UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class DEONTAY T. ROAF
United States Air Force

ACM 36305

20 July 2006

Sentence adjudged 12 January 2005 by GCM convened at Langley Air Force Base, Virginia. Military Judge: Lance B. Sigmon.

Approved sentence: Bad-conduct discharge, hard labor without confinement for 30 days, and a reprimand.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major David P. Bennett.

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

Before

STONE, SMITH, and MATHEWS
Appellate Military Judges

PER CURIAM:

The appellant stands convicted, contrary to her plea, of one specification of wrongful use of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. A panel of officer and enlisted members sentenced her to a bad-conduct discharge, hard labor without confinement for 30 days, and a reprimand. The convening authority approved the findings and sentence as adjudged. Finding no error, we affirm.

A sample of the appellant's urine collected during a random urinalysis tested positive for the metabolite of cocaine at a level of 1051 nanograms per milliliter -- more than ten times the Department of Defense cutoff. The trial counsel presented evidence establishing the chain of custody of the appellant's urine sample and the positive result of her urinalysis. The prosecution also presented testimony from witnesses who discussed the appellant's test results with her prior to trial, and in particular described several

alternative theories she shared with them about why her test came back positive. The trial counsel then called witnesses to debunk these theories.

The appellant put on a good character defense, contending that she would not knowingly jeopardize her career in the military by using illegal drugs. Her counsel suggested that the positive urinalysis result was the product of the appellant's unknowing ingestion of cocaine, and pointed to the appellant's former boyfriend -- an admitted occasional cocaine user -- as the likely source of the drug. The ex-boyfriend, however, denied providing the appellant with cocaine, and also denied ever seeing her use any illegal drugs.

On appeal, the appellant claims the evidence in her case is legally and factually insufficient to support a finding of guilt, and that her sentence is inappropriately severe. She points to several post-trial memoranda from court members who had second thoughts about her conviction, her sentence, or both. None of these memos suggest that any "extraneous prejudicial information" or "outside influence," including command influence, was improperly brought to bear during the trial, and they are inadmissible under Military Rule of Evidence 606(b). *See United States v. Loving*, 41 M.J. 213, 238 (C.A.A.F. 1994), *aff'd*, 517 U.S. 748 (1996). Even were we to consider them, however, we find the memoranda too vague and contrary to the record[*] to be of any value.

We therefore consider the legal and factual sufficiency of the evidence in this case as we do in all other cases: by asking, first, whether there was sufficient evidence for a reasonable trier of fact to have found the appellant's guilt beyond a reasonable doubt as to each and every element of the offense; and second, whether we ourselves are convinced of her guilt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *United States v. Quintanilla*, 56 M.J. 37, 82 (C.A.A.F. 2001); *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Evaluating these questions de novo, examining all of the evidence admitted at trial, we find that the evidence was sufficient to permit a rational factfinder to conclude that the appellant knowingly and wrongfully used cocaine. *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); *see also United States v. Green*, 55 M.J. 76, 81 (C.A.A.F. 2001). Moreover, we are ourselves convinced beyond a reasonable doubt of her guilt. Examining her sentence, we cannot say she received a punishment that was unduly harsh. *See United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999); *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988).

[*] The memorandum from the president of the appellant's court-martial, for example, makes much of the appellant's ex-boyfriend's supposed "immunity," despite the fact that the evidence at trial was clear that there was no such immunity, and no contrary evidence was produced post-trial.

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 sentence are

AFFIRMED.

Senior Judge STONE and Judge SMITH participated in this decision prior to their reassignments.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator