UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman DUSTIN J. CAMP
United States Air Force

ACM 38153

30 September 2013

Sentence adjudged 11 April 2012 by GCM convened at Edwards Air Force Base, California. Military Judge: Martin T. Mitchell (sitting alone).

Approved Sentence: Bad-conduct discharge, confinement for 6 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Major Erika L. Sleger and Captain Nicholas D. Carter.

Appellate Counsel for the United States: Colonel Don M. Christensen and Gerald R. Bruce, Esquire.

Before

HELGET, WEBER, and PELOQUIN
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

PER CURIAM:

A general court-martial composed of a military judge sitting alone convicted the appellant, contrary to his pleas, of three specifications of violating Article 112a, UCMJ, 10 U.S.C. § 912a, by wrongfully using heroin and buprenorphine and wrongfully possessing alprazolam. The military judge found the appellant not guilty of violating a lawful general regulation by wrongfully possessing tramadol with the intent to use it in a manner that would alter mood or function. The adjudged and approved sentence consisted of a bad-conduct discharge, confinement for 6 months, forfeiture of all pay and allowances, and reduction to the grade of E-1. On appeal, the appellant alleges that the

military judge erred by not suppressing the evidence derived from the inspection and subsequent search of his dormitory room.[1] Finding no error materially prejudicial to the substantial rights of the appellant, we affirm.

Background

In late June 2011, the Edwards Air Force Base installation commander ordered that an inspection be conducted of the base dormitories. The commander had previously participated in inspections at other command assignments and found them to be helpful in ensuring an appropriate living environment for Airmen residing in the dormitories. He also ordered a dormitory inspection about six months earlier after taking command of the installation's air base wing.

Base personnel carried out the inspection about a week later, soon after the Independence Day holiday. Trusted agents received briefings on how to execute the inspection. In this session, Air Force Office of Special Investigations (AFOSI) agents delivered a briefing on locating and identifying illegal drugs.

A senior noncommissioned officer inspected the appellant's room and located several suspicious items, including a bottle with pills of different sizes and colors in it, a piece of tin foil that appeared to have been used in burning something, and hollowed out pens with a brownish residue on them. Based on this, AFOSI requested and received search authorization from the military magistrate. Subsequent laboratory analysis demonstrated that the materials in the appellant's room included buprenorphine and alprazolam pills, along with heroin residue. Later that evening, after being advised of his rights, the appellant confessed to purchasing and using heroin and buprenorphine, and to purchasing "sleeping pills."[2]

Dormitory Inspection

At trial, the appellant unsuccessfully moved to suppress the evidence derived from AFOSI's search of the dormitory room, asserting that the inspection was either a subterfuge for a search for illegal drugs or was conducted in an unreasonable fashion. The appellant now renews this issue on appeal.

A military judge's ruling on a motion to suppress evidence is reviewed for an abuse of discretion. *United States v. Irizarry*, 72 M.J. 100, 103 (C.A.A.F. 2013). A military judge abuses his discretion when "his findings of fact are clearly erroneous, the court's decision is influenced by an erroneous view of the law, or the military judge's decision on the issue at hand is outside the range of choices reasonably arising from the

[1] The appellant raises this issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).
[2] Testimony at trial indicated that alprazolam may be used as a sleep aid, though it is most commonly used to treat anxiety.

applicable facts and the law." *United States v. Miller*, 66 M.J. 306, 307 (C.A.A.F. 2008). A military judge's finding regarding the primary purpose of an inspection is a question of fact, which will be reviewed under the clearly erroneous standard. *United States v. Shover*, 45 M.J. 119, 122 (C.A.A.F. 1996).

