UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman SHANNON L. DOLLAR
United States Air Force

ACM S31607

22 March 2010

Sentence adjudged 02 June 2008 by SPCM convened at Cannon Air Force Base, New Mexico. Military Judge: Maura T. McGowan.

Approved sentence: Bad-conduct discharge, confinement for 6 months, and reduction to E-1.

Appellate Counsel for the Appellant: Colonel James B. Roan, Major Shannon A. Bennett, Major Michael A. Burnat, Major Imelda L. Paredes, and Captain Marla J. Gillman.

Appellate Counsel for the United States: Colonel Douglas P. Cordova, Lieutenant Colonel Jeremy S. Weber, and Gerald R. Bruce, Esquire.

Before

BRAND, HELGET, and GREGORY
Appellate Military Judges

OPINION OF THE COURT

HELGET, Senior Judge:

The appellant was found guilty, contrary to his pleas, by a panel of officer members, of four specifications of wrongfully using cocaine, and consistent with his pleas, was also found guilty by a military judge of one specification of adultery, in violation of Articles 112a and 134, UCMJ, 10 U.S.C. §§ 912a, 934. The approved sentence consists of a bad-conduct discharge, confinement for six months, and reduction to E-1.

The appellant asserts two assignments of error before this Court. The first issue is whether the recent Supreme Court ruling in *Melendez-Diaz v. Massachusetts*[1] requires this Court to overturn the military judge's ruling to preadmit Prosecution Exhibits 5 and 10, drug testing reports (DTRs), because they constitute testimonial hearsay. The second issue is whether the military judge erred in finding that the appellant's additional urinalysis conducted pursuant to *United States v. Bickel*, 30 M.J. 277 (C.M.A. 1990) was for a permissible purpose. Finding no error in either issue, we affirm.

Background

At the time of trial, the appellant was 27 years old and had been on active duty since 28 May 2002. He was assigned to the 27th Special Operations Logistics Readiness Squadron at Cannon Air Force Base (AFB), New Mexico (NM).

On 23 August 2007, the appellant submitted a urine specimen, pursuant to a random urinalysis inspection at Cannon AFB. The specimen was sent to the Air Force Drug Testing Lab (AFDTL), Brooks City-Base, Texas, for forensic testing. On 6 September 2007, AFDTL reported that the specimen tested positive for benzoylecgonine, a metabolite of cocaine. On 10 September 2007, pursuant to the Cannon AFB Wing Commander's memorandum, dated 18 February 2007, directing follow-up testing as part of the random urinalysis inspection program, the appellant submitted another urine specimen that also tested positive for benzoylecgonine.

Impact of Melendez-Diaz

The first assignment of error is that the Supreme Court's recent decision in *Melendez-Diaz v. Massachusetts* requires that this Court overturn the military judge's ruling to preadmit Prosecution Exhibits 5 and 10, the DTRs, because they constitute testimonial hearsay.

On 26 May 2008, the government filed a motion for appropriate relief requesting that the military judge preadmit into evidence the two DTRs for both of the appellant's positive drug tests that were prepared by AFDTL. On 29 May 2008, during an Article 39(a), UCMJ, 10 U.S.C. § 839(a), session, after considering the expert testimony of Dr. DT, a forensic psychologist at AFDTL, and the documentary evidence submitted by the parties, the military judge granted the government's request to preadmit the two DTRs. In her ruling, the military judge made the following relevant findings of fact:

> 1. Air Force Instruction (AFI) 44-120, Drug Abuse Testing Program, dated 1 July 2000, sets forth in paragraph 1 the goals and objectives of urinalysis inspection within the Air Force. These purposes include:

[1] *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (2009).

1.1. “Maintain the health and wellness of a fit and ready fighting force and a drug-free Air Force community.[”]
1.2. “Deter military members . . . from abusing illegal drugs and other illicit substances.[”]
1.3. “Assist commanders in assessing the security, military fitness, readiness, good order, and discipline of their commands.[”]
1.4. “Detect and identify those individuals who use and abuse illegal drugs and other illicit substances.[”]
1.5. “Provide a basis for action, adverse or otherwise, against a service member based on a positive test.[”]

. . . .

