

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**UNITED STATES
Appellee

v.

Lieutenant Colonel (O-5)
ELPIDIO RODRIGUEZ,
United States Army
AppellantAPPELLANT'S SUPPLEMENT TO
THE PETITION FOR REVIEW

Crim. App. Dkt. No. 20240186

USCA Dkt. No. 26-0197/AR

TO THE UNITED STATES COURT OF APPEALS FOR THE ARMED
FORCES:**Issue Presented****WHETHER THE EVIDENCE IS LEGALLY INSUFFICIENT TO
SUPPORT APPELLANT'S CONVICTIONS OF THE SEXUAL
OFFENSES.****Statement of Statutory Jurisdiction**

The Army Court of Criminal Appeals (Army Court) had jurisdiction over this matter pursuant to Article 66, Uniform Code of Military Justice [hereinafter UCMJ], 10 U.S.C. § 866 (2024). This Honorable Court has jurisdiction over this matter under Article 67(a)(3), UCMJ, 10 U.S.C. § 867 (a)(3) (2024).¹

¹ Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), appellant respectfully requests this court consider the information provided in Appendix B.

Reason to Grant Review

Pursuant to this Court's internal Rule 21(b)(5)(F), the Army Court's affirmance of Appellant's legally insufficient verdicts led to a result that departed from the accepted and usual course of judicial proceedings. Insufficient evidence was presented as to Appellant's specific intent and Appellant's convictions should not stand.

Statement of the Case

On April 19, 2024, an officer panel sitting as a general court-martial convicted Appellant, contrary to his pleas, of two specifications of sexual abuse of a child, three specifications of sexual assault of a child, and one specification of domestic violence, in violation of Articles 120b and 128b, UCMJ. (Charge Sheet; R. at 1217–18). That same day, the military judge sentenced Appellant to six years of confinement and a dismissal. (R. at 1259).

On May 9, 2024, the convening authority took no action on the findings or sentence. (Action). On June 4, 2024, the military judge entered judgment. (Judgment). The Army Court of Criminal Appeals (Army Court) docketed Appellant's case on August 20, 2024. (Referral).

On March 17, 2026, the Army Court affirmed the findings and sentence in Appellant's case. (Appendix A).

Issue Presented

WHETHER THE EVIDENCE IS LEGALLY INSUFFICIENT TO SUPPORT APPELLANT’S CONVICTIONS OF THE SEXUAL OFFENSES.

Standard of Review

“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.” *United States v. Gutierrez*, 73 M.J. 172, 175 (C.A.A.F. 2014) (quoting *United States v. Bennett*, 72 M.J. 266, 268 (C.A.A.F. 2013)). Legal sufficiency asks whether “a reasonable factfinder reading the evidence one way could have found all the elements of the offense beyond a reasonable doubt.” *Id.* (quoting *United States v. Oliver*, 70 M.J. 64, 68 (C.A.A.F. 2011)).

Facts Relevant to the Issue Presented

Appellant was convicted of sexually assaulting on separate occasions his twin fifteen-year-old daughters, ANR and AXR. Per the Charge Sheet, Appellant committed a sexual act and a lewd act on ANR between 1 January and 22 February 2022 by touching her genitalia, breast, and thigh with his hand. (Charge Sheet, Chg. I, Spec. 1 & 2). It was also alleged Appellant committed a lewd act on ANR when he touched her buttocks with his hands between 1 March 2022 and 31 March 2022. (Charge Sheet, Chg. I, Spec. 3). Appellant was charged with committing a

sexual act and a lewd act upon AXR, the sexual act allegedly occurring between 1 January and 28 February 2022, when he penetrated her vulva, and the lewd act occurring on 23 April 2022. (Charge Sheet, Chg. II, Spec. 1 & 2).

A. The Dr. Pepper Incident

AXR alleged Appellant fondled her breasts after she drank too much Dr. Pepper. (R. at 693–94). AXR testified that she drank “one after the other” of the mini-cans of Dr. Pepper and she just kept “drinking more.” (R. at 694). She drank “a good amount of Dr. Pepper to the point where [she] had, like, this headache, [she] felt woozy and sick.” (R. at 695). ANR, AXR’s twin sister, told Appellant something was wrong with AXR, and Appellant and ANR “both grabbed” her and took her to her bedroom. (R. at 695).

