**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Airman Basic MATTHEW A. COLVIN**
**United States Air Force**

**ACM S30639**

**28 September 2005**

Sentence adjudged 12 April 2004 by SPCM convened at Patrick Air Force Base, Florida. Military Judge: W. Thomas Cumbie (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 60 days, and forfeiture of $750.00 pay per month for 4 months.

Appellate Counsel for Appellant: Colonel Carlos L. McDade and Major Sandra K. Whittington.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Major John C. Johnson, and Captain C. Taylor Smith.

Before

BROWN, MOODY, and FINCHER
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignments of error, and the government's reply. The appellant asks us to find his drug use pleas improvident due to his voluntary intoxication while using cocaine and ecstasy.[1] We cannot.

The record shows the appellant had a serious drinking problem. He had received nonjudicial punishment for both driving while intoxicated and being drunk on duty. During his providency inquiry, the appellant said he was drunk while he was using cocaine and ecstasy. He went on to say, "although I was drinking I made the choice, I knew, I was conscious enough to know what I was possessing and using." He then described in some detail the effects of the drugs. He stated that cocaine numbed his nose,

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

throat, and teeth, and sped up his heart rate. Ecstasy heightened his senses and made him feel he could "do anything." In addition to these statements from the appellant, the trial defense counsel shared the following during her sentencing argument:

> And if you remember during the CARE inquiry I had to prod [the appellant] to tell you about the facts and circumstances regarding the drinking when using drugs. As Your Honor knows that particular fact is important when accepting a plea of guilty because of the voluntary intoxication defense. Now, that's not our issue here, because [the appellant] admittedly took steps and made the decision to use drugs even though he was intoxicated.

We agree with trial defense counsel. Voluntary intoxication is not the issue here, and the military judge elicited sufficient facts from the appellant to support his pleas. *See United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969); *United States v. Bell*, 34 M.J. 937, 948 (A.F.C.M.R. 1992).

The appellant also contends the convening authority's action is ambiguous because it does not explicitly approve the bad-conduct discharge. We agree. *See United States v. Vogle*, 53 M.J. 428 (C.A.A.F. 2000) (mem.).

The record of trial is returned to The Judge Advocate General for remand to the convening authority for a new action and promulgating order consistent with this opinion. Thereafter, Article 66, UCMJ, 10 U.S.C. § 866, shall apply.

OFFICIAL

ANGELA M. BRICE
Clerk of Court