

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

U N I T E D	S T A T E S,)	BRIEF ON BEHALF OF APPELLEE
	Appellee)	
)	
	v.)	Crim. App. Dkt. No. 20110503
)	
Specialist (E-4))	USCA Dkt. No. 14-0495/AR
MATTHEW R. ADAMS, JR.,)	
United States Army,)	
Appellant)	

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CORROBORATE, IN ACCORDANCE WITH MILITARY RULE OF
EVIDENCE 304(g), THE ESSENTIAL FACT THAT
APPELLANT TOOK COCAINE.

Statement of Statutory Jurisdiction

The United States Army Court of Criminal Appeals (Army Court) reviewed this case pursuant to Article 66(b), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(b) (2012).¹ This Honorable Court has jurisdiction in "all cases reviewed by a Court of Criminal Appeals in which, upon petition of the

¹ Joint Appendix (JA) 1-5.

accused and on good cause shown, the Court of Appeals for the Armed Forces has granted a review."²

Statement of the Case

A military judge sitting as a general court-martial convicted appellant, contrary to his pleas, of larceny in violation of Article 121, UCMJ.³ The military judge sentenced appellant to be reduced to the grade of E-1, to be confined for 165 days, and to be discharged from the service with a bad-conduct discharge.⁴ The convening authority approved 104 days of the confinement and approved the remainder of the sentence as adjudged.⁵

On January 29, 2014, the Army Court affirmed the findings and sentence.⁶ On September 11, 2014, this Honorable Court granted review.

Summary of Argument

A very slight quantum of evidence corroborates a confession where the quality, rather than the quantity, allows for the inference of the truth of the essential facts of the confession. Independent evidence of the identity of the drug dealer victim Ootz, the existence of the cocaine, the handgun used in the taking, and the locations where the events surrounding the

² Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3) (2012).

³ JA 13-14.

⁴ JA 96.

⁵ JA 121.

⁶ JA 5.

taking occurred corroborate the unique aspects of appellant's confession and buttress the reliability of his confession.

Statement of Facts

The U.S. Army Criminal Investigation Command (CID) at Fort Drum, New York obtained a statement from Specialist DT, in which Specialist DT implicated appellant in the robbery of an individual named Ootz.⁷

CID conducted a source interview of Specialist DT and based on the information that he provided, CID obtained a search authorization for appellant's home.⁸ The search resulted in the collection of a Smith & Wesson .40 caliber handgun and loaded magazines, among other things.⁹

Later that afternoon, Investigator AM, a member of the CID drug suppression team at Fort Drum, interviewed appellant.¹⁰ She read appellant his rights, which he waived, and he agreed to speak with Investigator AM.¹¹ During the interview, appellant admitted that he robbed Ootz and provided the details of the crime in a written sworn statement.¹²

⁷ JA 35. The name of the victim is spelled three different ways in the record. JA 4.

⁸ JA 39-40.

⁹ JA 42-45, 102-06.

¹⁰ JA 48.

¹¹ JA 49-53.

¹² JA 53.

Appellant, along with Specialist DT, hatched a plan to steal an eight ball of cocaine from a dealer named Ootz.¹³ He had previously "ripped [] off" appellant, which "gave [appellant] the idea to rob [Ootz]."¹⁴ Appellant and Specialist DT "met [Ootz] at Wal[-]Mart and had him drive over to the Microtel where [they] got in [Ootz's] car."¹⁵ Appellant "pulled [his] gun out and [Specialist DT] grabbed the cocaine."¹⁶ Appellant told Ootz not to rip him off again and "waived [sic] [the gun] around quick."¹⁷ Appellant stated that he committed the robbery with an "S&W [.]40 cal sigma."¹⁸

Special Agent SV of Fort Drum CID testified about an ongoing investigation of "Matthew Outs."¹⁹ Neither appellant nor SPC DT knew Ootz's first name.²⁰ Special Agent SV looked through open case files, but did not examine the confession of appellant.²¹ Further investigation revealed that Ootz, a former soldier and current "drug dealer in the local area," had fallen victim to a recent robbery.²² Defense counsel posed no objection to this testimony.²³

¹³ JA 55, 97.

¹⁴ JA 55, 97.

¹⁵ JA 97.

¹⁶ JA 97.

¹⁷ JA 98-99.

¹⁸ JA 99.

¹⁹ JA 72.

²⁰ JA 111-118.

²¹ JA 72.

²² JA 72.

²³ JA 72.

When the government began to elicit testimony from Special Agent SV regarding "this case," the defense counsel objected on hearsay and cumulative grounds.²⁴ The judge sustained the objection.²⁵ Special Agent SV then verified that there is a Wal-Mart with a Microtel across the street just outside the gate of Fort Drum.²⁶

The government offered appellant's confession into evidence.²⁷ Defense counsel objected for a lack of corroboration.²⁸ The judge overruled the defense objection and allowed portions of the confession into evidence.²⁹

The judge found that "in his confession, [appellant] admitted to pulling a gun and grabbing cocaine from an individual named O[otz] on 28 February 2011. He indicated that he met O[otz] at Wal[-]Mart, and then proceeded to Microtel."³⁰ The judge further found that Investigator AM found "a Smith & Wesson .40 caliber hand gun and two loaded magazines . . ." in the home of appellant which matched the handgun ("S&W [.]40 cal.") in appellant's confession.³¹ The judge concluded that the items found during the search (handgun and magazines) as well as the testimony about the locations of Wal-Mart and Microtel were

²⁴ JA 73.

