UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman DARRELL W. STAFFORD
United States Air Force

ACM S30928

31 August 2006

Sentence adjudged 10 May 2005 by SPCM convened at Altus Air Force Base, Oklahoma. Military Judge: Barbara G. Brand.

Approved sentence: Bad-conduct discharge, confinement for 75 days, forfeiture of $823.00 pay per month for 2½ months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Kimberly A. Quedensley.

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

Before

BROWN, JACOBSON, and SCHOLZ
Appellate Military Judges

PER CURIAM:

Contrary to his pleas, the appellant was found guilty of use of cocaine in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. A special court-martial, comprised of officer members, sentenced the appellant to a bad-conduct discharge, confinement for 75 days, forfeitures of $823.00 per month for 2½ months, 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 military judge's decision to admit evidence of a positive drug urinalysis 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.

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

At trial, the appellant objected to the admission of a laboratory report from the Air Force Institute for Operational Health that indicated the appellant's urine had tested positive for a metabolite of cocaine. Citing *Crawford v. Washington*, 541 U.S. 36 (2004), the appellant argued that the report constituted testimonial hearsay evidence that could not be admitted without allowing him to cross-examine the individuals who prepared it. The military judge overruled the appellant's objection and admitted the report into evidence as a "business record" pursuant to Mil. R. Evid. 803(6). On appeal, the appellant again relies on *Crawford* in urging us to find that the laboratory report was testimonial hearsay and therefore inadmissible absent "confrontation."

Our superior court has recently ruled on this issue. In *United States v. Magyari*, 63 M.J. 123, 125-26 (C.A.A.F. 2006), 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 today. The Court found that the laboratory report was non-testimonial and therefore admissible, subject to the requirements of *Ohio v. Roberts*, 448 U.S. 56 (1980).[2] Since the laboratory report qualified as a business record, a "firmly rooted hearsay exception," the Court concluded that it had properly been admitted as evidence at trial. *Magyari*, 63 M.J. at 128; *Roberts*, 448 U.S. at 66.

After carefully considering the record of trial, we find that the facts and circumstances surrounding the creation of the laboratory report are essentially the same as those of the laboratory report analyzed by our superior court in *Magyari*. We therefore hold that the holding in that case directly controls the issue in the case sub judice. The laboratory report admitted as evidence at trial is non-testimonial hearsay that was properly admitted by the military judge as a business record under Mil. R. Evid. 803(6). The appellant's assertion of error is therefore without merit.

[2] *Roberts* held that "when a hearsay declarant is not present for cross-examination at trial, the Confrontation Clause normally requires a showing that he is unavailable. Even then, his statement is admissible only if it bears adequate "indicia of reliability." Reliability can be inferred without more in a case where the evidence falls within a firmly rooted hearsay exception. In other cases, the evidence must be excluded, at least absent a showing of particularized guarantees of trustworthiness." *Roberts*, 448 U.S. at 66 n.9.

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.

Judge SCHOLZ did not participate.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator