UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant CERIC M. VICTORIA
United States Air Force

ACM S32249

3 June 2015

Sentence adjudged 6 May 2014 by SPCM convened at Osan Air Base, Republic of Korea. Military Judge: Matthew P. Stoffell.

Approved Sentence: Bad-conduct discharge, confinement for 30 days, and reduction to E-4.

Appellate Counsel for the Appellant: Major Anthony D. Ortiz.

Appellate Counsel for the United States: Major Mary Ellen Payne and Gerald R. Bruce, Esquire.

Before

ALLRED, HECKER, and TELLER
Appellate Military Judges

OPINION OF THE COURT

This opinion is issued as an unpublished opinion and, as such, does not serve as precedent under AFCCA Rule of Practice and Procedure 18.4.

HECKER, Senior Judge:

The appellant was convicted, contrary to his pleas, at a special court-martial composed of officer members of unlawful entry, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The court sentenced him to a bad-conduct discharge, 30 days of confinement, and reduction to E-4. The convening authority approved the sentence, as adjudged.

Pursuant to *United States v. Grosetfon*, 12 M.J. 431 (C.M.A. 1982), the appellant contends (1) the evidence is factually and legally insufficient to sustain his conviction,

and (2) his sentence is inappropriately severe. Finding no error that materially prejudices a substantial right of the appellant, we affirm the findings and sentence.

Sufficiency of the Evidence

We review issues of factual and legal sufficiency de novo. 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 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] convinced of the accused's guilt beyond a reasonable doubt." *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). In conducting this unique appellate role, we take "a fresh, impartial look at the evidence," applying "neither a presumption of innocence nor a presumption of guilt" to "make [our] own independent determination as to whether the evidence constitutes proof of each required element beyond a reasonable doubt." *Washington*, 57 M.J. at 399.

"The test for legal sufficiency of the evidence is whether, considering the evidence in the light most favorable to the prosecution, a reasonable factfinder could have found all the essential elements beyond a reasonable doubt." *United States v. Humpherys*, 57 M.J. 83, 94 (C.A.A.F. 2002) (quoting *Turner*, 25 M.J. at 324) (internal quotation marks omitted). "[I]n resolving questions of legal sufficiency, we are bound to draw every reasonable inference from the evidence of record in favor of the prosecution." *United States v. Barner*, 56 M.J. 131, 134 (C.A.A.F. 2001) (citing *United States v. Rogers*, 54 M.J. 244, 246 (C.A.A.F. 2000)).

The appellant was convicted of unlawfully entering the dormitory room of a female Airman while she was sleeping. After being awoken by a noise at her door, the Airman turned on the lights and checked the lock. She saw that the batteries to the automatic locking mechanism had been removed. She texted several friends and asked them if they were pranking her; she also texted her boyfriend, who then came to her room. After the two watched television for a short time, the Airman went into her bathroom, where she encountered the appellant hiding behind the door. He fled from her dormitory room. Recognizing the appellant from prior interactions, the Airman reported the incident to security forces.

At trial, the government called the female Airman and her boyfriend, as well as several other witnesses. The appellant contends the evidence is insufficient to sustain his conviction because the government did not introduce the Airman's text messages into evidence, as he believes those messages are required to corroborate her story. We disagree.

Corroboration is not legally required to support the testimony of a witness at trial. Furthermore, after a review of the complete record of trial, consideration of the evidence in the light most favorable to the prosecution, consideration of the appellant's arguments,

and application of the above law, we are convinced that a reasonable factfinder could have found all the essential elements of unlawful entry beyond a reasonable doubt.[1] As such, the findings are legally sufficient. Furthermore, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, we are convinced of the accused's guilt beyond a reasonable doubt. Accordingly, the findings are legally and factually sufficient.

Sentence Appropriateness

This court reviews sentence appropriateness de novo. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006). We "may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine[], on the basis of the entire record, should be approved." Article 66(c), UCMJ. "We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense[s], the appellant's record of service, and all matters contained in the record of trial." *United States v. Anderson*, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009) (citing *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982)). Although we are accorded great discretion in determining whether a particular sentence is appropriate, we are not authorized to engage in exercises of clemency. *United States v. Nerad*, 69 M.J. 138, 146 (C.A.A.F. 2010).

The appellant contends his sentence to a bad-conduct discharge is inappropriately severe when considered in light of the offense and his duty performance. We consider whether the appellant's sentence was appropriate "judged by 'individualized consideration' of the [appellant] 'on the basis of the nature and seriousness of the offense and the character of the offender.'" *Snelling*, 14 M.J. at 268 (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180–81 (C.M.A. 1959)). We have given individualized consideration to this particular appellant, the nature and seriousness of his offense, the appellant's record of service, and all other matters contained in the record of trial. We find the approved sentence was clearly within the discretion of the convening authority and was appropriate in this case.

[1] The appellant was acquitted of stealing the master key for the building and of assaulting the Airman by grabbing her arm.

Conclusion

The findings and the sentence are correct in law and fact, and no error materially prejudicial to the substantial rights of the appellant occurred. Articles 59(a) and 66(c), UCMJ, 10 U.S.C. §§ 859(a), 866(c).

Accordingly, the approved findings and sentence are AFFIRMED**.**

FOR THE COURT

LEAH M. CALAHAN
Deputy Clerk of the Court