ANR left AXR with Appellant. (R. at 695). AXR testified that she remembered Appellant leading her to her bed. (R. at 698). She remembered “slouching off the bed at some point.” (R. at 699). AXR said she was “out of it for some reason.” (R. at 699). Appellant was trying to lift her up by her armpits. (R. at 700–01).

I remember I -- I was on his lap, and I remember I was slouching [slouching in seat] off again. And I remember he picked me -- he tried to, like, get me back up to keep me from slouching [doing a grabbing motion with hands as if to lift up] and I remember when he picked me up, I remember, like he had his hands, he like when he tried to pick me up, he grabbed me from the arms, but that wasn't working and then he got me from the stomach to try to get my torso up.

(R. at 701–02).

According to AXN, while Appellant was picking her up, Appellant’s hand slid under her bra, which was very loose. (R. at 702–03). AXN testified “she slouched down again.” Appellant picked up AXN again and his hands were just “sitting” on her breasts. (R. at 703–04). AXN claimed she would push Appellant’s hands away, but Appellant’s hands would come back up to sit on AXN’s breasts. (R. at 704).

B. ANR—The January-February Allegations

ANR testified that, following an early morning run with Appellant, Appellant came into her room and asked her if she wanted a massage. (R. at 339). ANR said “yes.” (R. at 339). As ANR laid on her stomach on her bed, Appellant touched her upper thigh. (R. at 340-41). Appellant asked her to take off her shorts. (R. at 342). She allowed him to do so. (R. at 343). ANR was in a sports bra and underwear. (R. at 343). Appellant moved his hand closer to her “private area.” (R. at 343). ANR testified Appellant touched her vulva. (R. at 344). ANR testified it was longer “than a quick touch.” (R. at 345). Appellant took off her bra and rubbed her chest because her chest hurt. (R. at 346-347).

But when ANR went to school that day, she told her “best friend” that Appellant massaged her thigh. “I don't remember where it started, but it ended up, like going to her thigh, I remember. And she had told me that he saw everything.”

(R. at 558). Her best friend testified that Appellant made ANR “really uncomfortable.” (R. at 558). The best friend convinced ANR to talk to a teacher. (R. at 561).

ANR told the teacher a different story. It differed in time and involved a massage gun.

So, like, that’s kind of how her story started, after school she was going on a run with her father, and then afterwards on the run, she was telling me that they had recently gotten a massage gun for after her run and that was supposed to be kind of a way to help after her runs to kind of help her out because I know that she was training for the -- I don’t know if the season was over, but I know that she was training field for school and after the run, her massage gun was broken and she was tense and in pain in the leg and upper body area. I was informed that he offered to give her a massage to help relieve the pain, and it stayed along the lower legs, like lower thigh and below and the shoulders.

(R. at 621-22).

C. ANR—The March Garage Buttocks Massage

In a forensic interview, ANR for the first time claimed Appellant committed lewd acts on her in March 2022. (R. at 379). The story goes like this: ANR went outside where her father was throwing medicine balls. (R. at 379). It was around dinnertime. (R. at 380). ANR “join[ed] in on the workout.” (R. at 380). ANR and Appellant then went into the garage to do sumo squats, pull-ups, and another exercise ANR could not remember. (R. at 381).

After they moved into the garage, ANR told Appellant she was sore. (R. at 386). She told him her “butt kind of hurts.” (R. at 386). ANR testified she told Appellant “she could handle it,” but Appellant started massaging her butt. (R. at 386). ANR testified Appellant was massaging the “circular area,” but she could “feel his thumbs kind of more near [her] vulva.” (R. at 388). Appellant said nothing while he massaged ANR’s butt. (R. at 388). ANR said she was not sure how long Appellant touched her butt. (R. at 389). Appellant concluded the massage by slapping ANR on the butt. ANR told nobody about this incident. (R. at 391). In her statement to the forensic investigator, she said the incident lasted thirty seconds. (R. at 518).

D. AXR’s Allegations—The Couch Massage

AXR claimed Appellant committed a sexual act upon her via massage between 1 January 2022 and 28 February 2022. (Charge Sheet). According to AXR, she was in the kitchen with Appellant and told him her quads were sore from a workout. (R. at 661). Appellant asked AXR if she wanted him to massage them. (R. at 661). AXR said “yes.” (R. at 661). AXR and Appellant went to the living room. (R. 661–62). AXR testified that, when she received prior massages from Appellant, they took place on the couch or her bed. (R. at 662).

AXR was sitting on the couch against the armrest with her legs on the couch. (R. at 663). Appellant massaged her legs from the calf to the thigh using a

massage gun for a while. (R. at 663-64). “So, after some time, I remember he started -- he moved on from the Theragun to his hands, and he used the stress relief oil, put it on his hands and started to massage my calves and then he started moving up to my quads. . . .” (R. at 664). She was wearing pajamas and he managed to pull up the pajamas to “get to the skin.” (R. at 665).

AXR testified that Appellant had massage oil on his hands and he asked, “I’m going to take these down, okay, to get to your . . . inner thighs.” (R. at 666).

AXR testified that it was okay, so Appellant pulled her pajamas down to her ankles. (R. at 666).

And so he was massaging my inner thighs and my quads, for, like, a good few minutes, and then -- and then he grabs the waistband of my underwear, and he asked me, ‘Is it okay if I pull these down.’ And I didn’t understand why, but I said yes anyway.

(R. at 667). AXR testified Appellant penetrated her with one finger. (R. at 669).

He’s making conversation with me like it was just, he was acting like it was just, he was acting like everything was normal in a way. Asking me about—ask me if I was in a relationship or how was school and all that. And I was just speaking back to him because I didn’t know what to do.

(R. at 670). AXR testified she “briefly cut him off” and pulled up her underwear and pajamas and told Appellant that “was enough.” (R. at 671). Throughout this massage her mother was in the room next to the living room—“a wall away.” (R. at 672).

Legal Insufficiency

Even if the facts happened as the twins claimed, the evidence is legally insufficient to establish Appellant did any of the acts with the intent to gratify his lust or sexual desires. Regarding the Dr. Pepper incident, the evidence does not indicate Appellant had any sexual intent. The Government failed to elicit a scintilla of evidence that Appellant had a desire or intent to arouse his or ANR's sexual desires. The record is devoid of anything other than fatherly assistance.

As for the massages, it might be out of the ordinary for a father to massage a fifteen-year old's legs and buttocks, but when done for athletic training reasons, it carries with it no sexual intent. For example, the buttocks massage in the garage ended in a butt slap, just as professional athletes do during games; there is no sexual connotation. The twins testified that receiving a massage was part of their training. AXR testified that, when she received prior massages from Appellant, they took place on the couch or her bed. (R. at 662).

During each of the acts, there was simply no indication Appellant had any sexual intent. No evidence was presented that Appellant was stimulated in any way, nor did he act with an intent to excite his daughters. Indeed, Appellant's household was imbued with an almost maniacal focus of physical fitness. Appellant's life with his daughters focused on workouts, not sex. Even during the alleged events his focus was on their athletic and social world, not his sexual

desires. The evidence in this case is legally insufficient to convict Appellant of the sexual offenses.

Conclusion

Wherefore, this Court should grant Appellant's petition and set aside his convictions.



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Appendix A: Army Court Decision

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
COOPER, WILLIAMS and SCHLACK
Appellate Military Judges

UNITED STATES, Appellee
v.
Lieutenant Colonel ELPIDIO RODRIGUEZ
United States Army, Appellant

ARMY 20240186

Headquarters, United States Army South
Michael C. Friess, Military Judge
Lieutenant Colonel Jennifer L. Venghaus, Staff Judge Advocate

For Appellant: Colonel Richard E. Gorini, JA; Major Elizabeth G. Van Dyck, JA;
Captain Nicholas A. Schaffer, JA (on brief).

