

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class CHRISTOPHER A. STRICKLAND
United States Air Force**

ACM 35610

8 September 2005

Sentence adjudged 17 August 2002 by GCM convened at Cannon Air Force Base, New Mexico. Military Judge: Steven B. Thompson.

Approved sentence: Bad-conduct discharge, confinement for 1 year, 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 Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Michelle M. McCluer.

Before

BROWN, ORR, and MOODY
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

BROWN, Chief Judge:

The appellant was tried by officer members sitting as a general court-martial at Cannon Air Force Base, New Mexico. The appellant was charged with a single specification of committing an indecent assault upon the body of his two-year-old stepdaughter, TDB, by inserting his finger inside her vagina, in violation of Article 134, UCMJ, 10 U.S.C. § 934. Contrary to the appellant's pleas, he was found guilty of the lesser-included offense of committing indecent acts with TDB, in violation of Article 134, UCMJ. The members sentenced the appellant to a bad-conduct discharge, confinement for 1 year, forfeiture of all pay and allowances, and reduction to E-1. The convening authority approved the sentence as adjudged.

The appellant has submitted two assignments of error: (1) Whether his oral and written admissions were voluntary; and (2) Whether the evidence is legally and factually sufficient to sustain his conviction. We have examined the record of trial, the assignments of error, and the government's response thereto. Finding no error, we affirm.

Background

On 22 November 2001, Technical Sergeant (TSgt) Thompson picked up TDB from the appellant's home. TSgt Thompson and his wife had been babysitting TDB while her mother was away at Navy Basic Training. When TSgt Thompson arrived home with TDB, his wife gave her a bath. While drying her, she noticed TDB's vaginal area was red. After applying ointment and powder on the child, she saw blood on her diaper. She immediately called the base hospital. TDB was subsequently transported to a local medical center, where a nurse conducted an examination of her. The examination revealed blood and a vaginal tear. The following day, TDB was taken to another facility for a child sexual abuse examination. This exam revealed a small tear in TDB's hymen and a second small tear in the skin near the vaginal opening. Dr. William Liakos testified these injuries were consistent with blunt force trauma and sexual abuse.

Special Agent (SA) Timothy Allen and SA Creighton Roberts with the Air Force Office of Special Investigations (AFOSI) interviewed the appellant. They advised him of his rights in accordance with Article 31, UCMJ, 10 U.S.C. § 831, and informed him that he was suspected of violating Article 134, UCMJ, specifically, indecent acts or liberties with a child. The appellant indicated to the agents that he understood his rights and was willing to answer their questions without a lawyer being present. Thereafter, the appellant provided both an oral and written statement admitting he deliberately placed his finger in TDB's vagina while changing her diaper.

Involuntary Confession

At trial and on appeal, the appellant contends his statements were not voluntary. Specifically, he argues they were involuntary due to his age and years of service; his lack of previous involvement with law enforcement interviews; sleep deprivation; the size of the interview room; SA Allen's alleged mentioning of the possibility of avoiding a court-martial; and, that the same agents raised their tone of voice during the interview.

The voluntariness of a confession is a question of law that this Court reviews de novo. *United States v. Ellis*, 57 M.J. 375, 378 (C.A.A.F. 2002); *United States v. Bubonics*, 45 M.J. 93, 94 (C.A.A.F. 1996). The government must establish by a preponderance of the evidence that the confession was voluntary. *Bubonics*, 45 M.J. at 95; Mil. R. Evid. 304(e)(1). This determination is made by examining the totality of all

the surrounding circumstances of the confession, including the characteristics of the appellant and the details of the interrogation. *United States v. Ford*, 51 M.J. 445, 451 (C.A.A.F. 1999). (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973)). On appeal, we review the military judge's findings of fact under the clearly erroneous standard. *United States v. Norris*, 55 M.J. 209, 215 (C.A.A.F. 2001).

At trial, the defense moved to suppress the appellant's pretrial admission to the AFOSI. The government called SAs Allen and Roberts to testify at an Article 39a, UCMJ, 10 U.S.C. § 839a, hearing on the defense motion. The appellant also testified at this hearing for the limited purpose of contesting the admissibility of his statements. The military judge made the following findings of fact and conclusions of law on the motion:

MJ: At some time approximately before midnight on 22 November 2001, agents from the OSI, including Special Agents Roberts and Allen, met the accused at his house to conduct a search. They were there approximately two to three hours. They did not question the accused, but did inform him that they would speak to him the next day.

The following day was not a work day for the accused and he stayed at home. Agent Roberts stated that he wanted the accused well rested. The OSI agents met with the accused the next day, 23 November, at approximately seven o'clock in the evening. The accused's acting first sergeant brought him to the OSI building. Agent Roberts took the accused into the interrogation room, which was approximately six or seven feet by five feet. The accused was placed in the corner chair. Agent Roberts sat about three feet across from the accused and Agent Allen sat about five feet away.

