

**IN THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS
WASHINGTON NAVY YARD
WASHINGTON, D.C.**

BEFORE

Charles Wm. DORMAN

C.L. CARVER

D.O. VOLLENWEIDER

UNITED STATES

v.

**Prince M. NELLON
Private First Class (E-2), U. S. Marine Corps**

NMCCA 200401014

Decided 25 January 2006

Sentence adjudged 16 May 2003. Military Judge: M.H. Sitler.
Review pursuant to Article 66(c), UCMJ, of General Court-Martial
convened by Commanding General, 2d FSSG, U.S. Marine Corps
Forces, Atlantic, Camp Lejeune, NC.

LCDR JASON S. GROVER, JAGC, USN, Appellate Defense Counsel
Maj WILBUR LEE, USMC, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

DORMAN, Chief Judge:

A military judge, sitting as a general court-martial, convicted the appellant, contrary to his pleas, of conspiring to distribute marijuana, wrongfully using marijuana, and wrongful introduction of marijuana onto a military installation, in violation of Articles 81 and 112a, Uniform Code of Military Justice, 10 U.S.C. § 881, 912a. The military judge sentenced the appellant to 42 months confinement, total forfeiture of pay and allowances, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority approved the sentence as adjudged and, except for the bad-conduct discharge, ordered the sentence executed.

After carefully considering the record of trial, the appellant's summary assignment of error that the military judge erred by admitting into evidence 4 written statements by the appellant, and the Government's response, we conclude that the findings and the sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ.

Facts

On 19 September 2002, sentries posted at the main gate to Marine Corps Base Camp Lejeune, North Carolina, stopped and searched a vehicle the appellant was driving. The inspection revealed marijuana in the vehicle. Subsequent questioning of the appellant resulted in four separate sworn confessions to various drug related offenses.

In Prosecution Exhibit 1, a statement taken from the appellant shortly after the 19 September 2002 vehicle search, the appellant revealed that earlier that evening he and another Marine, Lance Corporal [LCpl] Bruce Penn, Jr., U.S. Marine Corps, drove LCpl Penn's vehicle to a nearby apartment complex where the appellant purchased marijuana from an individual he only knew as "J." The 19 September 2002 statement further revealed that the appellant had made over 100 such purchases from this particular supplier.

On 26 September 2002, questioning by a Special Agent of the Naval Criminal Investigative Service [NCIS] culminated in a second sworn statement that was admitted during the appellant's court-martial as Prosecution Exhibit 2. On this occasion, the appellant admitted that he witnessed LCpl Penn sell marijuana to other Marines on several occasions. The appellant also admitted that he sold marijuana to a civilian identified only as "J." This particular confession concluded with a second recitation of the events leading up to the 19 September 2002 vehicle search discussed in Prosecution Exhibit 1.

Additional NCIS questioning resulted in a 30 September 2002 confession received by the military judge as Prosecution Exhibit 3. The appellant admitted that he traveled to Alabama several times where he purchased marijuana from his cousin, Cindy Spratling and from a friend by the name of Holstlik. The appellant discussed another trip to Alabama, this time with LCpl Penn, during which they purchased a significant amount of marijuana. This statement also detailed a trip with LCpl Penn to LCpl Penn's hometown of Martinsville, Virginia, to purchase marijuana from LCpl Penn's cousin, Travis.

A final NCIS interrogation resulted in yet a fourth statement, dated 3 October 2002, which was admitted by the military judge as Prosecution Exhibit 4. On this occasion, the appellant described in greater detail how he and LCpl Penn acquired the large amounts of marijuana they later distributed. The appellant explained that he and LCpl Penn purchased marijuana during regular trips to Opelika, Alabama, where they stayed with Ms. Spratling. The appellant provided directions to Ms. Spratling's trailer park, as well as a description of her mobile home.

According to the appellant, other supplies of marijuana were purchased during trips to LCpl Penn's hometown of Martinsville,

Virginia. While in Martinsville, the appellant and LCpl Penn stayed at either the home of LCpl Penn's mother or with Travis. This fourth statement also contained directions of how to get to Martinsville, as well as detailed descriptions of the apartment where Travis resided and the residence of LCpl Penn's mother.

Corroboration of Confessions

In his summary assignment of error, the appellant claims that the military judge erred by admitting Prosecution Exhibits 1 through 4 into evidence due to insufficient corroborating evidence. We disagree.