²⁵ JA 73.

²⁶ JA 73-75.

²⁷ JA 57.

²⁸ JA 57.

²⁹ JA 88-94.

³⁰ JA 91-92.

³¹ JA 92.

sufficient to meet the "slight corroboration required by the rule and case law."³²

The judge acquitted appellant of all the charged offenses, but convicted appellant of a lesser-included offense of larceny in violation of Article 121, Uniform Code of Military Justice.³³ The government charged robbery under the theory of putting the victim, Ootz, in fear as opposed to the theory of using force, violence, or force and violence to accomplish the robbery.³⁴

Those additional facts necessary for disposition of the granted issue are contained in the argument below.

Standard of Review

A judge's finding that sufficient corroboration exists to admit a confession is reviewed for abuse of discretion.³⁵ "A military judge abuses his discretion when his findings of fact are clearly erroneous, when he is incorrect about the applicable law, or when he improperly applies the law."³⁶

Argument

A. Corroboration of a confession establishes the confession's trustworthiness

Judicial experience with confessions necessitates additional guarantees of reliability beyond just a determination

³² JA 92.

³³ JA 14.

³⁴ JA 95; *Manual for Courts-Martial* (2008 ed.), pt. IV, ¶ 47.b.(3) [hereinafter *MCM*].

³⁵ *United States v. Seay*, 60 M.J. 73, 77 (C.A.A.F. 2004).

³⁶ *Id.* (quoting *United States v. Roberts*, 59 M.J. 323, 326 (C.A.A.F. 2004)).

of voluntariness.³⁷ Courts must ensure that a confession "extracted from one who is under the pressure of a police investigation" is "a clear reflection of his past" rather than the "strain and confusion" of his predicament.³⁸ Compliance with the corroboration requirement ensures the trustworthiness of the confession.³⁹

B. The government need only provide very slight corroboration to infer the truth of the essential facts of the confession

The corroboration requirement "does not necessitate independent evidence of all the elements of an offense or even the *corpus delicti* of the confessed offense."⁴⁰ "[T]he 'corpus delicti' corroboration rule no longer exists."⁴¹ Rather "a confession is corroborated when independent evidence supports [the confession's] truthfulness or reliability."⁴²

"[W]hile the reliability of the essential facts must be established, it need not be done beyond a reasonable doubt or by a preponderance of the evidence."⁴³ In fact, the quantum of evidence needed to infer the truth of the essential facts is very low.⁴⁴ "Considering the language of [Military Rule of

³⁷ *Smith v. United States*, 348 U.S. 147, 153 (1954).

³⁸ *Id.*

³⁹ *United States v. Rounds*, 30 M.J. 76, 80 (C.M.A. 1990).

⁴⁰ *United States v. Cottrill*, 45 M.J. 485, 489 (C.A.A.F. 1997) (citing *United States v. Maio*, 34 M.J. 215, 218 (C.M.A. 1992)).

⁴¹ *Maio*, 34 M.J. at 218 (C.M.A. 1992) (citing *United States v. Kerley*, 838 F.2d 932, 939-40 (7th Cir. 1988)).

⁴² *United States v. Melvin*, 26 M.J. 145, 146 (C.M.A. 1988) (citation omitted).

⁴³ *Seay*, 60 M.J. at 79 (citing *Cottrill*, 45 M.J. at 489).

⁴⁴ *Id.* at 80.

Evidence] 304 (g)(1), we also conclude that the amount needed in military courts may be very slight."⁴⁵

C. The military judge properly admitted appellant's confession because the government presented quality corroboration of the unique aspects of the confession

"The quantity and quality" of corroborating evidence determines the admissibility of the confession.⁴⁶ "While the quantity of the independent evidence need only be 'slight' . . . the quality of that evidence is the more critical focus as to the confession's reliability and, thus, admissibility."⁴⁷

United States v. Faciane included a large quantity of corroborating evidence, but it lacked the quality to sufficiently corroborate the appellant's confession.⁴⁸ In *Faciane*, the appellant confessed to "touching his daughter's vaginal area on three occasions."⁴⁹ The corroboration offered⁵⁰ by the government included testimony from the victim's mother that the victim would (1) wet the bed, (2) have nightmares, (3) refuse to eat, (4) be withdrawn after visiting appellant, (5) be angry, (6) throw toys, (7) not relax at bedtime, (8) hide under

⁴⁵ *Melvin*, 26 M.J. at 146.

⁴⁶ *Maio*, 34 M.J. at 223 (Wiss, J., concurring) (citing *Smith*, 348 U.S. 147 and *Opfer v. United States*, 348 U.S. 84 (1954)).

⁴⁷ *Id.*

⁴⁸ See *United States v. Faciane*, 40 M.J. 399 (C.M.A. 1994)

⁴⁹ *Id.* at 402.

