

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class PAUL H. SMITH
United States Air Force**

ACM 34297

25 February 2002

Sentence adjudged 4 August 2000 by GCM convened at Moody Air Force Base, Georgia. Military Judge: Linda S. Murnane (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 16 months and reduction to E-1.

Appellate Counsel for Appellant: Colonel James R. Wise, Major Maria A. Fried, and Major Stephen P. Kelly.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel Lance B. Sigmon, and Captain Steven R. Kaufman.

Before

BURD, HEAD, and ROBERTS
Appellate Military Judges

OPINION OF THE COURT

BURD, Senior Judge:

On 3-4 August 2000, the appellant was tried by general court-martial composed of a military judge sitting alone at Moody Air Force Base (AFB), Georgia. Consistent with his pleas, he was found guilty of distributing 3,4-methylenedioxymethamphetamine (ecstasy), using lysergic acid diethylamide (LSD), and using ecstasy on divers occasions, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a, and soliciting another to distribute ecstasy, in violation of Article 134, UCMJ, 10 U.S.C. § 934. Contrary to his pleas, he was found guilty of distributing LSD, in violation of Art. 112a, UCMJ. The appellant's adjudged and approved sentence consists of a bad-conduct discharge, confinement for 16 months, and reduction to E-1.

The appellant raises two issues on appeal. Neither issue has merit. We will discuss each issue briefly.

The appellant claims there is insufficient evidence to support the finding of guilty of distributing ecstasy as an aider and abettor. We disagree. The appellant's plea to Specification 1 of Charge I is provident. Article 45(a), UCMJ, 10 U.S.C. § 845(a).

The essential background for understanding this issue is that the appellant was asked by another airman to drive him off base so he could acquire something. The appellant drove the airman's car with the airman to an off-base location, and after the airman picked up what he wanted from that location, the appellant drove the two of them back to the base.

The thrust of the appellant's claim on this issue is that his explanation of the offense during the military judge's inquiry of the providence of the plea shows that the appellant did not know that he drove another airman to purchase ecstasy until after the purchase was made. The record shows that this is what the appellant told the military judge. However, he also told her that he saw the ecstasy as soon as the airman got back in the car after purchasing the ecstasy and that the airman told him on the drive back to the base that he was going to deliver the ecstasy to another person once they returned.

To overturn a military judge's acceptance of a guilty plea, the record must show a substantial basis in law and fact for rejecting the plea. *United States v. Faircloth*, 45 M.J. 172, 174 (1996) (citing *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). The record provides no basis in either law or fact to reject the appellant's plea. Once the appellant realized his role as driver in the other airman's illegal scheme to purchase and distribute ecstasy and voluntarily continued in that role, he became an aider and abettor in the distribution of ecstasy. *United States v. Speer*, 40 M.J. 230 (C.M.A. 1994) (and cases cited therein).

The appellant also claims the evidence is legally and factually insufficient to support the finding of guilty of distributing LSD because the testimony given by government witnesses under grants of immunity lacked credibility. We disagree.

The test for legal sufficiency is whether, when the evidence is viewed in the light most favorable to the government, any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The test for factual sufficiency is whether, after weighing the evidence and making allowances for not having observed the witnesses, we ourselves are convinced of the appellant's guilt beyond a reasonable doubt. *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987).

We have considered the testimony of the witnesses and, contrary to the assertions of the appellant, we find the testimony to be credible. We find the evidence both legally and factually sufficient. *Jackson; Turner*.

The approved findings of guilty and the sentence are correct in law and fact. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). The approved findings of guilty and the sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, SSgt, USAF
Chief Court Administrator