UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JASON S. BONNER
United States Air Force

ACM 35618

7 June 2005

Sentence adjudged 8 May 2003 by GCM convened at Holloman Air Force Base, New Mexico. Military Judge: Gregory E. Pavlik (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 20 months, and reduction to E-1.

Appellate Counsel for Appellant: Major Antony B. Kolenc.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Colonel Michael J. Cianci, Jr., and Lieutenant Colonel Robert V. Combs.

Before

ORR, GRANT, and ZANOTTI
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's reply thereto. The appellant asserts the military judge erred by denying a motion to suppress involuntary admissions and derivative evidence of the appellant's use of cocaine and marijuana, where agents with the Air Force Office of Special Investigations (AFOSI) interrogated the appellant, notwithstanding his representation by defense counsel.[1] Finding no error, we affirm.

The appellant pled guilty to, inter alia, 11 specifications of the wrongful use, introduction, distribution, and possession of controlled substances, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. He entered conditional guilty pleas to three of these specifications: wrongful introduction of 79.6 grams of marijuana onto Holloman Air

[1] This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Force Base, New Mexico, with the intent to distribute; wrongful use of marijuana; and wrongful use of cocaine.

In November 2002, the appellant became a target of an investigation after a confidential informant notified the AFOSI that the appellant had offered to sell him marijuana. On 20 November 2002, the informant executed a controlled buy from the appellant. On 25 November 2002, the appellant was subject to a random urinalysis, which later tested positive for marijuana and cocaine.

On 16 December 2002, the confidential informant reported to the AFOSI that the appellant had marijuana in his room, and the aroma of marijuana was present. AFOSI Special Agent (SA) James Bogle was aware that the appellant was being advised by defense counsel on similar offenses occurring approximately six months earlier because the AFOSI detachment had received a letter from his initial counsel and each successive counsel, thereafter.[2] The letter stated that the AFOSI were to have no contact with the appellant without the defense counsel's express written consent. In response to the information received from the confidential informant, SA Bogle sought the advice of the base legal office as to whether he was able to speak with the appellant regarding the new investigation. The advice he received was that he could proceed without prior permission from the defense counsel because this was a "different matter" and a "separate investigation."

After receiving this advice, SA Bogle and another AFOSI agent went to the appellant's room, apprehended him, and brought him to the AFOSI detachment to interrogate him. SA Bogle advised him of his rights under Article 31, UCMJ, 10 U.S.C. § 831. He further told the appellant that he was aware the appellant was represented by defense counsel, but the representation was in regards to another matter, so he was not represented for this particular interview. The appellant thereafter waived his rights, made an oral and written confession, and consented to the urinalysis that established the specifications for wrongful use of marijuana and cocaine. The appellant's confession established probable cause for the search authorization, and the evidence from the subsequent search formed the basis for the wrongful introduction of marijuana offense.

At trial, the appellant moved to suppress the statements he made to AFOSI on 16 December 2002 and the derivative evidence therefrom. In addition to receiving a stipulation of fact, the military judge heard testimony from SA Bogle and the appellant. In denying the motion, the military judge ruled that the appellant was not entitled to a "blanket of protection from interrogation for all future misconduct." He further ruled the appellant was entitled to another rights advisement, which he received, and that the appellant voluntarily chose to waive his rights and to make a statement. We agree. The

[2] Four of the drug specifications were a product of that earlier investigation. That investigation was closed by the time the appellant was interrogated on 16 December 2002, but neither he nor his attorney were aware of that fact.

interrogation was for a separate investigation into a different matter. Months had passed between the two periods of criminal activity, and the appellant was not in custody during the intervening months between investigations. Moreover, the appellant testified that he was motivated to cooperate to keep the events from escalating. Accordingly, we find no error. *See United States v. Vaughters*, 44 M.J. 377 (C.A.A.F. 1996).

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