UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman RENEE C. VAUGHN
United States Air Force

ACM 36531

30 April 2007

Sentence adjudged 19 August 2005 by GCM convened at Hickam Air Force Base, Hawaii. Military Judge: Steven A. Hatfield.

Approved sentence: Bad-conduct discharge, hard labor without confinement for 1 month, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Kimani R. Eason, and Captain Jamie L. Mendelson.

Before

BROWN, SCHOLZ, and BRAND
Appellate Military Judges

PER CURIAM:

A general court-martial composed of officer members convicted the appellant, contrary to her plea, of one specification of wrongful use of methylenedioxyamphetamine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The members sentenced the appellant to a bad conduct discharge, hard labor without confinement for 1 month, and reduction to E-1. The convening authority approved the sentence as adjudged.

The appellant alleges error by the military judge in refusing to admit the testimony of Senior Airman (SrA) M as residual hearsay. Specifically, the assigned error involves a statement made by the appellant, who had been selected for a random urinalysis, to SrA M that she was concerned someone may have slipped something into her drink at a local club. This statement was made hours after the appellant had been notified she was required to provide a sample, but before she actually provided the sample.

We review a military judge's decision to exclude evidence under an abuse of discretion standard. *United States v. Barnett,* 63 M.J. 388, 394 (C.A.A.F. 2006) (citing *United States v. McDonald,* 59 M.J. 426, 430 (C.A.A.F. 2004)). "[A] military judge abuses his discretion if his findings of fact are clearly erroneous or his conclusions of law are incorrect." *See Barnett,* 63 M.J. at 394 (citing *United States v. Ayala*, 43 M.J. 296, 298 (C.A.A.F. 1995)).

At trial, the defense counsel provided timely notice to the trial counsel that they would be presenting the statement made to SrA M under Mil. R. Evid. 807. The government made a motion in limine to suppress the statement. The military judge deferred ruling on the motion until the close of the government's case. At the conclusion of their case, the government renewed their motion, and the trial defense counsel proffered the statement was admissible as rebuttal, excited utterance, or residual hearsay. The military judge correctly ruled the statement was not rebuttal or an excited utterance. The judge then applied the criteria under Mil. R. Evid. 807, and found that the statement offered by the defense was not more probative on the point for which it was offered than other evidence which the defense could procure through reasonable efforts. Mil. R. Evid. 807(B). Self-serving statements made by an appellant are hearsay and inadmissible. *United States v. Schnable,* 58 M.J. 643, 654 (N.M. Ct. Crim. App. 2003), *set aside and remanded on other grounds*, 60 M.J. 343 (C.A.A.F. 2004).

The appellant, through counsel, argues this ruling "hamstrung" the defense. To rule to the contrary would permit an appellant to put her exculpatory side of the story before a court-martial while avoiding cross-examination. *Id.* We find the military judge did not abuse his discretion when he granted the prosecution's motion to suppress the statement the appellant made to SrA M.

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 findings and sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator