

# UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before  
WALKER, POND, and PARKER  
Appellate Military Judges

UNITED STATES, Appellee  
v.  
Sergeant First Class ERIC L. THOMPSON  
United States Army, Appellant

ARMY 20220040

Headquarters, 25th Infantry Division and U.S. Army Hawaii  
Michael E. Korte, Military Judge  
Lieutenant Colonel Geovanny A. Rojas, Acting Staff Judge Advocate

For Appellant: Captain Carol K. Rim, JA; Robert Feldmeier, Esquire (on brief);  
Robert Feldmeier, Esquire (on reply brief).

For Appellee: Colonel Christopher B. Burgess, JA; Lieutenant Colonel Jacqueline J.  
DeGaine, JA; Lieutenant Colonel Pamela L. Jones, JA (on brief).

31 August 2023

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SUMMARY DISPOSITION  
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*This opinion is issued as an unpublished opinion and, as such, does not serve as precedent.*

WALKER, Senior Judge:

Appellant was convicted of solicitation of distribution, distribution, possession, and viewing of child pornography. Appellant contends, *inter alia*, many of these convictions are legally and factually insufficient. We partially agree and except and dismiss the legally insufficient language from each of the specifications of which appellant was convicted. However, we affirm the remaining language of the specifications of which appellant was convicted and the sentence.

## BACKGROUND

A panel of officers sitting as a general court martial convicted appellant, contrary to his pleas, of two specifications of solicitation of the distribution of child pornography, two specifications of distribution of child pornography, one

specification of possession of child pornography, and one specification of viewing child pornography, in violation of Articles 82 and 134, Uniform Code of Military Justice [UCMJ], 10 U.S.C. §§ 882 and 934. The military judge sentenced appellant to a bad-conduct discharge and confinement for nineteen months. The convening authority waived automatic forfeitures for a period of six months but otherwise took no action on the findings or sentence.

The terminal elements for each specification of the charges allege appellant's conduct was both service discrediting and to the prejudice of good order and discipline in the armed forces. At trial, the government did not offer any evidence to prove appellant's conduct was to the prejudice of good order and discipline in the armed forces.

### LAW AND DISCUSSION

This court reviews questions of legal sufficiency de novo. *United States v. Rosario*, 76 M.J. 114, 117 (C.A.A.F. 2017) (citation omitted). “The test for legal sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.* (cleaned up). “[E]very element of a criminal offense—including the terminal element of Article 134, UCMJ—must be proven beyond a reasonable doubt and cannot be conclusively presumed based on the accused's conduct....” *United States v. Richard*, 82 M.J. 473, 474 (C.A.A.F. 2022). Our superior court has reiterated that the language of Article 134, UCMJ “only applies ‘to conduct that is directly and palpably—as distinguished from indirectly and remotely—prejudicial to good order and discipline.’” *Id.* at 477 (quoting *Parker v. Levy*, 417 U.S. 733, 753 (1974)).

Where, as here, the government offers no evidence to prove appellant's conduct was to the prejudice of good order and discipline in the armed forces, it follows that appellant's convictions as to that language in the specifications are legally insufficient. The absence of evidence, even when viewed in the light most favorable to the prosecution, could not have allowed any rational trier of fact to find appellant's conduct was to the prejudice of good order and discipline in the armed forces. *See United States v. Wilcox*, 66 M.J. 442, 451 (C.A.A.F. 2008) (finding convictions under Article 134, UCMJ legally insufficient where the “mere possibility...unsupported by the record” of the terminal element being satisfied was “so tenuous and speculative as to be legally insufficient....”).

**CONCLUSION**

The findings of guilty for Specifications 1 and 2 of Charge I and Specifications 1, 2, 3, and 4 of Charge II, excepting the words “was to the prejudice of good order and discipline in the armed forces and” are AFFIRMED.\* The sentence is AFFIRMED.

Judges POND and PARKER concur.

FOR THE COURT:



✓ JAMES W. HERRING, JR. ✓  
Clerk of Court

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\* The “Guilty Finding” sections for the said charges and specifications in the Statement of Trial Results Findings Worksheet, as incorporated into the Judgment of the Court, are amended to reflect the language as affirmed in the decretal paragraph above.