

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant QUINCY C. TARVER
United States Air Force

ACM 36368

29 September 2006

Sentence adjudged 5 April 2005 by GCM convened at Wright-Patterson Air Force Base, Ohio. Military Judge: W. Thomas Cumbie and Donald A. Plude (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 8 months, 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

BROWN, JACOBSON, and SCHOLZ
Appellate Military Judges

PER CURIAM:

Pursuant to his pleas, the appellant was found guilty of wrongfully using cocaine on divers occasions in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. Contrary to his pleas, he was also found guilty of wrongfully possessing cocaine and possessing drug paraphernalia, in violation of Articles 112a and 134, UCMJ, 10 U.S.C. §§ 912a, 934. A general court-martial comprised of a military judge sitting alone sentenced the appellant to a bad-conduct discharge, confinement for 8 months, and reduction to E-1. The convening authority approved the findings and sentence as adjudged. On appeal, the appellant asserts that the evidence supporting his conviction for wrongfully possessing cocaine is legally and factually insufficient because it does not establish knowing possession. Additionally, he asserts that the evidence supporting his conviction for possession of drug paraphernalia is legally and factually insufficient because it does not

establish beyond a reasonable doubt that the razor blade he possessed was connected with drug use.¹ We find both assignments of error to be without merit and affirm.²

The test for legal sufficiency is whether, considering the evidence in the light most favorable to the government, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *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 (C.M.A. 1987). The test for factual sufficiency is whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, we are ourselves convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325. After carefully reviewing the record, we conclude that there is sufficient competent evidence in the record of trial to support the military judge's findings, and therefore find the convictions legally sufficient. We are also personally convinced of the appellant's guilt beyond a reasonable doubt, and therefore find the convictions to be factually sufficient. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *Turner*, 25 M.J. at 325.

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 approved findings and sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator

¹ Both assignments of error were filed pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

² This case was originally submitted on its merits without assignment of error. After the case had been reviewed but prior to its official release, the appellant filed his assignments of error and a motion to consider the assignments of error out of time. The motion was granted, but due to an administrative oversight, the original opinion was released nonetheless. *United States v. Tarver*, ACM 36368 (A.F. Ct. Crim. App. 15 August 2006) (unpub. op.). The appellant's counsel then filed a motion for reconsideration of our original opinion, which we granted. This opinion, in which we consider both of the appellant's assignments of error, supersedes the original opinion, which has been vacated. See United States Air Force Court of Criminal Appeals, Rules of Practice and Procedure, Rule 19.1(d).