2. On 23 August 2007, the accused was selected at random to provide a urinalysis specimen. The specimen was observed and collected by Canon AFB personnel. The sample was later packaged and shipped by Mr. [RW], the Drug Demand Reduction Program Manager (DRPM) and sent to the Air Force Medical Operations Agency, Drug Testing Division, Brooks City-Base, Texas (“Brooks Lab”). The sample was coded “IR”, meaning it resulted from a random urinalysis.

3. In processing urine samples, Brooks Lab tests 1,000 to 2,000 samples daily, and between 350,000 to 375,000 samples annually. Only about one-half of one percent of the samples yield a positive result above DoD cutoff values. When operating Brooks Lab equipment, technicians and chemists generally process batches of samples often numbering in the hundreds.

4. When a sample arrives at Brooks Lab it is given a laboratory accession number. An individual’s name is not directly connected with his or her urine sample while the sample is being processed in the lab. An aliquot of the urine is subjected to an initial screening immunoassay test. If the test results are positive it is rescreened in another immunoassay test. Presumptive positive samples are grouped and retested in a rescreen immunoassay test. The member’s Social Security Number is added to the routing documentation. If the sample tests positive it is then tested through the Gas Chromatography/Mass Spectrometry test.

5. On 6 September 2007, Brooks Lab reported that the accused 23 August 2007 sample tested positive for benzoylecgonine, a metabolite of cocaine. On 9 October 2007, the Brooks Lab compiled all the relevant data regarding the accused’s 23 August 2007 specimen into a drug testing report. . . .

6. In generating the 23 August 2007 report, the laboratory technicians and other personnel at the Brooks Lab did not know the identity of the [a]ccused as being the person who provided the specimen at issue. Therefore, they did not equate any specific samples with any particular individual or outcomes. This sample was not tested in furtherance of any particular law enforcement investigation. When the [a]ccused's sample arrived at the Brooks Lab, the laboratory personnel had no reason to suspect or believe that the sample had been collected for law enforcement purposes.

7. The accused submitted another sample on 10 September 2007. This sample was given pursuant to the Wing Commander's 18 February 2007 Memo directing follow-up testing pursuant to the random urinalysis inspection program at Cannon Air Force Base, NM, under his authority as a military commander and U.S. v. Bickel.

8. The accused's commander [Major (Maj) P], the First Sergeant [Master Sergeant (MSgt) J], and the acting First Sergeant, [Technical Sergeant (TSgt) R], were unfamiliar with the procedures for retesting pursuant to the Bickel retest process. The Air Force Office of Special Investigations (AFOSI) advised [Maj J] of the authorization for retesting and he in turn advised the commander. The commander directed that the accused would be retested according to the Wing Commander's policy. The AFOSI interviewed the accused and then in accordance with MSgt [J's] representation that [Maj P] wanted the accused retested pursuant to the 27 FW Memo, they [took] him to be retested at the [Drug Demand Reduction Program (DDRP) office]. As DDRP was closed, the AFOSI then took the accused to the base clinic.

9. Personnel at the clinic were unfamiliar with the 27 FW Memo. [Captain (Capt) JB] read the document and determined that it appeared authentic and proper. He authorized TSgt [B] to collect the urinalysis. The accused submitted a urine sample, observed by TSgt [JJ.] TSgt [B] collected the sample and stored it in a secure area. The sample was again packaged and shipped by Mr. [W]. Although the sample resulted from continuation of an inspection pursuant to Mil. R. Evid. 313(b) and Wing policy, it was coded "CO" for commander-directed inspection. There is currently no standard Air Force code in use for such continuation tests. The code "IR", the premise upon which the continuation is based, is only available through the computer software for initially randomly generated names.

> 10. On 21 September 2007, Brooks Lab reported that the accused's 10 September 2007 sample tested positive for benzoylecgonine, a metabolite of cocaine.
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> 11. On 9 October 2007, Brooks Lab compiled all relevant data on the accused's 10 September 2007 urinalys[i]s into a drug testing report. . . .
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> 12. In generating the 10 September 2007 report, the laboratory technicians and other personnel of Brooks Lab did not know the identity of the [a]ccused as being the person who provided the specimen at issue. Therefore, they did not equate any specific samples with any particular individuals or outcomes. This sample was not tested in furtherance of any particular law enforcement investigation. When the accused's sample arrived at the Brooks Lab, the laboratory personnel had no reason to suspect or believe that the sample had been collected for law enforcement purposes.

