

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class DONALD R. WILLIAMS JR.
United States Air Force

ACM 35487

12 April 2005

Sentence adjudged 25 October 2002 by GCM convened at Langley Air Force Base, Virginia. Military Judge: Thomas G. Crossan, Jr.

Approved sentence: Dishonorable discharge, confinement for 3 years, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Major Andrew S. Williams, Major Sandra K. Whittington, and Major Kyle R. Jacobson.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Lieutenant Colonel David N. Cooper.

Before

PRATT, ORR, and MOODY
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignments of error, and the government's answer thereto. The appellant first asserts that the commander of Ninth Air Force (Provisional) was not authorized to convene general courts-martial when he took action on this case on 21 February 2003. We disagree and hold that the convening authority was authorized to convene courts-martial when he took action. *United States v. Hardy*, 60 M.J. 620 (A.F. Ct. Crim. App. 2004), *pet. denied*, No. 04-0790/AF (12 Jan 2005).

In his other assigned error, the appellant contends that the evidence is insufficient, both legally and factually, to sustain his conviction for rape. In keeping with our responsibility under Article 66(c), UCMJ, 10 U.S.C. § 866(c), we may affirm only those

findings of guilty that we determine are correct in law and fact and, on the basis of the entire record, should be approved. The test for legal sufficiency is whether, when the evidence is viewed in the light most favorable to the government, a rational factfinder could have found the appellant guilty of all elements of the offense, 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). The test for factual sufficiency is whether, after weighing the evidence and making allowances for not having observed the witnesses, the Court is convinced of the appellant's guilt beyond a reasonable doubt. *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). After carefully reading the record and applying the standards described above, we find the evidence both legally and factually sufficient to support a finding that the appellant raped EM, the 15-year-old female victim in this case. In a pretrial statement to interrogators, the appellant readily acknowledged that he engaged in intercourse with EM. But he claimed it was a consensual act. In contrast, EM testified at trial that she told the appellant "no" at least 10 times during the assault and tried several times to escape as he pinned her beneath him. We find this victim's testimony to be inherently credible and compelling on the issue of lack of consent. *United States v. Lips*, 22 M.J. 679, 684 (A.F.C.M.R. 1986).

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

ANGELA M. BRICE
Clerk of Court