By way of a pretrial motion, the appellant moved to exclude all four statements pursuant to MILITARY RULE OF EVIDENCE 304(g), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2002 ed.). Specifically, the appellant argued that his confessions were inadmissible because they lacked independent evidence corroborating the essential facts, thus preventing the drawing of any inference as to the truth of facts related in his various statements. After taking witness testimony and hearing arguments on the motion, the military judge denied the motion for exclusion and admitted Prosecution Exhibits 1 through 4. Appellate Exhibit XXV.

Under MIL. R. EVID. 304(g), "[a]n 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* . . . has been introduced that corroborates the essential facts admitted to justify sufficiently an inference of their truth." (Emphasis added). Independent evidence is evidence that is not based on or derived from the appellant's extrajudicial statements. *Opper v. United States*, 348 U.S. 84, 93 (1954). This long-standing principle is one of several mechanisms embedded in the Military Rules of Evidence that guard against the use of false or coerced confessions. *United States v. Arnold*, 61 M.J. 254, 256-57 (C.A.A.F. 2005).

The corroborating evidence need not confirm each element of the charged offense. Nor does this rule even compel the corroboration of the *corpus delicti* of the offense. *United States v. Seay*, 60 M.J. 73, 79 (C.A.A.F. 2004). Instead, only the "essential facts" need be corroborated, and only to the extent necessary to "justify sufficiently an inference of their truth." MIL. R. EVID. 304(g); see *United States v. Melvin*, 26 M.J. 145, 146 (C.M.A. 1988). Finally, although the reliability of the essential facts must be established, they need not be established beyond a reasonable doubt or by a preponderance of the evidence. *United States v. Cottrill*, 45 M.J. 485, 489 (C.A.A.F. 1997). In short, MIL. R. EVID. 304(g) sets forth a very low standard. *Seay*, 60 M.J. at 79.

We agree with the military judge that the Government offered sufficient corroborating evidence in support of Prosecution Exhibits 1 through 4. In Prosecution Exhibit 1, the appellant

stated that he was a regular purchaser of marijuana and had made such a purchase only hours before he made the statement. The Government presented admissible evidence that shortly before the statement was taken, the appellant was found driving LCpl Penn's vehicle, in which marijuana was found.

Prosecution Exhibit 2 contains the appellant's admissions that he knew LCpl Penn routinely sold marijuana to fellow Marines onboard Camp Lejeune, that the appellant himself had sold a considerable amount of marijuana to a civilian, and that the appellant had used marijuana in the past. These admissions were supported by evidence seized during the search of LCpl Penn's vehicle, as well as the association between the appellant and LCpl Penn. Additionally, NCIS conducted a controlled purchase of marijuana from LCpl Penn onboard Camp Lejeune. Further investigation of the appellant's other statements also confirmed specific details establishing that he had access to at least two sources from which he was able to purchase enough marijuana for resale.

Turning to Prosecution Exhibit 3, law enforcement investigations confirmed several aspects of the descriptions provided by the appellant with respect to his and LCpl Penn's marijuana purchasing excursions. Local authorities were able to confirm that persons by the name of Cindy Spratling and Skylar Holstlik lived in Opelika, Alabama, and that these individuals were suspected traffickers/users of controlled substances. Similar investigations confirmed that LCpl Penn's mother and his cousin, Travis, both resided in Martinsville, Virginia.

These same investigations also adequately supported the appellant's fourth confession, Prosecution Exhibit 4. The additional details and descriptions provided by the appellant with respect to the homes of Ms. Spratling, Ms. Penn, and Travis, as well as a physical description of Travis, were all essentially proved accurate when checked by local law enforcement officials.

When measured against the low standard set by MIL. R. EVID. 304(g), the independent evidence offered by the Government adequately corroborated the essential facts of the appellant's four statements. This evidence was more than sufficient to justify an inference as to the truth of the facts related in these statements and, thus, Prosecution Exhibits 1 through 4 were properly received as evidence against the appellant, and support the findings.

Conclusion

Accordingly, we affirm the findings and the sentence, as approved by the convening authority.

Senior Judge CARVER and Judge VOLLENWEIDER concur.

For the Court

R.H. TROIDL
Clerk of Court