UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class DWIGHT A. CELESTIN, JR.
United States Air Force

ACM 36555

7 November 2007

Sentence adjudged 29 September 2005 by GCM convened at Barksdale Air Force Base, Louisiana. Military Judge: Mary M. Boone.

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: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Major Kimani R. Eason.

Before

WISE, BRAND, and HEIMANN
Appellate Military Judges

PER CURIAM:

The appellant was convicted, contrary to his pleas, of one specification of possession of marijuana and one specification of having a firearm under his immediate control while in possession of a controlled substance contrary to Louisiana state law, in violation of Articles 112a and 134, UCMJ, 10 U.S.C. §§ 912a, 934. His adjudged and approved sentence consists of a bad-conduct discharge, confinement for 6 months, total forfeitures, and reduction to E-1.

On appeal, the appellant alleges error in that the military judge denied the defense's challenge for cause against Lieutenant (Lt) H and Senior Master Sergeant (SMSgt) M, and that it was a violation of the Fourth Amendment to the Constitution for a

police officer to make a pretext stop as part of a drug interdiction operation when the stop was part of a general scheme to use minor traffic violations as justification to stop motor vehicles and search for illegal drugs.

Background

At trial, the defense made a motion to suppress all evidence seized during the traffic stop and the motion was denied. The arresting officer and the appellant took the stand on the motion and offered differing versions of the events on 30 December 2004. Both agreed there were signs announcing a drug checkpoint on the interstate upon which the appellant was traveling. The appellant exited the highway where several patrol officers were stationed, and was eventually detained by a police officer. The checkpoint was a fake and the officers would pull over individuals exiting the highway if they committed any traffic violation. Whether the appellant committed a traffic violation and consented to a search of his vehicle are where the testimony differs. During argument on the motion, counsel for both sides agreed the ruling would be determined based upon which version of the events the military judge believed.

During voir dire, the defense challenged three members for cause. One challenge was granted. The challenges for cause against Lt H and SMSgt M based upon implied bias were denied. The trial defense counsel argued only implied bias and suggested it existed because Lt H had been a security forces augmentee two years previously for four or five months, his father had been a police officer helicopter pilot for 25 years, and Lt H both knew the sheriff of his hometown and was friends with a couple of hometown police officers. As to SMSgt M, the trial defense counsel argued that SMSgt M had been a member of the security forces squadron (predominantly involved in security and not law enforcement) for 19 years prior to becoming a first sergeant, he had previously been in contact with one of the prosecutors regarding discipline in his unit, and he had testified in three courts-martial. The military judge gave a very detailed explanation of her denial of the challenges lasting six pages in the record of trial.

Discussion

A military judge's denial of a challenge for cause is reviewed for abuse of discretion. *United States v. Richardson*, 61 M.J. 113, 118 (C.A.A.F. 2005) (citing *United States v. Armstrong*, 54 M.J. 51, 53 (C.A.A.F. 2000)). Any member whose presence on the court conflicts with the "interest of having the court-martial free from substantial doubt as to legality, fairness, and impartiality" must be removed for cause. Rule for Courts-Martial 912(f)(1)(N). This rule encompasses both actual and implied bias. *United States v. Clay*, 64 M.J. 274, 276 (C.A.A.F. 2007). Determinations of member bias, whether actual or implied, must be based on the totality of the surrounding circumstances, with due recognition that "challenges for cause are to be liberally granted." *United States v. Terry*, 64 M.J. 295, 302 (C.A.A.F. 2007).

"Challenges based on implied bias and the liberal grant mandate address historic concerns about the real and perceived potential for command influence on members' deliberations." *Clay*, 64 M.J. at 276-277. Whether implied bias exists is determined by objectively viewing the issue "through the eyes of the public, focusing on the appearance of fairness." *United States v. Briggs*, 64 M.J. 285, 286 (C.A.A.F. 2007). "Accordingly, a military judge's ruling on implied bias, while not reviewed de novo, is afforded less deference than a ruling on actual bias." *Clay*, 64 M.J. at 276. Moreover, we accord the military judge no deference at all when he fails to indicate on the record the basis for his ruling, either as to the legal standard applied or the relevant facts upon which he relied. *Briggs*, 64 M.J. at 287. In this regard, "[w]e do not expect record dissertations but, rather, a clear signal that the military judge applied the right law." *Terry*, 64 M.J. at 305 (quoting *United States v. Downing*, 56 M.J. 419, 422 (C.A.A.F. 2002)). In this case, the military judge explained in detail the basis for her ruling, did not abuse her discretion, and applied the correct law.

We review a military judge's ruling on a motion to suppress under an abuse of discretion standard, considering the evidence in the light most favorable to the prevailing party. *United States v. Rodriguez*, 60 M.J. 239, 246-47 (C.A.A.F. 2004) (citing *United States v. Monroe*, 52 M.J. 326, 330 (C.A.A.F. 2000); *United States v. Reister*, 44 M.J. 409, 413 (C.A.A.F. 1996)). We find no error here. The military judge's findings of fact were thorough, detailed, and amply supported by the evidence, and we adopt them as our own. Considering the military judge's application of the law, de novo, we concur in her conclusions as to the suppression motion. *See Rodriguez*, 60 M.J. at 246 (citing *United States v. Ayala*, 43 M.J. 296, 298 (C.A.A.F. 1995)). The military judge did not abuse her discretion.

Furthermore, this Court has thoroughly addressed whether it was a violation of the Fourth Amendment for a police officer to make a pretext stop as part of a drug interdiction operation when the stop was part of a general scheme to use minor traffic violations as justification to stop motor vehicles and search for illegal drugs in *United States v. Johnson*, 59 M.J. 666 (A.F. Ct. Crim. App. 2003), *aff'd*, 62 M.J. 31 (C.A.A.F. 2005).

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

AFFIRMED.

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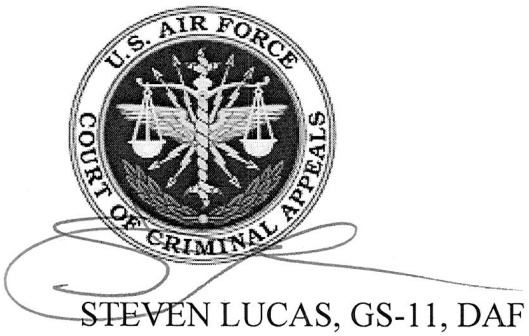

STEVEN LUCAS, GS-11, DAF
Clerk of the Court