

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Staff Sergeant FRANK D. GOZUKIZIL**  
**United States Air Force**

**ACM S31010**

**29 March 2007**

Sentence adjudged 18 August 2005 by SPCM convened at Rhein-Main Air Base and Ramstein Air Base, Germany. Military Judge: David F. Brash.

Approved sentence: Bad-conduct discharge, confinement for 4 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major John N. Page III.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Jefferson E. McBride.

Before

**BROWN, BECHTOLD, and BRAND**  
Appellate Military Judges

**PER CURIAM:**

A special court-martial composed of officer members convicted the appellant, contrary to his pleas, of one specification of wrongful use of ecstasy,<sup>1</sup> in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The members sentenced the appellant to a bad-conduct discharge, confinement for 4 months, and reduction to E-1. The convening authority approved the sentence as adjudged.

We reviewed the record of trial, the appellant's assignment of error, and the government's answer thereto. The appellant alleges error by the military judge in denying the defense motion to suppress the results of the appellant's urinalysis. The basis for the error is that the appellant's urinalysis was obtained in violation of the Fourth Amendment of the United States Constitution, because: (1) there was insufficient

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<sup>1</sup> The appellant was acquitted of wrongful distribution, divers wrongful distributions, and divers wrongful uses of ecstasy, as well as conspiracy to wrongfully use and possess ecstasy.

information presented to establish probable cause; and (2) information was intentionally and recklessly withheld from the military magistrate.<sup>2</sup>

We review a military judge's ruling on a motion to suppress under an abuse of discretion standard, considering the evidence in the light most favorable to the prevailing party. *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); *United States v. Reister*, 44 M.J. 409, 413 (C.A.A.F. 1996)). We find no error here. The military judge's findings of fact were thorough, detailed, and amply supported by the evidence, and we adopt them as our own. Considering the military judge's application of the law, de novo, we concur in his conclusion that the search authorization in this case was supported by probable cause. *See Rodriguez*, 60 M.J. at 246 (citing *United States v. Ayala*, 43 M.J. 296, 298 (C.A.A.F. 1995)). The evidence presented to the magistrate was sufficient to permit a person of reasonable caution to conclude that evidence of illegal drug use would be found in the appellant's urine. *See United States v. Bethea*, 61 M.J. 184, 187 (C.A.A.F. 2005).

In addressing the issue of omissions, the appellant must demonstrate the omissions were intentional or reckless and that their hypothetical inclusion would have prevented a finding of probable cause. *United States v. Mason*, 59 M.J. 416, 422 (C.A.A.F. 2004). The Fourth Amendment is not violated if the affidavit would still show probable cause after the omission was corrected. *Id.* (citing *United States v. Gallo*, 55 M.J. 418, 421 (C.A.A.F. 2001)). In the appellant's case, the military judge found that, although the omissions were intentional, they were not material and would not affect the decision of the magistrate. The agents did not act with reckless disregard. The military judge's determination is binding on this Court unless it is clearly erroneous. *Mason*, 59 M.J. at 422 (citing *United States v. Cravens*, 56 M.J. 370, 375 (C.A.A.F. 2002)). We do not find the military's judge's determination to be clearly erroneous.

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

LOUIS T. FUSS, TSgt, USAF  
Chief Court Administrator

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<sup>2</sup> At trial, the defense counsel also alleged the magistrate improperly delegated his decision whether there was probable cause to his staff judge advocate. This was not raised as an issue before us.