

**UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS
WASHINGTON, D.C.**

**Before
J.R. PERLAK, E.C. PRICE, C.K. JOYCE
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**DEARON L. MAYBERRY
LIEUTENANT (O-3), U.S. NAVY**

**NMCCA 201200269
GENERAL COURT-MARTIAL**

Sentence Adjudged: 16 December 2011.

Military Judge: CDR Colleen Glaser-Allen, JAGC, USN.

Convening Authority: Commander, Navy Region Mid-Atlantic,
Norfolk, VA.

Staff Judge Advocate's Recommendation: CDR F.D. Hutchison,
JAGC, USN.

For Appellant: LT Carrie Theis, JAGC, USN; Capt Michael D.
Berry, USMC.

For Appellee: LT Philip S. Reutlinger, JAGC, USN.

30 April 2013

OPINION OF THE COURT

THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS
PERSUASIVE AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.

PER CURIAM:

This was a mixed-pleas case. A military judge sitting as a general court-martial convicted the appellant, pursuant to his plea, of one specification of conduct unbecoming an officer and a gentleman, in violation of Article 133, Uniform Code of Military Justice, 10 U.S.C. § 933. A panel of members then convicted the appellant, contrary to his pleas, of one specification of attempted sodomy, two specifications of

aggravated sexual assault, one specification of forcible sodomy, and two specifications of assault consummated by battery, in violation of Articles 80, 120, 125, and 128, UCMJ, 10 U.S.C. §§ 880, 920, 925, and 928. The members sentenced the appellant to be confined for five years. The convening authority approved the sentence as adjudged and ordered it executed.

The appellant now assigns a single error: that the evidence was legally and factually insufficient with respect to the offenses to which he pled not guilty.¹ We disagree, and will affirm the findings and sentence.

Background

The appellant was a prior enlisted Lieutenant with 23 years of service then assigned as the electrical officer for the USS KEARSARGE (LHD 3). The primary victim, Airman Recruit (AR) NE, was new to the Navy and was at that point working out of her rating, supporting operations in the officer's mess. The events in this case began during a port visit to Oman, where the appellant became intoxicated and made inappropriate advances and comments to a fellow officer. While returning to the ship, he observed AR NE in an apparent public display of affection with another female Sailor attending a "beer on the pier" liberty event. He addressed the behavior by essentially reprimanding the Sailors, telling them to engage in that behavior on their own time. Later, aboard the USS KEARSARGE in the early morning hours, the appellant located AR NE and told her to follow him. The appellant led her to an electrical equipment room under his cognizance. Securing the hatches from the inside, the appellant surprised the victim by kissing her. AR NE resisted his advances but the appellant forcibly overcame that resistance and proceeded to assault, sexually assault, and sodomize her. The victim reported the incident to her command in short order and the electrical room was sealed. Investigators found the victim's blood smeared throughout the room, as well as the appellant's semen and his belt. In pleading guilty to the conduct unbecoming charge, the appellant admitted to sexual intercourse with AR NE, but maintained that it was consensual.

Discussion

¹ This assignment of error was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

The test for legal sufficiency is whether any rational trier of fact could have found that the evidence met the essential elements of the charged offenses, viewing the evidence in a light most favorable to the Government. *United States v. Turner*, 25 M.J. 324 (C.M.A. 1987). The test for factual sufficiency is whether we are convinced of the appellant's guilt beyond a reasonable doubt, allowing for the fact that we did not personally observe the witnesses. *Id.* at 325. We readily find in the affirmative as to both. The appellant, in his guilty plea to the Article 133 offense, admitted to sexual intercourse with AR NE. During the contested portion of the trial, the Government likewise established that intercourse had occurred, and introduced considerable, if not overwhelming, evidence of the use of positional authority and physical force, along with evidence of the additional offenses occurring in the context of the sexual assaults. The assigned error is without merit.

Conclusion

The findings and the sentence are correct in law and fact, and they are affirmed.

For the Court

R.H. TROIDL
Clerk of Court