UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Technical Sergeant KENNETH J. DAVIS
United States Air Force

ACM S30657

29 June 2006

Sentence adjudged 20 March 2004 by SPCM convened at Paya Lebar Air Base, Republic of Singapore. Military Judge: Dawn R. Eflein.

Approved sentence: Bad-conduct discharge.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Sandra K. Whittington, and Major John N. Page III.

Appellate Counsel for the United States: Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Major Michelle M. McCluer, and Major Amy E. Hutchens.

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

We reviewed the record of trial, the appellant's assignment of errors, and the government's reply thereto. The appellant contends, *inter alia*, that his pretrial statements were not voluntary and that the military judge therefore erred by admitting them.

The voluntariness of a confession is a question of law which we review de novo. *Arizona v. Fulminante*, 499 U.S. 279, 287 (1991); *United States v. Bubonics*, 45 M.J. 93, 94 (C.A.A.F. 1996). The trial record on this issue was commendably thorough. The record shows the appellant was properly advised of his rights in accordance with Article 31, UCMJ, 10 U.S.C. § 831; the rights advisement was reduced to writing; the interview was initially conducted at the initiation of the investigators, but was subsequently

reinitiated by the appellant; the appellant was fully aware of his right not to answer questions, and selectively exercised it by refusing to answer some questions while agreeing to answer others; the appellant was given breaks when he requested them; and finally, the appellant was, at the time of the questioning, an experienced noncommissioned officer. The investigator's refusal to permit the appellant to talk to the suspected co-actor in the appellant's crimes was reasonable and did not render his confession involuntary. *See, e.g., United States v. Vandewoestyne*, 41 M.J. 587, 591 (A.F. Ct. Crim. App. 1994). Based on the totality of the circumstances, we find the appellant's waiver was properly given and his statements were voluntary. *See* Mil. R. Evid. 305(g); *United States v. Ellis*, 57 M.J. 375, 379 (C.A.A.F. 2002).

We considered the appellant's remaining assignments of error and resolve them adversely to him. *See* Rule for Courts-Martial 1001(e); *United States v. Briscoe*, 56 M.J. 903, 906 (A.F. Ct. Crim. App. 2002); *United States v. Dresen*, 47 M.J. 122, 125 (C.A.A.F. 1997); *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987).

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 sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator