

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman EVELYN A CANTU
United States Air Force**

ACM 36824

12 September 2007

Sentence adjudged 24 March 2006 by GCM convened at Aviano Air Base, Italy. Military Judge: Adam Oler.

Approved sentence: Bad-conduct discharge, confinement for 12 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain Griffin S. Dunham.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Jason M. Kellhofer.

Before

**FRANCIS, SOYBEL, and BRAND
Appellate Military Judges**

PER CURIAM:

The appellant was convicted, in accordance with her pleas, of one specification of making a false official statement, one specification of wrongful use of marijuana on divers occasions, one specification of wrongful use of ecstasy on divers occasions, one specification of wrongful use of mushrooms, and one specification of wrongful use of methamphetamine, in violation of Articles 107 and 112a, UCMJ, 10 U.S.C. §§ 907, 912a. Her approved sentence consists of a bad-conduct discharge, confinement for 12 months, and reduction to E-1.

On appeal, the appellant alleges error in that the trial judge admitted, and trial counsel argued, evidence of marijuana uses that were not discussed during the appellant's guilty plea inquiry and were not the basis of the appellant's conviction.

During the appellant's providency plea, she admitted to two uses of marijuana during the charged timeframe. When counsel were asked if further discussion was warranted, the trial counsel requested the trial judge explore other uses during the charged timeframe. He declined to do so. During the pre-sentencing phase, the trial counsel presented an eye witness to two additional uses, both of which occurred during the charged timeframe. The trial defense counsel objected to this evidence and was overruled by the military judge. The evidence was admitted as facts and circumstances, a continuing course of conduct, and aggravation. In argument, the trial counsel argued the evidence.

This Court reviews a military judge's ruling on the admission of sentencing evidence for an abuse of discretion. See *United States v. Gogas*, 58 M.J. 96, 99 (C.A.A.F. 2003); *United States v. Hursey*, 55 M.J. 34, 36 (C.A.A.F. 2001); *United States v. McElhaney*, 54 M.J. 120, 129 (C.A.A.F. 2000). The trial counsel may introduce evidence as to any aggravating circumstances directly relating to or resulting from the offenses of which the accused has been found guilty. Rule for Courts-Martial 1001(b)(4); see also *United States v. Shupe*, 36 M.J. 431, 436 (C.M.A. 1999).

The evidence introduced at trial was clearly admissible and the military judge did not err when he admitted the evidence. The trial counsel did not err when arguing the properly admitted evidence.

Conclusion

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



STEVEN LUCAS, GS-11, DAF
Clerk of Court