

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

**Before
B.L. PAYTON-O'BRIEN, R.Q. WARD, M.D. MODZELEWSKI
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**CHARLES L. PERRY
LIEUTENANT COMMANDER (O-4), U.S. NAVY**

**NMCCA 201100645
GENERAL COURT-MARTIAL**

Sentence Adjudged: 18 August 2011.

Military Judge: CAPT John Waits, JAGC, USN.

Convening Authority: Commander, Navy Region Southeast,
Naval Air Station, Jacksonville, FL.

Staff Judge Advocate's Recommendation: LT G.W. Eden, JAGC,
USN.

For Appellant: Maj Jeffrey Liebenguth, USMC.

For Appellee: Capt Crista Kraics, USMC.

26 June 2012

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:

At a general court-martial, members convicted the appellant, contrary to his pleas, of one specification of violating a lawful general order, two specifications of wrongful sexual contact, one specification of indecent act, one specification of assault consummated by battery, and two specifications of conduct unbecoming an officer and a gentleman in violation of Articles 92, 120, 128 and 133, Uniform Code of

Military Justice, 10 U.S.C. §§ 892, 920, 928, and 933.¹ The members sentenced the appellant to one year of confinement and a reprimand. The convening authority approved the sentence as adjudged. The appellant raises a single assignment of error: that the two guilty findings of wrongful sexual contact are factually insufficient.²

We have examined the record of trial, the appellant's assignment of error, and the pleadings of the parties. 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.

The test for factual sufficiency of a guilty finding is well-known. We must, after weighing all the evidence in the record and taking into account that we did not personally see or hear the witnesses, decide whether we ourselves are convinced of the appellant's guilt beyond a reasonable doubt. *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). We review this issue *de novo*. *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002). After weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, we are convinced of the appellant's guilt beyond any reasonable doubt.

Conclusion

The findings and sentence as approved by the convening authority are affirmed.

For the Court

R.H. TROIDL
Clerk of Court

¹ The members found the appellant not guilty of one specification of violating a lawful general order. Prior to assembly, the military judge dismissed two specifications of assault consummated by battery for multiplicity. Record at 44. The military judge also dismissed two specifications of violating a lawful general order for an unreasonable multiplication of charges. *Id.* at 98. After the members returned findings, the military judge dismissed the sole remaining specification of violating a lawful general order, the sole specification of indecent act, and one specification of conduct unbecoming an officer and a gentleman. *Id.* at 812-23.

² This assignment of error is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).