The military judge found that the facts underlying the 23 August 2007 report to be almost identical to the facts of *United States v. Magyari*, 63 M.J. 123 (C.A.A.F. 2006), and consistent with our superior court's holding in *Magyari*, concluded that that the 23 August 2007 drug testing report was non-testimonial. The military judge stated:

> The laboratory technicians who handled the specimen were merely cataloging the results of routine tests, and they could not reasonably know that their data entries would 'bear testimony' against an Accused. The laboratory technicians worked with batches of urine samples that each contained hundreds of individual samples, and they could not equate a particular sample with a particular person. Only a small number of such random samples yield a positive result. Further, the laboratory personnel had no reason to anticipate that any particular sample would test positive and be used at trial.

Concerning the 10 September 2007 report, the military judge stated:

> The Defense has raised the argument that as the AFOSI instructed the First Sergeant on the testing procedure and as they brought the accused to the clinic to give a urine sample this sample was taken with an eye to litigation. While the unit command and AFOSI did not comply with the steps of the 27 FW Memo, these were only minor discrepancies. This did not make the inspection a law enforcement inspection. The labeling of this second inspection as Commander Directed gave less credence to any argument that the lab technicians would believe the test results would be used in a criminal proceeding.

The military judge then concluded that the 10 September 2007 report was also non-testimonial.

On appeal, the appellant avers that in light of the Supreme Court's holding in *Melendez-Diaz*, the drug testing reports in this case constitute testimonial hearsay. Although arguably all three tests conducted at AFDTL are testimonial, the appellant contends that both of the forensic confirmatory tests, specifically the second immunoassay screen and the gas chromatography/mass spectrometry test, constitute testimonial hearsay because they are performed with an eye towards prosecution. The appellant argues that the DTRs were only created to serve as evidence in the appellant's court-martial and do not fit within the Supreme Court's definition of a business record, nor do they document the day-to-day operations of the laboratory. Additionally, the appellant avers that he has the right to cross-examine the analysts at AFDTL who conducted his tests because they interpret the outputs to determine if an anomaly occurred, and they make recommendations to the laboratory certifying officials.

We review a military judge's decision to admit or exclude evidence for an abuse of discretion. *United States v. Clayton*, 67 M.J. 283, 286 (C.A.A.F. 2009) (citing *United States v. Datz*, 61 M.J. 37, 42 (C.A.A.F. 2005)). "We review factfinding under the clearly-erroneous standard and conclusions of law under the de novo standard." *Id.* (quoting *United States v. Rodriguez*, 60 M.J. 239, 246 (C.A.A.F. 2004)). "Whether evidence constitutes testimonial hearsay is a question of law reviewed de novo." *Id*.

In *Melendez-Diaz*, the Supreme Court held that affidavits used to convict the defendant were "testimonial," making the affiants "witnesses" subject to the defendant's right to confrontation under the Sixth Amendment.[2] The defendant in *Melendez-Diaz* was prosecuted for cocaine distribution and trafficking based upon a law enforcement undercover operation. The seized evidence was sent to the state laboratory responsible by state law for conducting chemical analysis on evidence at the police request. The evidence tested positive for cocaine. During the trial, the prosecution submitted three "certificates of analysis" that reported the results of the forensic analysis performed on the substances. "The certificates reported the weight of the seized bags and stated that the bags '[h]a[ve] been examined with the following results: The substance was found to contain: Cocaine.' The certificates were sworn to before a notary public by analysts at the State Laboratory Institute of the Massachusetts Department of Public Health, as required under Massachusetts law." *Melendez-Diaz*, 129 S. Ct. at 2531 (alterations in original) (internal citations omitted). The certificates were admitted into evidence without any live testimony, unlike typical military urinalysis cases where an expert testifies.

