

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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UNITED STATES

v.

**Airman First Class LATRICE D. PAYNE**  
**United States Air Force**

**ACM S31556**

**15 January 2009**

Sentence adjudged 14 March 2008 by SPCM convened at Aviano Air Base, Italy. Military Judge: Jennifer L. Cline (sitting alone).

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

Appellate Counsel for the Appellant: Major Shannon A. Bennett, Captain Michael Burnat, and Captain Timothy M. Cox.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Jeremy S. Weber, and Captain Coretta E. Gray.

Before

BRAND, FRANCIS, and JACKSON  
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

Pursuant to the appellant's pleas, a military judge sitting as a special court-martial convicted her of one specification of wrongful divers use of marijuana, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. Contrary to the appellant's pleas, the military judge also found her guilty of one specification of wrongful divers use of marijuana while on duty as a sentinel or lookout, in violation of Article 112a, UCMJ. The adjudged and approved sentence consists of a bad-conduct discharge, four months confinement, and a reduction to E-1.

On appeal the appellant asks the Court to set aside the finding of guilt on the contested specification and to either set aside her sentence and order a sentence rehearing or disapprove her bad-conduct discharge. The basis for her request is that she opines: (1) there was insufficient corroboration of her confession to wrongfully using marijuana on duty and, as a result, her conviction for wrongfully using marijuana while on duty as a sentinel or lookout is legally insufficient; and (2) the evidence does not indicate the nature of her security forces' duty and thus her conviction for wrongfully using marijuana while on duty as a sentinel or lookout is legally and factually insufficient. We disagree; finding no error, we affirm.

### *Background*

On several occasions while stationed at Aviano Air Base, Italy, the appellant smoked marijuana with fellow airmen. She either smoked marijuana with the fellow airmen at various locations on-base or at her off-base residence. On 3 May 2007, agents with the Air Force Office of Special Investigations (AFOSI) received word of the appellant's drug use and summoned her to their office for an interview. After a proper rights advisement, the appellant waived her rights and confessed not only to smoking marijuana while off-duty, but also to smoking marijuana on several occasions while "posted out in areas" on-duty. On that same day, the appellant consented to a urinalysis; her urine sample was tested and subsequently tested positive for marijuana.

At trial, the appellant providently pled and was found guilty of wrongful divers use of marijuana. However, she pled not guilty and was subsequently found guilty of wrongful divers use of marijuana while on duty as a sentinel or lookout. The government's evidence on this contested specification consisted of: the appellant's confession; the appellant's positive urinalysis test results and expert testimony about the test results; testimony from the appellant's supervisor about the appellant's duties during the charged time period; and testimony from Airman Basic (AB) BS that it was "very possible" he smoked marijuana with the appellant while "posted out in areas" on-duty during the charged timeframe.

### *Corroboration of the Appellant's Confession*

This Court reviews the military judge's decision to admit the appellant's confession for an abuse of discretion. *United States v. Pipkin*, 58 M.J. 358, 360 (C.A.A.F. 2003). "An admission or a confession of the accused may be considered as evidence against the accused on the question of guilt or innocence only if independent evidence, either direct or circumstantial, has been introduced that corroborates the essential facts admitted to justify sufficiently an inference of their truth." Mil. R. Evid. 304(g). "The independent evidence necessary to establish corroboration need not be sufficient of itself to establish beyond a reasonable doubt the truth of the facts stated in the admission or confession. . . . [it] need raise only an inference of the truth of the

essential facts admitted.” *Mil. R. Evid.* 304(g)(1). Alternatively stated, the quantum of evidence needed to fulfill the corroboration requirement is very slight. *United States v. Grant*, 56 M.J. 410, 416 (C.A.A.F. 2002) (quoting *United States v. Melvin*, 26 M.J. 145, 146 (C.M.A. 1988)).

In the instant case, the appellant’s confession to wrongful divers use of marijuana while on duty as a sentinel or lookout is corroborated by: (1) the appellant’s positive urinalysis test results; (2) the appellant’s supervisor’s testimony that the appellant was assigned as a base patrolman and a security response team member during the charged time period; and (3) AB BS’s testimony that he very possibly smoked marijuana with the appellant while “posted out in areas” on-duty during the charged timeframe. This evidence aggregately and sufficiently raised an inference of the truthfulness of the appellant’s confession. Accordingly, the military judge did not err in finding that the appellant’s confession was sufficiently corroborated and thus, did not abuse her discretion in admitting and considering the appellant’s confession.

#### *Legal and Factual Sufficiency*

We review issues of legal and factual sufficiency de novo. *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002). “The test for legal sufficiency of the evidence is ‘whether, considering the evidence in the light most favorable to the prosecution, a reasonable factfinder could have found all the essential elements beyond a reasonable doubt.’” *United States v. Humpherys*, 57 M.J. 83, 94 (C.A.A.F. 2002) (quoting *United States v. Turner*, 25 M.J. 324 (C.M.A. 1987) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979))).

“[I]n resolving questions of legal sufficiency, we are bound to draw every reasonable inference from the evidence of record in favor of the prosecution.” *United States v. Barner*, 56 M.J. 131, 134 (C.A.A.F. 2001). Our assessment of legal sufficiency is limited to the evidence produced at trial. *United States v. Dykes*, 38 M.J. 270, 272 (C.M.A. 1993). We have considered the evidence produced at trial in a light most favorable to the government and find a reasonable fact finder could have found, beyond a reasonable doubt, all of the essential elements of the specifications of which the appellant was convicted. The appellant’s confession, her positive urinalysis test results, and her provident, in-court admission are legally sufficient to support her conviction for wrongful divers use of marijuana.

Moreover, the appellant’s confession, her supervisor’s testimony, and AB BS’s testimony are legally sufficient to support the appellant’s convictions to wrongful divers use of marijuana while on duty as a sentinel or lookout. With respect to the appellant’s assertion that there is insufficient evidence that she was a “sentinel” or “lookout” and thus cannot be found guilty of using marijuana while performing such duties, we note that the appellant’s supervisor testified that during the charged time period the appellant

was assigned as a base patrolman and a security response team member. While the terms “sentinel” and “lookout” are not defined under Article 112a, UCMJ, the drafters did define the terms under Article 113, UCMJ, 10 U.S.C. § 913.

A “sentinel” or “lookout” is “a person whose duties include the requirement to maintain constant alertness, be vigilant, and remain awake, in order to observe for the possible approach of the enemy, or to guard persons, property, or a place and to sound the alert, if necessary.” *Manual for Courts-Martial, United States*, Part IV, ¶ 38.c.(4) (2008 ed.). Axiomatically, the appellant’s duties as a base patrolman and a security response team member, duties which inherently required her to guard Air Force resources, place her within the definitions of a “sentinel” and “lookout.” In short, for the aforementioned reasons, the evidence is legally sufficient to support the appellant’s conviction for wrongful divers use of marijuana while on duty as a sentinel or lookout.

The test for factual sufficiency is “whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, [we] are [ourselves] convinced of the accused’s guilt beyond a reasonable doubt.” *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). Review of the evidence is limited to the entire record, which includes only the evidence admitted at trial and exposed to the crucible of cross-examination. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Bethea*, 46 C.M.R. 223, 224-25 (C.M.A. 1973). We have carefully considered the evidence under this standard and are convinced beyond a reasonable doubt that the appellant is guilty of the charge and the specifications of which she was convicted.

*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