For Appellee: Colonel Frank E. Kostik, JA; Jonathan F. Potter, Esquire; Major
Kelsey Mowatt-Larssen, JA; Captain Eli M. Creighton, JA (on brief).

17 March 2026

DECISION

Per Curiam:

On consideration of the entire record, we hold the findings of guilty and the sentence, as entered in the Judgment, correct in law and fact. Accordingly, those findings of guilty and the sentence are AFFIRMED.

FOR THE COURT:


JAMES W. HERRING, JR.
Clerk of Court

Appendix B: Matters Submitted Pursuant to *United States v. Grostefon*

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), the appellant, through appellate defense counsel, personally requests that this court consider the following matters:

1. My counsel were ineffective. Major D did not have sufficient time to prepare my defense after my original counsel withdrew because of a personal matter. Captain W was never invested in my defense. Neither of my counsel communicated with me sufficiently. Both my counsel demonstrated their lack of preparation and failed to adequately cross-examine witnesses and understand the nuances of the various witnesses' claims or the Government's theory of the case. Many of my concerns were either ignored or never meaningfully investigated.
2. The allegations against me arose in the context of a contentious family situation involving custody and parenting disputes. Prior to the criminal charges, there had been significant disagreement between family members concerning the care and supervision of my daughter. These conflicts created circumstances that warranted careful investigation, particularly regarding the motivations and credibility of individuals involved in making accusations against me.

3. Despite the seriousness of the allegations, counsel failed to conduct a thorough investigation into the background of the complainant and other key witnesses. Information that could have been used to challenge the Government's narrative or establish alternative explanations was not adequately explored. Counsel also failed to sufficiently investigate evidence that may have demonstrated bias, motive, or inconsistencies in witness accounts.
4. I repeatedly raised concerns regarding witness statements, investigative procedures, and factual discrepancies. However, counsel frequently dismissed those concerns without conducting independent verification. In my opinion, this prevented the development of a complete defense and deprived the panel of information that could have affected its assessment of witness credibility.
5. I also expressed concerns about the manner in which certain evidence was presented and interpreted by investigators. There were facts and circumstances that I believed contradicted portions of the allegations, yet counsel did not adequately challenge those issues through cross-examination, expert testimony, or other available means.
6. As trial approached, communication between counsel and me remained limited. Important decisions concerning strategy, witness examination,

- and evidentiary issues were not fully discussed. This left me unable to meaningfully participate in my defense or make informed decisions regarding my case.
7. The cumulative effect of these failures was substantial. Counsel's lack of investigation, inadequate communication, and failure to pursue potentially exculpatory information undermined confidence in the outcome of the proceedings. Had counsel performed the duties expected of reasonably competent defense counsel, there is a reasonable probability that the outcome of the trial would have been different.
 8. The panel I faced was either rated or senior rated by the convening authority. I raised my concern with this biased panel to Captain W, but he made no complaint about the panel. He was ineffective in failing to do so.
 9. The trial counsel made impermissible comments during his opening statement. He made false statements that my daughters felt unsafe being alone with me.
 10. Trial counsel misrepresented that I placed Spyware on electronic devices to spy on my children so they would not report abuse. That was clearly untrue. The Spyware was on their phones to track them for their safety, and was on their phones long before any allegations.

11. My wife impermissibly mentioned a polygraph result. I should have been granted a mistrial.
12. My daughters provided contradictory testimony that should not have been believed.

Certificate of Compliance with Rules 24(c) and 37

1. This Supplement to the Petition complies with the type-volume limitation of Rule 24(c) because it contains 2,167 words.

2. This Supplement to the Petition complies with the typeface and type style requirements of Rule 37 because it has been prepared in Times New Roman font, using 14-point type with one-inch margins.



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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of United States v. Rodriguez, Crim. App. Dkt. No. 20240186, USCA Dkt. No. 26-0197/AR was electronically filed with the Court and Government Appellate Division on June 22, 2026.



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