UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JONATHAN M. WAHILA
United States Air Force

ACM S30910

17 November 2006

Sentence adjudged 7 April 2005 by SPCM convened at Beale Air Force Base, California. Military Judge: Anne L. Burman.

Approved sentence: Bad-conduct discharge, confinement for 3 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain John S. Fredland.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Colonel Gary F. Spencer, and Lieutenant Colonel Robert V. Combs.

Before

BROWN, FRANCIS, and SOYBEL
Appellate Military Judges

PER CURIAM:

Contrary to his pleas, a special court-martial consisting of officer and enlisted members convicted the appellant of one specification of wrongful use of cocaine, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The adjudged and approved sentence consists of a bad-conduct discharge, confinement for 3 months, and reduction to E-1.

The appellant asserts that the admission of a positive drug urinalysis report, without testimony by all of the numerous laboratory technicians who contributed to that report, was a violation of the Sixth Amendment's Confrontation Clause[1] and was therefore erroneous. Finding no error, we affirm.

[1] U.S. CONST. amend. VI.

Background

On 28 June 2004, the appellant, as part of a random urinalysis inspection, was selected to provide a urine sample for testing. The sample was sent to the Air Force Institute for Operational Health, Brooks City-Base, Texas (Brooks Laboratory) and ultimately tested positive for a metabolite of cocaine. At trial, the appellant did not object to the admission of a laboratory report reflecting the results of the test. The government did not call any of the seventeen different technicians at Brooks Laboratory whose names appeared on the laboratory report and chain of custody documents, and who tested the appellant's urine, reviewed the test results, or prepared the report admitted at trial. Citing *Crawford v. Washington*[2], the appellant now urges us to find the laboratory report contained testimonial hearsay and was therefore inadmissible, absent an opportunity by the appellant to confront at trial all the laboratory technicians who provided input to that report.

Discussion

We find no merit in the appellant's position. Data entries made by laboratory technicians testing urine samples submitted as part of a random urinalysis inspection program are not testimonial hearsay within the meaning of *Crawford. United States v. Magyari,* 63 M.J. 123, 127 (C.A.A.F. 2006), *cert. denied, Magyari v. United States*, 166 L. Ed. 2d 156 (2006). As a result, such reports are properly admissible, subject to the requirements of *Ohio v. Roberts*.[3] *Magyari*, 63 M.J. at 127-28. In this case, the laboratory report qualified as a business record, a "firmly rooted hearsay exception," and was therefore properly admitted as evidence at trial. *Id*. at 128 (citing *Roberts*, 448 U.S. at 66).

Conclusion

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 the sentence are

AFFIRMED.

OFFICIAL

JEFFREY L. NESTER
Clerk of Court

[2] 541 U.S. 36 (2004).
[3] 448 U.S. 56 (1980).