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

After concluding the certificates were "quite plainly affidavits," the Supreme Court held that the affidavits clearly fell within testimonial evidence because they "are functionally identical to live, in-court testimony, doing 'precisely what a witness does on direct examination.'" *Id*. at 2532 (quoting *Davis v. Washington*, 547 U.S. 813, 830 (2006)). Further, the Supreme Court held that the analysts swearing to the certificates accuracy were witnesses for Sixth Amendment purposes, and the defendant was entitled to "be confronted with" the analysts at trial. *Id*. The Supreme Court described the affidavits as including only a "bare-bones statement" that the substance was found to be cocaine and emphasized that the defendant "did not know what tests the analysts performed, whether those tests were routine, and whether interpreting their results required the exercise of judgment or the use of skills that the analysts may not have possessed." *Id*. at 2537.

In a footnote, the Supreme Court stated that:

> [W]e do not hold, and it is not the case, that anyone whose testimony may be relevant in establishing the chain of custody, authenticity of the sample, or accuracy of the testing device, must appear in person as part of the prosecution's case. While the dissent is correct that '[i]t is the obligation of the prosecution to establish the chain of custody,' . . . this does not mean that everyone who laid hands on the evidence must be called. As stated in the dissent's own quotation, . . . 'gaps in the chain [of custody] normally go to the weight of the evidence rather than its admissibility.' It is up to the prosecution to decide what steps in the chain of custody are so crucial as to require evidence; but what testimony *is* introduced must (if the defendant objects) be introduced live. Additionally, documents prepared in the regular course of equipment maintenance may well qualify as nontestimonial records.

Id. at 2532 n.1 (internal citations omitted).

Prior to the Supreme Court's decision in *Melendez-Diaz*, our superior court in *United States v. Magyari*, addressed lab reports and random urinalysis tests and concluded lab reports contained non-testimonial hearsay with indicia of reliability, and therefore the appellant's Confrontation Clause rights were not violated. Concerning whether or not the data recorded on lab reports are testimonial statements, the Court noted:

> [T]he better view is that these lab technicians were not engaged in a law enforcement function, a search for evidence in anticipation of prosecution or trial. Rather, their data entries were "simply a routine, objective cataloging of an unambiguous factual matter." . . . Because the lab technicians were merely cataloging the results of routine tests, the

> technicians could not reasonably expect their data entries would "bear testimony" against Appellant at his court-martial. . . . This conclusion is consistent with the . . . policy concerns that might arise where government officers are involved "in the production of testimony with an eye toward trial" and where there is "unique potential for prosecutorial abuse" and overreaching.

Magyari, 63 M.J. at 126-27 (internal citations omitted).

The government also relies on this Court's decision in *United States v. Blazier*, 68 M.J. 544 (A.F. Ct. Crim. App. 2008), *pet. granted*, No. 09-0441/AF (C.A.A.F. 2009), where we held that a consent urinalysis following an earlier positive random urinalysis was non-testimonial because the second sample was treated exactly the same by the lab.

The government further relies on the holding in *United States v. Washington*, 498 F.3d 225 (4th Cir. 2007), *cert. denied*, 129 S. Ct. 2856 (2009), where the Fourth Circuit approved the prosecution's use of drug testing reports. The Fourth Circuit held (1) that the toxicology data generated by the lab machines were not out-of-court statements of the lab technicians; (2) the data did not constitute hearsay evidence subject to the Confrontation Clause; and (3) the data was non-testimonial. *Washington*, 498 F.3d at 229-32. In *Washington*, the appellant was convicted of driving while under the influence of alcohol or drugs. The appellant was pulled over after an officer observed him driving significantly slower than the posted speed limit. When the officer approached the appellant's car, the appellant was staring disaffectedly ahead and was unresponsive to the officer's commands. When the officer opened the appellant's door, he smelled a strong odor of phencyclidine (PCP). The officer took the appellant to a hospital where the appellant consented to give a blood sample for testing. The blood sample was sent for analyses to the Armed Forces Institute of Pathology, which performs alcohol and drug testing for both military and civilian court cases. After the lab technicians subjected the blood sample to testing, the instruments printed out some 20 pages of data and graphs. The sample tested positive for ethanol and PCP. *Id*. at 228.

