UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman JAVIER J. GONZALEZ
United States Air Force

ACM 36201

30 November 2006

Sentence adjudged 24 November 2004 by GCM convened at Patrick Air Force Base, Florida. Military Judge: Kevin P. Koehler.

Approved sentence: Bad-conduct discharge, confinement for 22 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major Sandra K. Whittington, Major John N. Page III, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Gary F. Spencer and Lieutenant Colonel Robert V. Combs.

Before

BROWN, FRANCIS, and SOYBEL
Appellate Military Judges

PER CURIAM:

Consistent with his pleas, a general court-martial convicted the appellant of two specifications each of wrongful use of cocaine and marijuana, one specification of wrongful use of a Schedule I controlled substance (Ecstasy), one specification of wrongful use of a Schedule II controlled substance (Percocet), and one specification of wrongfully introducing cocaine onto a military installation, all in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. Contrary to his pleas, a panel of officer members also convicted the appellant of one specification of wrongful possession of marijuana, in violation of Article 112a, UCMJ. The court-martial sentenced the appellant to a bad conduct discharge, confinement for 5 years, forfeiture of all pay and allowances, and reduction to E-1. The convening

authority, as a matter of clemency, reduced the period of confinement to 22 months, but otherwise approved the sentence as adjudged.

The appellant asserts the evidence is legally and factually insufficient to support his conviction for wrongful possession of marijuana. Finding no error, we affirm.

Background

On 3 April 2004, as part of an ongoing investigation of suspected illegal drug activity by the appellant, two Air Force Office of Special Investigations (AFOSI) agents searched the appellant's dorm room on Patrick Air Force Base, Florida. One of the agents found and seized trace amounts of suspicious, partially burned organic material scattered in the bottom of a nightstand drawer. Subsequent laboratory testing proved the material to be .07 grams of marijuana. At trial and on appeal, the appellant posited that the amount of material was so small he did not know it was there and therefore cannot be guilty of knowing possession. The court-martial panel disagreed, as do we.

Discussion

We review the appellant's claim of legal and factual insufficiency de novo, examining all the evidence properly admitted at trial. *See* Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002). The test for legal sufficiency is whether, considering the evidence in the light most favorable to the government, any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *United States v. Quintanilla*, 56 M.J. 37, 82 (C.A.A.F. 2001); *United States v. Turner*, 25 M.J. 324 (C.M.A. 1987). The test for factual sufficiency is whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, we ourselves are convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325. Both standards are met here.

Evidence of the marijuana possession offense introduced at trial included a stipulation of fact stating that the 3 April 2004 search of the appellant's dorm room was done with his consent, that the marijuana was found scattered in the bottom of the drawer of a nightstand next to the appellant's bed, and that the substance found was determined through laboratory testing to be .07 grams of marijuana. One of the AFOSI agents conducting the search provided similar testimony, and an expert from the laboratory that tested the substance testified both as to the nature and results of the tests conducted. The government also introduced the actual substance found. Another government witness, Airman Basic C, testified he used marijuana with the appellant 15-20 times and that most

of those uses occurred in the appellant's dorm room, where the marijuana at issue was found. He also testified the appellant kept some of the marijuana they used in the appellant's room and that the appellant was the only occupant of that room.

This evidence, viewed in a light most favorable to the prosecution, provides a sufficient basis from which a rational trier of fact could conclude the appellant knowingly possessed the trace amounts of marijuana found in the drawer of his nightstand, next to his bed, in his dorm room; a room in which he was known to keep marijuana and in which he had on numerous occasions used marijuana with another airman. Further, we ourselves are convinced beyond a reasonable doubt that the appellant is in fact guilty of wrongful possession of marijuana. Mindful that we did not personally observe the witnesses, we find the government evidence both credible and compelling.

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; *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