UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class EDWARD S. MACOMBER
United States Air Force

ACM 36693

31 August 2007

Sentence adjudged 08 November 2005 by GCM convened at Minot Air Force Base, North Dakota. Military Judge: James L. Flanary (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 18 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, and Captain Chadwick A. Conn.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Major Kimani R. Eason.

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's reply thereto. The appellant contends before us, as he did at trial, that the search warrant issued by the military magistrate to search his dorm room and personal computer was not supported by probable cause. The military judge adopted a detailed and comprehensive stipulation of fact for his findings of fact on this issue and denied the appellant's motion to suppress the results of the search. We review the military judge's findings of fact using a clearly erroneous standard and his conclusions of law de novo. *United States v. Rodriguez*, 60 M.J. 239, 246 (C.A.A.F. 2004); *United States v. Ayala*, 43 M.J. 296, 298 (C.A.A.F. 1995). His ruling is reviewed for an abuse of discretion. *United*

States v. Bethea, 61 M.J. 184, 187 (C.A.A.F. 2005). Applying these standards, we find no error.

The military judge found the military magistrate who issued the search warrant had been briefed by the OSI agent investigating the appellant and had been provided an affidavit from this agent containing the following information: the appellant had been identified as a subscriber to a known child pornography website through an Immigration and Customs Enforcement (ICE) agency investigation; the appellant had responded to a "test" letter, which included a sexual interest questionnaire, from an undercover Postal Inspector using his dorm room address as his return address; the appellant indicated on this questionnaire that he was interested in heterosexual, teen-sex, female-gay, and pre-teen sex; the Postal Inspector then sent the appellant an order form and a list of child pornographic video selections, including a narrative description of each; and the appellant selected two videotapes on the form and mailed it and a money order back to the undercover Postal Inspector, again using his dorm room address. Further, the military judge found that the military magistrate was also given profile information from experienced agents in the field about persons with an interest in child pornography or a sexual interest in children. This information included that such persons almost always maintain and possess child porn materials such as, photographs, magazines, and graphic image files in a secure but accessible location, most often in their personal bedrooms. The profile information also stated it is common for persons with a sexual interest in children or child pornography to retain their materials for many years. Based on these facts as stipulated by the parties the military judge concluded the military magistrate did have probable cause to issue the search authorization under the totality of the circumstances as presented to the magistrate.

The defense avers that the military magistrate should have been told that the date on which the appellant accessed the fee-for-service website known to display child porn, discovered by ICE, was 14 months prior to the request for authorization to search and because this information was stale and incomplete there was no probable cause to search the appellant's room or computer. We disagree. The fact that the appellant returned via mail his sexual interest survey and order form for the videotapes within two months of the search authorization shows the appellant's continuing interest in child pornography. These activities by the appellant, combined with the profile information provided to the military magistrate, make it unlikely that inclusion of this date in the information provided the military magistrate, in this case, would have extinguished otherwise-established probable cause. *United States v. Mason*, 59 M.J. 416, 423 (C.A.A.F. 2004).

On balance, we are satisfied, as were the military magistrate who issued the warrant and the military judge who tried the appellant's case, that there was probable cause to conduct the search. *See Bethea*, 61 M.J. at 187; *United States v. Carter*, 54 M.J. 414, 418 (C.A.A.F. 2001). Moreover, we find that the law enforcement agents acted in good faith when obtaining the search authorization, and reasonably relied on it when

conducting their search. *See generally United States v. Lopez*, 35 M.J. 35, 40 (C.M.A. 1992).

Conclusion

We conclude 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 approved findings and sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS, GS-11, DAF
Clerk of Court