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

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**UNITED STATES**

**v.**

**Airman First Class RASHONE L. JOHNSON**
**United States Air Force**

**ACM 36433**

**29 March 2007**

Sentence adjudged 17 March 05 by GCM convened at Pope Air Force Base, North Carolina. Military Judge: David F. Brash (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 9 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Major John N. Page III, and Captain Vicki A. Belleau.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Captain Jamie L. Mendelson.

Before

BROWN, BECHTOLD, and BRAND
Appellate Military Judges

PER CURIAM:

A general court-martial, composed of a military judge, convicted the appellant, in accordance with his pleas, of one specification of wrongful use of marijuana, one specification of wrongful use of ecstasy, one specification of wrongful use of Percocet, and one specification of wrongful distribution of Percocet on divers occasions in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. Contrary to his plea, the appellant was also found guilty of one specification of wrongful use of cocaine on divers occasions, in violation of Article 112a, UCMJ.[1] The military judge sentenced the appellant to a bad-conduct discharge, confinement for 10 months, forfeiture of $500.00

[1] The appellant pled guilty by exceptions and substitution to a one-time use of cocaine.

pay per month for 10 months, and reduction to the grade of E-1. The convening authority granted clemency, approving only a bad-conduct discharge, confinement for 9 months, and reduction to E-1.[2]

On appeal, the appellant raises three issues:

> I. WHETHER THE EVIDENCE IS LEGALLY AND FACTUALLY INSUFFICIENT TO SUPPORT A CONVICTION FOR WRONGFUL USE OF COCAINE "ON DIVERS OCCASIONS" UNDER SPECIFICATION 5 OF CHARGE II;
>
> II. WHETHER THE MILITARY JUDGE OVERSTEPPED HIS IMPARTIAL ROLE WHEN HE QUESTIONED AIRMAN MALDONADO ABOUT WHAT SENTENCE HE RECEIVED AT TRIAL;
>
> III. WHETHER THE TRIAL COUNSEL'S FINDINGS ARGUMENT WAS IMPROPER AND MATERIALLY PREJUDICED APPELLANT'S SUBSTANTIAL RIGHTS.

As to the first assignment of error, we have carefully considered the appellant's assertion that the evidence is legally and factually insufficient to sustain his conviction for wrongful use of cocaine on divers occasions. We review each court-martial record de novo to consider its legal and factual sufficiency. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Washington,* 57 M.J. 394, 399 (C.A.A.F. 2002). With regard to legal sufficiency, we ask whether, considering the evidence in the light most favorable to the prosecution, a reasonable factfinder could have found all of the elements of the offense proven beyond a reasonable doubt. For factual sufficiency, we weigh the evidence in the record of trial and, after making allowances for not having personally observed the witnesses, determine whether we ourselves are convinced beyond a reasonable doubt of the appellant's guilt. *United States v. Turner,* 25 M.J. 324, 324-25 (C.M.A. 1987). Applying this guidance, we conclude the evidence is both legally and factually sufficient. Further, we ourselves are convinced of the appellant's guilt beyond a reasonable doubt. *Id.* at 325.

Next we turn to the second assignment of error: Whether the military judge overstepped his impartial role when he questioned a witness, a co-actor, about the sentence the co-actor received in his own court-martial. It is apparent from the record, the military judge was inquiring into the sentence of the witness and whether action had been taken on his sentence in order to assess bias and/or motive to fabricate.[3] When a

[2] The convening authority also deferred adjudged and automatic forfeitures, and waived automatic forfeitures.
[3] The testimony in question was favorable to the defense, and the trial defense counsel did not object to its inclusion.

military judge's impartiality is challenged on appeal, the test is "whether 'taken as a whole in the context of this trial,' a court-martial's 'legality, fairness, and impartiality' were put into doubt by the military judge's questions.' *United States v. Burton,* 52 M.J. 223, 226 (C.A.A.F. 2000) (quoting *United States v. Ramos*, 42 M.J. 392, 396 (C.A.A.F. 1995)). See also *United States v. Acosta,* 49 M.J. 14, 17-18 (C.A.A.F. 1998); *United States v. Reynolds,* 24 M.J. 261, 265 (C.M.A. 1987). We do not find any such doubt arises in this case.

Finally, the appellant avers the trial counsel's findings argument was improper and materially prejudiced his substantial rights[4]. It is appropriate for a trial counsel to argue evidence of record, as well as all reasonable inferences fairly derived from the evidence. *United States v. Baer,* 53 M.J. 235, 237 (C.A.A.F. 2000) (citing *United States v. Nelson*, 1 M.J. 235, 239 (C.MA. 1975)). Further, argument by counsel must be viewed within the context of the entire court-martial. *Baer,* 53 M.J. at 238. The trial counsel's argument was not improper when viewed in context of the entire proceeding, and no right of the appellant was materially prejudiced.

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; *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

[4] Again, no objection was made at trial by defense counsel during the government's findings argument.