Evidence obtained from a military inspection is admissible at trial when relevant and not otherwise inadmissible under the Military Rules of Evidence. Mil. R. Evid. 313(a). Under Mil. R. Evid. 313(b), a military commander may order an inspection if its primary purpose "is to determine and to ensure the security, military fitness, or good order and discipline of the unit, organization, installation, vessel, aircraft, or vessel." An inspection may be conducted for reasons such as "to ensure that . . . the command is properly equipped, functioning properly, maintaining proper standards of readiness, sea or airworthiness, sanitation and cleanliness, and that personnel are present, fit, and ready for duty." Mil. R. Evid. 313(b). "An inspection also includes an examination to locate and confiscate unlawful weapons and other contraband." *Id.*

Conversely, "[a]n examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inspection within the meaning of this rule." *Id.* If a purpose of an examination is to locate weapons or contraband, the prosecution must prove by clear and convincing evidence that the examination was an inspection if one of three circumstances is present: (1) the examination was directed immediately following a report of a specific offense in the organization or area in question; (2) specific individuals are selected for examination; or (3) persons examined are subjected to substantially different intrusions during the same examination. *Id.*

Once properly ordered, an inspection must be conducted in a reasonable fashion. *Id.* In determining whether an inspection was conducted in a reasonable fashion, this Court considers the scope of the particular intrusion, the manner in which it was conducted, the justification for initiating it, and the place in which it was conducted. *United States v. Burney*, 66 M.J. 701, 703 (A.F. Ct. Crim. App. 2008) (citing *Bell v. Wolfish*, 441 U.S. 520 (1979)).

This issue was extensively litigated at trial, and the military judge issued detailed findings of fact to support his conclusion that the appellant was not subjected to an unlawful search. He noted that the installation commander had been informed of an AFOSI investigation into possible drug use in the dormitories before the inspection took place, but he also noted the testimony of the installation commander that he had planned this inspection before learning of the AFOSI investigation. The military judge also noted that the installation commander actually agreed to delay the inspection until after the

investigation finished.[3] The installation commander had already ordered one dormitory inspection before any issue regarding possible drug use in the dormitories arose, and he planned to make such inspections a recurring event. The installation commander testified that there had recently been a large turnover in personnel, another factor that made him want to conduct another inspection. The military judge also noted that before the inspection, there was no evidence to suggest that the appellant was abusing drugs and that the inspection of the appellant's room was conducted in the same manner as every other room. Finally, the military judge found that the inspection was conducted in a reasonable fashion, and that the inspection was limited to open areas within dormitory rooms and all unlocked containers within the rooms, as well as common areas such as kitchens.

The military judge did not abuse his discretion in denying the defense's motion to suppress the results of the inspection. While evidence indicates AFOSI mentioned a drug investigation about six weeks before the inspection took place, the installation commander testified that this had no effect on his decision to order another inspection. In fact, the installation commander specifically waited until after the AFOSI investigation to carry out the inspection, indicating he did not primarily intend this inspection to obtain evidence for use in a trial by court-martial or in other disciplinary proceedings. A preponderance of the evidence demonstrated that the examination was an inspection within the meaning of Mil. R. Evid. 313(b). The military judge properly found that the prosecution did not need to meet the higher clear and convincing standard, but even assuming that the clear and convincing standard should have applied, the Government met this standard through the installation commander's testimony.

Likewise, the military judge appropriately ruled that the inspection was carried out in a reasonable fashion. The appellant's room was inspected in the same manner as every other room, and the senior noncommissioned officer conducting the inspection properly opened and examined unlocked, closed containers, consistent with the rules approved by the installation commander. There is no prohibition against an inspection authorizing examination of unlocked, closed containers. Indeed, where one of the purposes of the inspection was to look for contraband, it would be illogical to exclude closed containers from the inspection, as these areas are the most likely places for individuals to store such items. *See Burney*, 66 M.J. at 703 ("given the purpose of an entry point inspection, we question what purpose would be served by limiting the scope of examination to a vehicle's opened compartments but not allowing a look into containers within that compartment or elsewhere in the vehicle. Such a limit would defeat the very purpose of any inspection and allow a free flow of contraband onto military installations as long as the material was retained within its own container.").

[3] The investigation revealed nothing that would lead to a suspicion that there was widespread drug use in the dormitories, and the appellant was not a subject of the investigation.

Conclusion

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Articles 59(a) and 66(c), UCMJ, 10 U.S.C. §§ 859(a), 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and the sentence are

AFFIRMED.

FOR THE COURT

STEVEN LUCAS
Clerk of the Court