UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman JAMES J. BEST
United States Air Force

ACM 35447

17 March 2005

Sentence adjudged 24 September 2002 by GCM convened at Davis-Monthan Air Force Base, Arizona. Military Judge: Bryan T. Wheeler.

Approved sentence: Bad-conduct discharge, confinement for 1 year, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, Major Andrew S. Williams, and Major Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Captain C. Taylor Smith.

Before

STONE, GENT, and SMITH
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignments of error, and the government's reply thereto. The appellant was found guilty of stealing a motorcycle and hobby supplies, and unlawful entry, in violation of Articles 121 and 130, UCMJ, 10 U.S.C. §§ 921, 930.

The appellant first asserts that an investigator found the hobby supplies during an unlawful search of a locked storage area in his garage. The appellant consented to a search of his residence for a motorcycle or evidence leading to a motorcycle. He did not limit the consent or inform the investigator that the dismantled motorcycle could be found on the garage floor. During a motion to suppress evidence of his theft of the hobby supplies, he testified that he did not expect the investigator to look in the locked storage area in the garage where he kept the hobby supplies because the disassembled motorcycle

was on the garage floor and in plain view. The standard we use to measure the scope of an appellant's consent under the Fourth Amendment is that of "'objective' reasonableness" -- what would the reasonable person have understood by the exchange between the investigator and the appellant. *Florida v. Jimeno*, 500 U.S. 248, 251 (1991) (citing *Illinois* v. *Rodriguez*, 497 U.S. 177, 183-89 (1990)). We conclude a reasonable person would have understood the scope of the consent to include the garage storage area. Because the investigator conducted a lawful search, and he had probable cause to believe the hobby supplies were stolen, he properly seized the hobby supplies. Mil. R. Evid. 316(d)(4)(C); *United States v. McMahon*, 58 M.J. 362, 367 (C.A.A.F. 2003); *United States v. Fogg*, 52 M.J. 144, 149 (C.A.A.F. 1999). Even if the appellant had not consented to a search of the locked storage area, the investigator reasonably believed that the appellant's roommate could validly consent to the search. *Rodriguez*, 497 U.S. at 188; *United States v. White*, 40 M.J. 257, 258-59 (C.M.A. 1994). We hold that the military judge did not abuse his discretion in declining to suppress the evidence. *See McMahon*, 58 M.J. at 366.

The appellant next asserts, pursuant to *United States v. Grostefon*, 12 M.J. 431, 436 (C.M.A. 1982), that his confession should be suppressed because it was the result of improper coercion. We considered this issue and conclude it is without merit. *United States v. Matias*, 25 M.J. 356, 361 (C.M.A. 1987).

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). On the basis of the entire record, the findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court