

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class RYAN E. EDMONDS
United States Air Force**

ACM 35765

28 March 2006

Sentence adjudged 22 October 2003 by GCM convened at Cannon Air Force Base, New Mexico. Military Judge: James L. Flanary (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 11 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Terry L. McElyea, Major James M. Winner, and Captain David P. Bennett.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Tracey L. Printer.

Before

**STONE, SMITH, and MATHEWS
Appellate Military Judges**

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

MATHEWS, Judge:

The appellant was convicted, in accordance with his pleas, of one specification each of divers wrongful uses of cocaine and methamphetamine, and was also convicted, contrary to his pleas, of one specification of divers wrongful use of marijuana, all in violation of Article 112a, UCMJ, 10 U.S.C. § 912a.¹ He was sentenced in a general

¹ The appellant was also charged with a single specification of wrongful distribution of cocaine, but was found not guilty.

court-martial composed of a military judge alone to a bad-conduct discharge, confinement for 11 months, forfeiture of all pay and allowances, and reduction to E-1. The convening authority approved the findings and sentence as adjudged. On appeal, the appellant argues the evidence at trial was legally and factually insufficient to sustain his conviction for divers wrongful use of marijuana. We disagree and affirm.

The appellant admitted, in an oral statement to an agent of the Air Force Office of Special Investigations (AFOSI), he used marijuana three times. He made similar statements to a fellow Airman, DLB. Considering this evidence in the light most favorable to the prosecution, and drawing all reasonable inferences in favor of the government's position, we conclude the appellant's admissions were enough to permit a finding of guilt beyond a reasonable doubt. *See United States v. Davis*, 56 M.J. 299, 300 (C.A.A.F. 2002). We are, ourselves, likewise satisfied that he is guilty. *See United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987).

Though the appellant now contends his admissions were not sufficiently corroborated under Mil. R. Evid. 304(g) and should therefore not have been considered, he did not object at trial. His failure to timely object acts as a waiver to appellate consideration of this issue, in the absence of plain error. Mil. R. Evid. 103; *United States v. Lockhart*, 11 M.J. 603, 604 (A.F.C.M.R. 1981). To establish plain error, the appellant must demonstrate not only that there was error, but also that the error was plain or obvious, and that it materially prejudiced a substantial right. Article 59(a), UCMJ, 10 U.S.C. § 859(a); *United States v. Powell*, 49 M.J. 460, 465 (C.A.A.F. 1998).

We find no error at all, let alone a plain or obvious one. The quantum of evidence needed to corroborate an admission can be "very slight," and need only raise an inference of truth as to the essential facts of the admission. *United States v. Cottrill*, 45 M.J. 485, 489 (C.A.A.F. 1997); *United States v. Melvin*, 26 M.J. 145, 146 (C.M.A. 1988). That standard was more than met here.

The appellant told AFOSI he used marijuana on three occasions: first, with a civilian named "Matrice;" next, with another civilian named "Jarvis;" and finally, with a third person the appellant did not name. The prosecution called an AFOSI agent who testified his office was, at the time of the appellant's admission, investigating a local civilian named Jarvis who was believed to be distributing drugs to military members. The prosecution also called DLB, who testified under a grant of immunity. DLB testified he personally obtained marijuana from Jarvis, and that he went with the appellant to Jarvis' house on one occasion to buy marijuana, but on that particular day, Jarvis had none to sell. Finally, DLB testified the appellant "sporadically" talked about using marijuana, and the appellant said he used marijuana with Airman (Amn) B.

The AFOSI information concerning Jarvis' drug activities and DLB's first-hand knowledge of his marijuana sales support the appellant's admission to use of marijuana

with Jarvis. This corroborating information is completely independent of any knowledge gleaned from the appellant, and is sufficient to infer the truthfulness of his admission to use of marijuana with Jarvis. The appellant's statements to DLB about using drugs with Amn B dovetail with his admission to AFOSI about using drugs with a third person other than the civilians Jarvis and Matrice. Taken as a whole, we find there was sufficient evidence to raise "an inference of truth" as to the appellant's admitted marijuana use. *See Cottrill*, 45 M.J. at 489.

Although the appellant contends his statements to DLB cannot be used to corroborate his admission to AFOSI, our review of the law convinces us otherwise. Our superior appellate court's holding in *United States v. Maio*, 34 M.J. 215 (C.M.A. 1992), seems particularly on point. In *Maio*, the then-Court of Military Appeals characterized admissions to an undercover agent as "independent" evidence corroborating the appellant's subsequent confession. *Id.* at 218. Further, the *Maio* court noted the appellant made no objection to his prior statements to the undercover agent being used as corroboration for his confession. *Id.* at 218-19 n.2. The appellant here likewise did not object to DLB's testimony about his out-of-court statements, and we conclude those statements can be used to corroborate his admission to AFOSI.

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, 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

ANGELA M. BRICE
Clerk of Court