

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

**Before
E.E. GEISER, L.T. BOOKER, J.K. CARBERRY
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**CHRISTOPHER S. GREGORY
SEAMAN (E-3), U.S. NAVY**

**NMCCA 200900282
GENERAL COURT-MARTIAL**

Sentence Adjudged: 30 January 2009.

Military Judge: CAPT Dennis G. Bengtson, JAGC, USN.

Convening Authority: Commander, U.S. Naval Forces, Japan, Yokosuka, Japan.

Staff Judge Advocate's Recommendation: LT Hayes Larsen, JAGC, USN.

For Appellant: LT Gregory W. Manz, JAGC, USN.

For Appellee: Maj Elizabeth A. Harvey, USMC.

17 November 2009

OPINION OF THE COURT

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

PER CURIAM:

A general court-martial composed of officer and enlisted members convicted the appellant, contrary to his pleas, of one specification of aggravated sexual assault caused by inflicting bodily harm, in violation of Article 120, Uniform Code of Military Justice, 10 U.S.C. § 920. The approved sentence was eighteen months confinement and forfeitures of \$1753.50 pay per month for two months. The appellant now alleges that the evidence was factually insufficient to prove his guilt to the offense of aggravated sexual assault.

We have examined the record of trial and the pleadings of the parties. RULE FOR COURTS-MARTIAL 1003(b)(2), MANUAL FOR COURTS-

MARTIAL, UNITED STATES (2008 ed.) provides that a sentence to forfeitures must be stated in a whole dollar amount. We will correct the forfeitures in our decretal paragraph. Following our action, 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 occurred. Arts. 59(a) and 66(c), UCMJ.

Background

At approximately 0300, on 27 June 2008, AM was walking home in Sasebo, Japan. While walking home, AM was struck on the back of her neck and fell to the ground. Her attacker then hit her again, grabbed her hair, dragged her to a bushy area adjacent to the Sasebo River and had sexual intercourse with her.

Following the attack, AM crawled back to a main road and cried for help. Police responded and an investigation ensued. AM described her attacker as a tall black male who was wearing dark pants and a dark hooded sweatshirt, whose face might be scratched as a result of her attempts to fend him off. This description resulted in the identification of the appellant.

On 27 June 2008, the same day as the attack occurred, the appellant met with Special Agent Willie of the Naval Criminal Investigative Service (NCIS). After he was advised of his Article 31(b), UCMJ, rights, the appellant waived his rights and made a lengthy statement to the agent. That statement was videotaped and placed into evidence. The members saw the entire interrogation, Prosecution Exhibit 47, during trial on the merits.¹ Trial defense counsel vigorously cross-examined the special agent and later argued that the appellant's statement was involuntary and that AM's story was "unbelievably outrageous."

Factual Sufficiency

The appellant made numerous inculpatory statements during the course of the NCIS interview. His statements progressed from a general denial of involvement to admission that he was wearing a black-hooded sweatshirt on 27 June 2008; that AM scratched his face while she was pushing the appellant away as he tried to kiss her; that he struck AM three times immediately prior to having sex with her; and that AM engaged in sex with him only because she was scared. AE LVIII at 99, 100.

The appellant's statements were corroborated at trial by AM's testimony and by the presence of his DNA under her fingernails, on her hand, on her thigh, in her vagina, and on the underwear she wore at the time of the attack. The Government

¹ The court reporter transcribed the videotape and that transcription is attached as Appellate Exhibit LVIII.

offered further corroboration in the form of photographs of AM, of her torn clothing, and of the area where she was found.

As noted above, the appellant attacked the videotaped statement as involuntary and that AM's account was "unbelievably outrageous". More specifically, he maintained that AM should not be believed because she lied about her presence in "Sailor Town" and that, had the rape occurred as she testified, her injuries would have been more severe.

We are satisfied that the appellant's videotaped statement was not the product of coercion or manipulation, and that it was voluntary. The appellant's NCIS statement is corroborated by AM's testimony and the DNA evidence. Applying the well-known test for factual sufficiency, see *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987), and having viewed all the evidence and taken into consideration that we did not personally see and hear the evidence, we are convinced beyond a reasonable doubt that the appellant, on or about 27 June 2008, committed an aggravated sexual assault upon AM through the infliction of bodily harm.

Conclusion

We therefore affirm the finding of guilty to Specification 3 of the Charge and to the Charge itself. Only so much of the sentence as extends to confinement for 18 months and forfeiture of \$1753.00 pay per month for 2 months is affirmed.

For the Court

R.H. TROIDL
Clerk of Court