Agent Roberts first asked the accused some preliminary questions regarding biographical data and talked with the accused about where the accused was from. Agent Roberts was calm and friendly. Agent Roberts then read the accused his rights under Article 31, [UCMJ,] and informed him of the offense, which was Article 134, [UCMJ,] indecent acts or liberties with a child. The accused understood his rights and did not have any questions about his rights. He waived his rights and agreed to talk with the agents. The accused was very familiar with his Miranda rights. He had learned them in high school.

MJ: The accused answered questions posed by Agent Roberts and engaged in a discussion regarding the possibility that any touching was an accident. The accused initially denied the allegations. This exchange went back and forth three or four times. The accused eventually conceded that a touching may have been an accident.

Special Agent Roberts then nodded to Special Agent Allen, who then took over the questioning. Allen's demeanor was more direct than Agent Roberts had been. Allen talked to the accused for five to seven minutes in a tone of voice louder than a normal conversation. On the witness stand, the court noted that Agent Allen did have a voice louder than the average person, which usually projected easily throughout the courtroom. Any raising of that tone, such as to emphasize a point, could be perceived as a yell or almost a yell.

Agent Allen told the accused that the medical evidence did not support an accidental touching. Agent Allen demonstrated with his hands how the touching may have occurred, jamming his fingers into a hole made by the fingers of his other hand.

Agent Allen told the accused that it was his chance to tell his side of the story before the report was sent to the accused's commander. Agent Allen told the accused that he thought the accused had done it, but was not the type of person to be a child molester.

The accused eventually admitted to placing his finger in the alleged victim's vagina. The OSI agents asked the accused to write a statement, which the accused did. He acknowledged his Article 31, [UCMJ,] rights on the form and swore to the truth of the contents of the written statement. The oral portion of the interview lasted about one hour. The accused did not complain of being sleepy and did not exhibit any signs of drowsiness. He appeared coherent to the agents. The accused did not appear to the agents to be under the influence of drugs or alcohol and he did not appear tired.

MJ: At the time of the interview the accused was a 21 year old high school graduate who had once achieved the rank of senior airman, E-4. He had three years of experience in the Air Force and was a dedicated crew chief, working on the F-16. The accused had previously received letters of reprimand and had consulted the ADC [Area Defense Counsel] at Cannon Air Force Base in connection with action under Article 15, UCMJ, [10 U.S.C. § 815]. On the witness stand, the accused appeared intelligent and articulate.

While questioning the accused, the OSI agents remained seated. The accused did not apprehend any physical threat from the agents. The accused knew he could have stopped the questioning or refused to write the statement. The accused did not feel that any promises had been made to

him by the agents. Neither of the agents told the accused that he would possibly only get a letter of reprimand if he admitted some or any of the alleged touching. Neither agent threatened the accused that he would be prosecuted if he did not make a statement. Neither agent made any type of deal with the accused.

In determining the voluntariness of the confession, the government must prove by a preponderance of the evidence that the confession was voluntary. The court must consider the totality of the circumstances in evaluating whether the confession was voluntary.

I conclude that there was no unlawful inducement or unlawful influence exhibited by the agents toward the accused. The accused was not given any promises of immunity. He was not induced into making any statements by any promises that receiving an LOR [Letter of Reprimand] was a possibility. He was not induced into giving oral or written statements by threats of prosecution if he did not give those statements. His will was not overcome by his physical condition. And, his age and mental abilities were not a negative factor in his decision to make oral and written statements.

MJ: The questioning tactics used by the agents, including the confrontational aspect of the questions, including mentioning that the report would be forwarded to the accused's commander without the accused's side, as well as the loud tone employed by Special Agent Allen, did not amount to coercion or threats and were not unlawful. The agents did not unlawfully threaten, induce, or coerce the accused.

The evidence proves by a preponderance that the accused fully understood the rights advice, that he waived his rights, and that his statements were voluntary and obtained in full compliance with Article 31, UCMJ[,] and the United States Constitution. The defense motion is denied.

The evidence clearly supports the military judge's findings and we adopt them as our own. We hold that the military judge did not err in admitting the appellant's pretrial statements made to SAs Allen and Roberts. *See Ellis*, 57 M.J. at 375; *Bubonics*, 45 M.J. at 93.

Legal and Factual Sufficiency

The test for legal sufficiency is whether, considering the evidence in the light most favorable to the government, any 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. Quintanilla, 56 M.J. 37, 182 (C.A.A.F. 2001); *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). 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, we are ourselves convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325.

We conclude there is overwhelming, competent evidence in the record of trial to support the court-martial's findings. In addition to the appellant's oral and written admissions, there is medical evidence and testimony which support the conclusion that the trauma to TDB's vagina was the result of the appellant's deliberate insertion of his finger. We are convinced of the appellant's guilt beyond a reasonable doubt. *See Turner*, 25 M.J. at 325; Article 66(c), UCMJ, 10 U.S.C. § 866(c).

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

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court