredible and unworthy of belief, and asks this Court to set aside the findings of guilt. We do not agree.

Under Article 66(c), UCMJ, 10 U.S.C. § 866(c), we may approve only those findings of guilt we determine to be correct in both law and fact. The test for legal sufficiency of the evidence is whether, considering the evidence in the light most favorable to the prosecution, a rational fact finder could have found all the essential elements 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). According to our superior court, the test for factual sufficiency "is whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses," the court is "convinced of the accused'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)).

We considered carefully the evidence presented at trial, keeping in mind that the court members saw and heard the witnesses. Article 66(c), UCMJ; *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002). The appellant's allegations regarding the witnesses' credibility and prior inconsistent statements were developed at trial and ably argued to the court members. The evidence need not be free of conflict for this Court to be convinced of the appellant's guilt beyond a reasonable doubt. *United States v. Lips*, 22 M.J. 679 (A.F.C.M.R. 1986). We are convinced that the evidence is legally and factually sufficient to support the appellant's convictions.

IV. Sentence Appropriateness

The appellant contends that his sentence to a bad-conduct discharge, confinement for 1 year and 3 months, forfeiture of all pay and allowances, and reduction to E-1 is inappropriately severe. Appellate defense counsel maintain that he was "at worst, a socially awkward young man, who did not realize that his sexual overtures were unwelcome." They argue that he was convicted of "three relatively benign allegations of indecent assault," and that his punishment is excessive considering both the offender and the offenses. We do not agree.

We are not persuaded that the appellant was young and naïve, or that he did not appreciate the significance of his acts. The appellant was about 29 years old and had a bachelor's degree in criminal justice. He was nearing completion of a full enlistment in the Air Force as a member of the security forces, and had arranged civilian employment in law enforcement. These offenses were not merely inept sexual overtures; rather they demonstrated a pattern of conduct reflecting his intent to engage in sexual activity with the victims regardless of their lack of consent. The offenses are further aggravated by the fact that the victims were fellow service members and the crimes occurred on military installations. Finally, his record of service was not so compelling as to justify a lesser sentence; to the contrary, his disciplinary record included two prior nonjudicial punishment actions under Article 15, UCMJ, 10 U.S.C. § 815, for making false official statements, and a letter of reprimand for engaging in inappropriate sexual activity with a married woman and two other service members. Under all the circumstances, we do not find that the sentence adjudged and approved is unjust.

V. Conclusion

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