UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class LAURA K. SHAND
United States Air Force

ACM 36552

19 October 2006

Sentence adjudged 31 August 2005 by GCM convened at Edwards Air Force Base, California. Military Judge: Dawn R. Eflein.

Approved sentence: Bad-conduct discharge and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major John N. Page III.

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

ORR, MATHEWS, AND THOMPSON
Appellate Military Judges

PER CURIAM:

Contrary to her pleas, the appellant was found guilty of wrongfully using cocaine in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. A general court-martial comprised of officer members sentenced the appellant to a bad-conduct discharge and reduction to the grade of E-1. The convening authority approved the findings and sentence as adjudged. On appeal, the appellant asserts that the admission of a positive drug urinalysis report was a violation of the Sixth Amendment's Confrontation Clause,[1] and therefore erroneous. We find the assignment of error to be without merit and affirm.

At trial, the appellant did not object to the admission of a laboratory report from the Air Force Institute for Operational Health which indicated the appellant's urine tested

[1] U.S. CONST. amend. VI.

positive for a metabolite of cocaine. On appeal, citing *Crawford v. Washington*,[2] the appellant urges us to find the laboratory report was testimonial hearsay and therefore inadmissible, absent "confrontation."

Our superior court recently ruled on this issue. In *United States v. Magyari*,[3] the Court applied *Crawford* in considering the admissibility of a laboratory urinalysis report that had been prepared and submitted in substantially the same manner as the report at issue before us now. The Court found the laboratory report was non-testimonial and therefore admissible, subject to the requirements of *Ohio v. Roberts*.[4] *Magyari*, 63 M.J. at 127. Because the laboratory report qualified as a business record, a "firmly rooted hearsay exception," the Court concluded that it was properly admitted as evidence at trial. *Id.* at 128 (citing *Roberts*, 448 U.S. at 66 n.8).

After carefully considering the record of trial, we find that the facts and circumstances surrounding the creation of the laboratory report concerning the appellant are essentially the same as those of the laboratory report analyzed by our superior court in *Magyari*. Therefore, the holding in that case directly controls the issue in the case sub judice.

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, 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

JEFFREY L. NESTER
Clerk of Court

[2] 541 U.S. 36 (2004).
[3] 63 M.J. 123 (C.A.A.F. 2006).
[4] 448 U.S. 56 (1980).