

**IN THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS
WASHINGTON NAVY YARD
WASHINGTON, D.C.**

BEFORE

C.A. PRICE

M.J. SUSZAN

R.C. HARRIS

UNITED STATES

v.

**Roy C. JANNICHE
Aviation Electrician's Mate Third Class (E-4), U.S. Navy**

NMCCA 200000401

Decided 22 April 2004

Sentence adjudged 18 June 1999. Military Judge: A.W. Keller, Jr. Review pursuant to Article 66(c), UCMJ, of General Court-Martial convened by Commander, Navy Region Southeast, Naval Air Station, Jacksonville, FL.

LT I. PAREDES, JAGC, USNR, Appellate Defense Counsel
LT DEBORAH S. MAYER, JAGC, USNR, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

PRICE, Senior Judge:

Contrary to his pleas, a general court-martial consisting of officer and enlisted members convicted the appellant of making a false official statement and committing an indecent act upon a child, in violation of Articles 107 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 907 and 934. The members sentenced the appellant to confinement for one year, reduction to pay grade E-1, forfeiture of all pay and allowances, and a dishonorable discharge. The convening authority approved the sentence, but deferred and suspended the adjudged forfeitures and deferred and waived the automatic forfeitures.

The appellant now contends that the evidence is legally and factually insufficient to support the conviction for indecent acts, and that a dishonorable discharge is inappropriately severe. Having carefully considered the assignments of error, the Government's response, and the record of trial, we concur with the appellant's argument that the findings of "divers" indecent acts cannot be affirmed. With that exception, we conclude that the findings and the sentence are correct in law and fact, and that no error materially prejudicial to the

substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ.

Sufficiency of Evidence

The indecent acts specification reads as follows:

In that Aviation Electrician's Mate Third Class Roy C. Janniche, U.S. Navy, Fighter Squadron ONE HUNDRED ONE, Naval Air Station, Oceana, Virginia Beach, Virginia, on active duty, did at or near Key West, Florida, on divers occasions, on or about 12 June 1998, commit an indecent act upon and with the body of [AS], a female under the age of 16 years, not the wife of the said Janniche, by licking in and around her naked buttocks with his tongue, and kissing in and around her naked buttocks with his mouth, with the intent to arouse, appeal to and gratify the lust, passion and sexual desires of the said Aviation Electrician's Mate Third Class Roy C. Janniche, U.S. Navy.

Charge Sheet. The Government presented the testimony of the four-year old victim and substantial corroborating evidence. In addition, a partial written confession, penned in the appellant's own hand, was admitted. In his confession, the appellant admitted kissing AS on her buttocks one time. However, he denied any sexual intent. He also denied any other incidents of sexual misconduct.

The members found the appellant guilty of the specification, except for the words, "licking in and around her naked buttocks with his tongue, and." Of particular note, the members did not except the words, "on divers occasions." Therefore, we might reasonably conclude that the members found that the appellant kissed her on the buttocks more than once. However, after scrutinizing of the entire record, we are convinced that the members intended to find the appellant guilty only of the single incident to which he confessed, not that he did so on divers occasions. We believe that the members inadvertently failed to except the language, "on divers occasions." Accordingly, we will take appropriate corrective action in our decretal paragraph.

We have considered the appellant's other argument that the evidence is insufficient to show that he acted with the requisite criminal intent in kissing the bare buttocks of AS. We conclude that the evidence is legally and factually sufficient as to that element and all other elements of the offense.

Sentence Appropriateness

The appellant asserts that, in view of the absence of any physical, emotional, or psychological harm to the victim, the appellant's excellent record of military performance and

character renders a dishonorable discharge inappropriately severe. We disagree.

That the appellant has served his country well for several years without prior misconduct is undisputed. We note that he served in deployable squadrons most of his time on active duty and received several personal and unit awards and decorations. We have also considered the testimony that he is a wonderful husband and father who devoted many hours to community service.

We are aware that the record is devoid of testimonial evidence of specific physical harm or injury to the young victim in this case. However, we are not prepared to conclude that she suffered no emotional or psychological harm. Based on our review of the record, we are satisfied that the appellant inflicted real psychological harm upon AS, harm that she undoubtedly will have to deal with for years to come. We conclude that a dishonorable discharge is not inappropriately severe.

Conclusion

The finding of guilty of the language "on divers occasions" in the Specification of Charge II is set aside. That portion of the Specification is dismissed. With that exception, the findings are affirmed.

We have reassessed the sentence and we conclude that the approved sentence is both appropriate and free of all prejudice from the trial error. *United States v. Cook*, 48 M.J. 434, 438 (C.A.A.F 1998). The sentence is affirmed.

Judge SUSZAN and Judge HARRIS concur.

For the Court

R.H. TROIDL
Clerk of Court