UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic RANDY D. EARLS
United States Air Force

ACM S29959

19 June 2002

Sentence adjudged 28 March 2001 by SPCM convened at Hurlburt Field, Florida. Military Judge: John J. Powers.

Approved sentence: Bad-conduct discharge and confinement for 4 months.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Jeffrey A. Vires, and Major Jefferson B. Brown.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Major Jennifer R. Rider, and Captain Christa S. Cothrel.

Before

BURD, ROBERTS, and CONNELLY
Appellate Military Judges

OPINION OF THE COURT

CONNELLY, Judge:

The appellant was convicted pursuant to mixed pleas of wrongful use of marijuana, larceny of government property, and breaking restriction in violation of Articles 112a, 121, 134, UCMJ, 10 U.S.C. §§ 912a, 921, 934. The approved sentence consisted of a bad-conduct discharge and confinement for four months.

The appellant alleges the military judge erred by admitting the results of a urinalysis test as a business record exception to the hearsay rule without any evidence of the circumstances surrounding the document's preparation, and any expert testimony explaining and interpreting the significance of the exhibits. The appellant also alleges the evidence was legally insufficient to sustain his conviction for wrongful use of marijuana.

The appellant was restricted to the base for thirty days as part of his punishment under Article 15, UCMJ, 10 U.S.C. § 815. He broke restriction and spent four days at his home to celebrate the new year holiday with his family. Upon returning to the base he orally and in writing admitted to using marijuana during his absence. He consented to take a urinalysis test that returned positive for the presence tetrahydrocannabinol (THC).

At trial, Jay M. Diamond, the Drug Testing Program Administration Manager for the 96th Medical Operations Squadron at Eglin Air Force Base, was called to lay a foundation for the admissibility of the urinalysis results as a business record of the medical squadron, even though he was not present at the laboratory when the urinalysis testing was performed, nor was he familiar with the laboratory's testing procedures. The military judge did find Mr. Diamond to be "intimately familiar with the process of collection, shipping, processing and reporting urinalysis specimens." Pursuant to Mil. R. Evid. 803(b), the military judge admitted the results of the appellant's urinalysis test and took judicial notice that THC is the byproduct of marijuana use. The testing was done at the Armstrong Laboratory at Brooks AFB, Texas, and then faxed to Mr. Diamond at Eglin AFB, Florida. Mr. Diamond used the established procedure for such report by first placing the test results in the records of the 96th Medical Operations Squadron, and then by notifying the appellant's commander and Air Force Office of Special Investigations.

A Third Party Document As a Business Record Exception to Hearsay

The appellant contends the document containing his urinalysis results should not have been admitted under the business record exception to the hearsay rule for two reasons. First, no evidence was presented regarding the details of the document's preparation. Secondly, no expert testimony was presented to explain and interpret the test results. The appellant contends the exhibit is therefore not relevant to the trial.

These two objections were recently addressed by the United States Court of Appeals for the Armed Forces in *United States v. Grant*, 56 M.J. 410 (2002). In *Grant* the Court acknowledged that it had not previously addressed the foundation necessary to admit evidence under Mil. R. Evid. 803(6). The court went on to directly address the admissibility of a business record created by a third party not before the trial court, incorporated into the business records of the testifying party. *Id.* at 411.

Our superior court thus fashioned a two-pronged test for admissibility of such records following the federal courts of appeal. "[A] document prepared by a third party is properly admitted as part of a second business entity's records if the second business integrated the documents into its records and relied upon it in the ordinary course of its business." *Id.* at 414. In *Grant*, drug test results from the Armstrong Laboratory were entered into the file system of the medical squadron, and would have been routinely

relied upon by the medical staff for treatment purposes if the results had been received before the accused in the case was discharged.

In the instant case, the drug test results were also entered into the file system of the medical squadron, and then forwarded to other personnel for action. The records were a normal business record for the medical squadron and used in the ordinary course of their business of treating patients.

Additionally, the court in *Grant* held that the government was not required to produce expert testimony to explain the drug test results when the results were used only to corroborate the confession of the appellant. *Grant*, 56 M.J. at 416. In the case under review, the urinalysis results were introduced for the sole purpose of corroborating a confession.[*]

Legal Sufficiency of the Evidence

The appellant's last claim of error concerns the legal sufficiency of the evidence to sustain his conviction. We find the appellant's oral and written admissions corroborated by the results of the urinalysis are more than sufficient to sustain his conviction.

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. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator

[*] The ruling in *Grant* did not change the additional foundation requirement for those cases where the drug test results are offered as proof of the substantive issue, i.e., whether the accused wrongfully used marijuana. In those cases "[e]xpert testimony interpreting [scientific] tests…is required to provide a rational basis upon which the factfinder may draw an inference that mari[j]uana was used." *United States v. Murphy*, 23 M. J. 310, 312 (C.M.A 1987).