At the trial in *Washington*, the government offered, over the appellant's objection, the expert testimony of Dr. BL, the Director of Forensic Toxicology Laboratory of the Armed Forces Institute of Pathology. Dr. BL did not see the blood sample and did not conduct any of the tests, instead, the tests were conducted by lab technicians under his supervision. In his testimony, Dr. BL relied on the raw data printed from the machines. The appellant objected to Dr. BL's testimony, arguing that his reliance upon the raw data obtained by the lab technicians violated his rights under the Confrontation Clause of the Sixth Amendment, and arguing that he was entitled to confront the lab technicians. The Fourth Circuit noted that, "the inculpating 'statement'- that Washington's blood sample contained PCP and alcohol - was made by the machine on printed sheets, which were given to Dr. [BL]. The technicians could neither have affirmed nor denied *independently*

that the blood contained PCP and alcohol because all the technicians could do was to refer to the raw data printed out by the machine." *Id*. at 230. Thus, the statements to which Dr. Levine testified in court - the blood sample contained PCP and alcohol - did not come from the out-of-court technicians, and so there was no violation of the Confrontation Clause. *Id*. Further, there would be no value in cross-examining the lab technicians about the data because the role of the technicians was only to operate the machine. The raw data generated by the machines were not hearsay statements. *Id*.

Pursuant to Fed. R. Evid. 801(a), a statement is one made by a person, and raw data generated by the machines are not statements of the technicians. *Id*. at 231. Further, the reports generated by the machines were not testimonial in that they did not relate to past events but rather related to the present condition of the blood in the machine. Accordingly, the court concluded that the raw data printed by the machines are not testimonial hearsay statements and therefore, Dr. BL's testimony did not violate the confrontation clause, or the hearsay rule. *Id*. at 232.

Considering our opinion in *Blazier*, our superior court's decision in *Magyari*, and the Fourth Circuit's decision in *Washington*, we find that the military judge did not abuse her discretion by allowing the government to preadmit the DTRs. The testing conducted at AFDTL was essentially the same for both the initial random inspection and the follow-up test. We do not find that *Melendez-Diaz* applies in this situation because the raw data contained in the DTRs are not statements made by the lab technicians. Additionally, the government intended to call an expert, also an employee of AFDTL, who would be subject to cross-examination by the appellant. Accordingly, under these circumstances, the DTRs are non-testimonial.

Motion to Suppress

The appellant's second assignment of error is that the 10 September 2007 urinalysis was provided for an improper purpose. This Court reviews a military judge's ruling on a motion to suppress for an abuse of discretion. *United States v. Rodriguez*, 60 M.J. 239, 246 (C.A.A.F. 2004) (citing *United States v. Monroe*, 52 M.J. 326, 330 (C.A.A.F. 2000)). "An abuse of discretion occurs if the military judge's findings of fact are clearly erroneous or if the decision is influenced by an erroneous view of the law." *United States v. Quintanilla*, 63 M.J. 29, 35 (C.A.A.F. 2006) (citing *United States v. Gore*, 60 M.J. 178, 187 (C.A.A.F. 2004)). "[A] military judge's finding regarding the 'primary purpose' of an inspection is a question of fact, which will be sustained on appeal unless clearly erroneous." *United States v. Jackson*, 48 M.J. 292, 295 (C.A.A.F. 1998) (citing *United States v. Shover*, 45 M.J. 119, 122 (C.A.A.F. 1996)). "Although the military judge's finding regarding the 'primary purpose' is a matter of fact, the issue of whether the examination is an inspection is a matter of law that this Court will review *de novo*." *United States v. Gardner*, 41 M.J. 189, 191 (C.M.A. 1994). Requiring a service member, who has tested positive when randomly selected to submit a urine specimen as

part of an inspection, to submit another urine specimen during the next inspection is proper provided there is a specific policy promulgated by the commander that anyone whose specimen tested positive would be required to submit another specimen during the next inspection. *Bickel*, 30 M.J. at 287.

Mil. R. Evid. 313(b) states in relevant part:

> An 'inspection' is an examination of the whole or part of a unit, organization, installation, vessel, aircraft, or vehicle, including an examination conducted at entrance and exit points, conducted as an incident of command the primary purpose of which is to determine and to ensure the security, military fitness, or good order and discipline of the unit, organization, installation, vessel, aircraft, or vehicle. An inspection may include but is not limited to an examination to determine and to ensure that any or all of the following requirements are met: that the command is properly equipped, functioning properly, maintaining proper standards of readiness, sea or airworthiness, sanitation and cleanliness, and that personnel are present, fit, and ready for duty. . . . An order to produce body fluids, such as urine, is permissible in accordance with this rule. An examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inspection within the meaning of this rule.

On or about 18 February 2007, the installation commander at Cannon AFB, NM, published a memorandum establishing specific categories of individuals to submit to urinalysis retesting in accordance with *Bickel*. The policy states in relevant part that the following class of personnel will be required to provide follow-up tests, "[p]ersonnel randomly selected for urinalysis testing whose urine tests are reported by the drug testing laboratory as being positive for the presence of any illegal or unprescribed drug, for which there is no reasonable medical explanation." The follow-up tests will take place:

> at the next available opportunity following the [DDRP's] receipt of the test report for the initial random test, without interfering with or impeding any potential criminal investigations. . . . The follow-up test sample will be obtained by ordering the member to report for testing according to the same procedures used to order a member to report for random urinalysis testing.

The policy memorandum further states that,

> The purpose of the random urinalysis inspection program is to determine and ensure the safety, security, military fitness, readiness, and good order and discipline of persons under my command. . . . A member who provides a positive or adulterated test sample poses an ongoing threat until further

> testing yields a negative result. Follow-up random urinalysis inspections are a part of my random urinalysis inspection program and not a criminal investigative tool, regardless of the admissibility of test results as evidence in UCMJ actions.

On 6 September 2007, the appellant's first sergeant, MSgt GJ, was notified by the DDRP office that the appellant had a positive urinalysis. MSgt GJ contacted the AFOSI to arrange for an interview. AFOSI informed MSgt GJ of the Wing Commander's policy on follow-up testing. MSgt GJ informed his commander, Maj RP, who was also unaware of the policy, and who then advised him to take the appellant to AFOSI and get him retested. Maj RP testified that his understanding of the policy was that a member will continue to be retested until he receives a negative test result. He indicated that the purpose of the retesting is, "under the rules on the law it's a way to help determine whether someone's guilty of a crime or not." Maj RP was also concerned about maintaining good order and discipline in his unit.

On 10 September 2007, after his interview with AFOSI, the appellant was taken by AFOSI to the lab at Cannon AFB to be retested. The lab serves as the back-up for urinalysis whenever the DDRP office is unavailable as it was in this case. When AFOSI appeared at the lab, they presented the policy letter to the technician, TSgt TB. Since TSgt TB was unaware of the policy, she spoke with the officer in charge, Capt JB, who was also unfamiliar with the policy. After reviewing the policy memorandum and speaking with the AFOSI agents, Capt JB authorized the urinalysis. No one from the lab contacted Maj RP to see if he had authorized the retest. Maj RP did not personally order the appellant to retest. However, he would have had the appellant tested if AFOSI had not taken him to be retested.

After considering all of the evidence, and twice reconsidering her ruling, the military judge denied the appellant's motion to suppress the test results from the 10 September 2007 urinalysis. In her final ruling, the military judge opined that since the retest was conducted pursuant to the 27 FW policy memorandum, which she found to be a proper inspection, the unit commander's understanding of the purpose of the policy was irrelevant in determining whether or not the retest was a proper inspection under Mil. R. Evid. 313(b).

The appellant contends that his second urinalysis was a search and not an inspection. The basis of the appellant's argument is that the appellant's squadron commander was motivated at the time of the retest to learn whether the appellant had committed a crime. Further, Maj RP did not order the appellant to retest in accordance with the provisions of the policy letter, and it was AFOSI who escorted the appellant to the lab, not his unit. Under these conditions, the appellant claims the retest was an unauthorized search rather than a health, safety, and welfare check under Mil. R. Evid. 313(b).

We concur with the military judge that although the squadron commander did not understand the policy memorandum and did not properly order the appellant to retest in accordance with established procedures, including having the appellant escorted to the laboratory by AFOSI agents, the appellant was nevertheless retested in accordance with the Wing Commander's inspection policy. We find that the Wing's Commander's policy was properly established in accordance with our superior court's decision in *Bickel*, and is therefore a valid inspection under Mil R. Evid. 313(b) and not a subterfuge search. Accordingly, we find that the military judge did not abuse her discretion in denying the appellant's motion to suppress his second urinalysis.

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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS, YA-02, DAF
Clerk of the Court