UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic ERIC D. BOGACKI
United States Air Force

ACM S30590

23 December 2005

Sentence adjudged 26 February 2004 by SPCM convened at Luke Air Force Base, Arizona. Military Judge: Glenn L. Spitzer (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 2 months, and forfeiture of $795.00 pay per month for 2 months.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Terry L. McElyea, and Captain Christopher S. Morgan.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major John C. Johnson.

Before

BROWN, MOODY, and FINCHER
Appellate Military Judges

PER CURIAM:

The appellant was tried by military judge alone sitting as a special court-martial at Luke Air Force Base, Arizona. Pursuant to appellant's conditional plea of guilty under Rule for Courts-Martial (R.C.M.) 910(a)(2), the appellant was found guilty of wrongful use of methamphetamine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The military judge sentenced the appellant to a bad-conduct discharge, confinement for 2 months, and forfeiture of $796.00 pay per month for two months. The convening authority approved the sentence as adjudged, except he reduced the amount of forfeiture to $795.00 pay per month for 2 months.

The appellant has submitted one assignment of error: Whether the military judge erred in failing to grant the appellant's motion to suppress. We have examined the record

of trial, the assignment of error, and the government's response thereto. Finding no error, we affirm.

Background

On 12 September 2003, the Air Force Office of Special Investigations seized from the appellant's off-base apartment a silver spoon, a razor blade, a credit card, a straw containing white residue, a mirror with white residue, and two plates containing white residue. On that same date, the appellant provided a urine specimen that subsequently tested positive for methamphetamine. At trial, the appellant brought a motion to suppress the seized items as well as the urinalysis result on the grounds that the searches and seizures were unlawful. After the military judge denied this motion, the appellant entered a conditional guilty plea under R.C.M. 910(a)(2), with the consent of the Government, reserving the right to appellate review of the military judge's decision.[1] Appellant contends the military judge erred in failing to grant the motion to suppress. He argues the entry into his apartment did not meet the requirements of Mil. R. Evid. 314(i) because there was no emergency within the meaning of that rule.

Motion to Suppress

We review a military judge's ruling on a motion to suppress for an abuse of discretion. *United States v. Rodriguez*, 60 M.J. 239, 246 (C.A.A.F. 2004). We review factfinding under the clearly-erroneous standard and conclusions of law under the de novo standard. *Id.* On mixed questions of law and fact "a military judge abuses his discretion if his findings of fact are clearly erroneous or his conclusions of law are incorrect." *United States v. Ayala*, 43 M.J. 296, 298 (C.A.A.F. 1995). "In reviewing a ruling on a motion to suppress, we consider the evidence 'in the light most favorable to the' prevailing party." *United States v. Reister*, 44 M.J. 409, 413 (C.A.A.F. 1996).

The evidence presented at trial clearly supports the military judge's well-reasoned findings of fact and conclusions of law. We adopt them as our own. We agree with the military judge that the entry into the appellant's apartment met the requirements of Mil. R. Evid. 314(i) as an emergency search and that the discovery of the drug paraphernalia and drug residue was in plain view.[2] *See* Mil. R. Evid. 311, 314(i), 316(d)(4)(C); *United States v. Fogg*, 52 M.J. 144, 149 (C.A.A.F. 1999); *United States v. Curry*, 48 M.J. 115 (C.A.A.F. 1998); *United States v. Smeal*, 49 C.M.R. 751, 754 (C.M.A. 1975); *United States v. Korda*, 36 M.J. 578, 581 (A.F.C.M.R. 1992). We hold that the military judge did not err in denying the appellant's motion to suppress.

[1] The Government did not offer either the positive methamphetamine laboratory result or the evidence seized from the appellant's apartment at his trial.

[2] If the police officer had not entered appellant's apartment on 12 September 2003, we believe he would have been derelict in his duties.

Conclusion

The approved 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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

LAQUITTA J. SMITH
Documents Examiner