UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman SAMUEL K. WEBBER
United States Air Force

ACM 36489

31 October 2007

Sentence adjudged 1 April 2005 by GCM convened at Pope Air Force Base, North Carolina. Military Judge: Lance Sigmon.

Approved sentence: Bad-conduct discharge, confinement for 20 months, and reduction to E-1.

Appellate Counsel for the Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain John S. Fredland.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, Major Kimani R. Eason, and Captain Daniel J. Breen.

Before

SCHOLZ, JACOBSON, and THOMPSON
Appellate Military Judges

PER CURIAM:

Contrary to his pleas, the appellant was found guilty of one specification of assault with a means likely to produce grievous bodily harm, in violation of Article 128, UCMJ, 10 U.S.C. § 928. He was acquitted of the greater offense of intentional infliction of grievous bodily harm upon a child under the age of 16. A panel of officers sentenced the appellant to a bad conduct discharge, confinement for 20 months, forfeitures of all pay and allowances, and reduction to E-1. The convening authority approved the findings and, except for the forfeitures, approved the sentence as adjudged.

Before this court, the appellant assigns as error an issue he first raised as a motion at trial and therefore properly preserved for appeal. His argument, raised pursuant to

United States v. Grostefon,[1] claims the military judge erred in failing to suppress statements made by the appellant to the Air Force Office of Special Investigations. We find the appellant's assigned error to be without merit and affirm.

Background

On 17 October 2003, the appellant was called into the offices of the Pope Air Force Base detachment of the Air Force Office of Special Investigations (AFOSI). There he was interviewed in regard to suspected physical abuse of his five-month-old son. The appellant was read his rights pursuant to Article 31, UCMJ.[2] During the course of the interview the appellant made several oral statements and one detailed written statement related to how his son might have sustained his injuries. Although he never directly confessed to causing injury to his son, many of the statements he made during the interview were inconsistent with each other and with the injuries suffered by the infant. The government announced its intention to use several of the statements during the court-martial to prove its case.

Prior to entering pleas, trial defense counsel moved to suppress all statements made by the appellant during the 17 October 2003 interview. The appellant argued at trial, as he does before us today, that, based on the totality of the circumstances, the statements were involuntarily given. After hearing testimony from several witnesses, including the appellant himself, the military judge denied the defense motion and allowed the statements into evidence, but did not insert detailed findings of facts into the record. The government relied on the appellant's 17 October 2003 statements during its case in chief.

Law and Discussion

We review the voluntariness of a confession *de novo*. See *United States v. Bubonics*, 45 M.J. 93, 94 (C.A.A.F. 1996). Although a military judge's findings of fact are normally reviewed for clear error, *United States v. Alameda*, 57 M.J. 190, 198 (C.A.A.F. 2002), we have previously noted "where the military judge's findings are silent . . . we may exercise our statutory discretion under 10 [U.S.C.] §866(c) and find the facts ourselves." *United States v. Agosto*, 43 M.J. 745, 748 (A.F. Ct. Crim. App. 1995). We use a totality of the circumstances approach in assessing the voluntariness of a confession, considering "both the characteristics of the accused and the details of the interrogation." *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973); *United States v. Ellis*, 57 M.J. 375, 378-79 (C.A.A.F. 2002); *see also* Mil. R. Evid. 304(e).

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[1] 12 M.J. 431 (C.M.A. 1982)
[2] 10 U.S.C. § 831

We have carefully reviewed the evidence presented during motion practice (as well as the entire record of trial) and the arguments by counsel at the trial and appellate level. After conducting our independent review, we find, under the totality of the circumstances,[3] that the appellant's 17 October 2003 statements were freely and voluntarily given and the military judge's decision to admit them into evidence was not error.

Conclusion

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.

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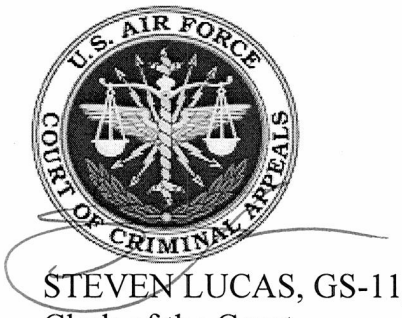

STEVEN LUCAS, GS-11, DAF
Clerk of the Court

[3] In examining the "totality of the circumstances," we specifically considered the factors set out by our superior courts in *Schneckloth* and *Ellis*, *supra.*