UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant EDWARD R. CHAVEZ
United States Air Force

ACM S30894

1 November 2006

Sentence adjudged 13 January 2005 by SPCM convened at Nellis Air Force Base, Nevada. Military Judge: Glenn L. Spitzer.

Approved sentence: Bad-conduct discharge, 3 months hard labor without confinement, forfeiture of $500.00 pay per month for 3 months, and reduction to E-1.

Appellate Counsel for 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, Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Amy E. Hutchens.

Before

ORR, FRANCIS, and SOYBEL
Appellate Military Judges

PER CURIAM:

A special court-martial composed of officer members convicted the appellant, contrary to his plea, of one specification of wrongful use of methamphetamine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The appellant was sentenced to a bad-conduct discharge, 3 months hard labor without confinement, forfeiture of $500.00 pay per month for 3 months, and reduction to E-1. The convening authority approved the sentence as adjudged.

On appeal, the appellant asserts he was denied meaningful cross-examination of a key government witness, in violation of his Sixth Amendment[*] right of confrontation. Finding no error, we affirm.

Background

In August 2004, the appellant was selected to participate in a random urinalysis test. His sample was sent to the Air Force Drug Testing Laboratory (AFDTL) at Brooks City-Base, San Antonio, Texas, and was tested by that facility between 17 August 2004 and 25 August 2004. The sample tested positive for methamphetamine. The positive test results served as the government's primary evidence of the appellant's misconduct at trial. The government employed an expert witness, Dr. Bourland, to explain the test results to the members. Prior to presentation of its case, the government moved to preclude the defense from raising any evidence, testimony, or reference to several prior discrepancies arising out of AFDTL between May 1997 and August 2003. The military judge granted the motion, precluding the defense from inquiring into those specific discrepancies during its cross-examination of Dr. Bourland. The defense did cross-examine Dr. Bourland on numerous other discrepancies reported out of the laboratory during the time the appellant's sample was tested and in the months preceding that testing.

Discussion

We review the military judge's rulings limiting cross-examination for abuse of discretion. *United States v. Moss*, 63 M.J. 233, 236 (C.A.A.F. 2006); *United States v. Israel*, 60 M.J. 485, 488 (C.A.A.F. 2005). The abuse of discretion standard is a strict one, calling for more than a mere difference of opinion. The challenged action must be "arbitrary, fanciful, clearly unreasonable," or "clearly erroneous." *United States v. McElhaney*, 54 M.J. 120, 130 (C.A.A.F. 2000) (quoting *United States v. Miller*, 46 M.J. 63, 65 (C.A.A.F. 1997)). "Trial judges have broad discretion to impose reasonable limitations on cross-examination, 'based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant.'" *McElhaney*, 54 M.J. at 129 (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986)). However, that discretion is not unfettered. An accused's right under the Sixth Amendment to cross-examine witnesses is violated if the military judge precludes a defendant from exploring an entire relevant area of cross-examination. *Israel*, 60 M.J. at 486 (citing *United States v. Gray*, 40 M.J. 77, 81 (C.M.A. 1994)). If the military judge makes findings of fact, we review the

[*] U.S. CONST. amend. VI.

findings under a clearly-erroneous standard of review. *United States v. Springer*, 58 M.J. 164, 167 (C.A.A.F. 2003).

In this case, the military judge made extensive findings of fact. The record supports those findings and we adopt them as our own.

The AFDTL discrepancies at issue were extremely remote in time, occurring between one and more than seven years before the appellant's urine sample was tested. Many of the discrepancies involved personnel who were either no longer at AFDTL when the appellant's sample was tested or were not substantively involved in testing the appellant's sample. Some of the discrepancies also involved either extremely minor administrative matters or internal personnel issues of little or no probative value as to the validity of the appellant's urine test. Based on these factors, the military judge, applying Mil. R. Evid. 401, 402, and 403, precluded cross-examination on the discrepancies at issue. In doing so, the military judge did not foreclose all challenges to the laboratory testing procedures. He permitted the defense to fully cross-examine the government witness on discrepancies reported during the preceding months and the month the appellant's sample was tested.

Based on the nature of the discrepancies at issue, we find the military judge did not abuse his discretion. In doing so, we are mindful that when, as here, the government "characterize[es] the testing process as … the 'gold standard' in drug testing, it opens the door to a broader time frame during which the laboratory errors may be relevant to challenge the testing process." *Israel,* 60 M.J. at 490. However, even under this broader scrutiny, we find no error.

Conclusion

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). Accordingly, the findings and the sentence are

AFFIRMED.

OFFICIAL

JEFFREY L. NESTER
Clerk of Court