UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Master Sergeant CRAIG A. BARNETT
United States Air Force

ACM 35731

26 September 2005

Sentence adjudged 29 May 2003 by GCM convened at Cannon Air Force Base, New Mexico. Military Judge: R. Scott Howard (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 60 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Terry L. McElyea, and Major Andrew S. Williams.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major James K. Floyd.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignments of error,[1] and the government's reply thereto. The appellant contends before us, as he did at trial, that the search warrant issued by a civilian judge to search his home computer was not supported by probable cause. The military judge made comprehensive findings of fact on this issue and denied the appellant's motion to suppress the results of the search. We review the military judge's findings of fact using a clearly erroneous standard and his conclusions of law de novo. *United States v. Rodriguez,* 60 M.J. 239, 246 (C.A.A.F. 2004); *United States v. Ayala,* 43 M.J. 296, 298 (C.A.A.F. 1995). His ruling is reviewed for an abuse of

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[1] These issues were raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

discretion. *United States v. Bethea,* 61 M.J. 184, 187 (C.A.A.F. 2005). Applying these standards, we find no error.

The military judge found that the civilian judge who issued the search warrant had evidence that the appellant had sexually molested a 5-year-old girl; that the molestation occurred in a room in the appellant's home where he kept his computer; that there was a camera attached to that computer; that, upon being confronted by the victim's father, the appellant became concerned about the presence of pornography on his computer; that the appellant sought information from an acquaintance in the Communications Squadron on base as to how to delete pornographic files from his computer; and that, even when told that *adult* pornography was not illegal, the appellant was insistent on deleting the files anyway. In addition, the military judge found that the civilian judge had information that pornographic images, even after being deleted, might still be recoverable from the appellant's computer. On balance, we are satisfied, as were the civilian judge who issued the warrant and the military judge who tried the appellant's case, that there was probable cause to conduct the search.[2] *See Bethea,* 61 M.J. at 187; *United States v. Carter,* 54 M.J. 414, 418 (C.A.A.F. 2001).

We have also considered the appellant's remaining assignments of error. Finding them without merit, we resolve them adversely to him. *Strickland v. Washington,* 466 U.S. 668, 687 (1984); *United States v. Ingham,* 42 M.J. 218, 223 (C.A.A.F. 1995), *aff'd sum nom. Ingham v. Tillery*, 201 F.3d 448 (10th Cir. 1999); *United States v. Healy,* 26 M.J. 394, 395-96 (C.M.A. 1988); *United States v. Snelling,* 14 M.J. 267, 268 (C.M.A. 1982).

We conclude the findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed,* 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court

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[2] The civilian judge was also presented with profile evidence concerning the propensity of child molesters to collect images of child pornography and to store them on computers. The military judge did not rely on this evidence in finding probable cause, and neither do we; but such evidence clearly would not detract from that determination. We are unmoved by the appellant's argument that the investigators should have disclosed that the victim never saw any child pornography, because the investigators who sought the warrant never claimed that she had. There is no reason to believe that inclusion of what the child did *not* see, in this case, would have extinguished otherwise-established probable cause. *United States v. Mason,* 59 M.J. 416, 423 (C.A.A.F. 2004).