⁵⁰ The government offered additional corroboration through "a member of the Child Protective Committee" who interviewed the child victim, but the Court of Military Appeals found her testimony to be inadmissible. *Id.* at 401-03.

her bed and cry, and (9) insert a toothbrush into her vagina.⁵¹ The government also offered testimony from the victim's daycare worker that the victim (1) was shy, (2) would cry when separated from one parent to the other, (3) was angry, (4) would fight with other children, (5) would throw food, (6) was afraid to go to bed, (7) showed interest in changing diapers, (8) hid in the closet at bedtime, and (9) refused to eat and go to the bathroom.⁵² The court explained that the mother and daycare worker "certainly described a troubled child," but it found their testimony insufficient corroboration.⁵³

In *Faciane*, the government's case included approximately twenty different snippets of testimony from two witnesses that arguably corroborated, to some degree, the confession of the appellant to sexually abusing his daughter.⁵⁴ Based upon the holding of the court, these pieces of evidence may have been consistent with the appellant's confession, but they lacked the unique quality to independently corroborate.⁵⁵

In appellant's case before this court, on the other hand, the government corroborated the victim of the taking (Ootz), the means of the taking (handgun), the location of the taking (Wal-

⁵¹ *Id.* at 400.

⁵² *Id.* at 400-01.

⁵³ *Id.* at 403.

⁵⁴ *See id.* at 400-03.

⁵⁵ *See id.* at 403.

Mart and Microtel), and circumstantially the object of the taking (cocaine).

1. The known drug dealer, Ootz, possessed cocaine

The oddly-named and known dealer in drugs, Ootz, confirms the veracity of appellant's confession to robbing Ootz who previously ripped off appellant during a drug deal.⁵⁶ CID, independent of both appellant and Specialist DT, identified "Matthew O[otz]" as an area drug dealer who had been robbed.⁵⁷

Special Agent SV explained the ongoing investigation of "Matthew O[otz]."⁵⁸ Special Agent SV looked through open case files, but did not examine the confession of appellant and determined that Ootz, a former soldier and current "drug dealer in the local area," had fallen victim to a recent robbery.⁵⁹ Appellant made no objection to this evidence.⁶⁰

⁵⁶ JA 55, 97; See *Melvin*, 26 M.J. at 146-47 (considering the appellant's association with a known drug dealer to corroborate his confession to using heroin over a four-month period of time).

⁵⁷ JA 35, 37, 72, 111-118. Investigator AM identified Ootz by the first name "Timothy." JA 55.

⁵⁸ JA 72.

⁵⁹ JA 72. Master Sergeant CV verified that Ootz was a former soldier. JA 79.

⁶⁰ Appellant's "[f]ailure to object to the admission of evidence at trial forfeits appellate review of the issue absent plain error." *United States v. Eslinger*, 70 M.J. 193, 197-98 (C.A.A.F. 2011) (citations omitted). Without objection, the court had no opportunity to correct any possible error. *United States v. Knapp*, 73 M.J. 33, 36 (C.A.A.F. 2014). "[A]dmission of hearsay will not be error unless there is an objection to the hearsay." MCM, Military Rule of Evidence 802, analysis at A22-53. Even if Special Agent SV relied on hearsay or her testimony amounted to inadmissible hearsay, the lack of objection from appellant at trial renders her testimony evidence before the court-martial and evidence properly considered on appellate review.

Ootz is an "uncommon" name, as found by the Army Court.⁶¹ The fact that the name is spelled several different ways and presumably pronounced differently by witnesses further supports a finding of uniqueness.⁶² Ootz also possessed the distinguishing characteristic of a known drug dealer in the Fort Drum area.⁶³ The identification of Ootz as a drug dealer is qualitatively different than the identification of individuals who had "been involved in the use of drugs" at the Thanksgiving party in *Rounds*.⁶⁴ The Thanksgiving party corroboration gave no indication that the party-goers would have the slightest inclination to share drugs with the appellant.⁶⁵ A drug dealer allows the greater inference for the presence of drugs than does users, like in *Rounds*.

The Air Force Court of Military Review found corroboration adequate for a confession to buying and using crack from the location of the confessed sale and the description of the dealer.⁶⁶ The description of a man "known to local law enforcement authorities as frequently engaged in selling crack cocaine at the apartment house complex . . ." matched the

⁶¹ JA 5.

⁶² See JA 4.

⁶³ JA 5, 37, 72.

⁶⁴ *Rounds*, 30 M.J. at 79-80.

⁶⁵ See *id.* at 77-80.

⁶⁶ *United States v. McCastle*, 40 M.J. 763, 764-65 (A.F.C.M.R. 1994).

appellant's confession.⁶⁷ This court affirmed the Air Force Court's decision.⁶⁸ Similarly, Ootz's distinguishing name and status as a drug dealer provides particular corroboration of appellant's confession to a theft of cocaine from Ootz.

Defense counsel also elicited testimony from Investigator AM corroborating the existence of the cocaine.⁶⁹ Defense counsel confirmed with Investigator AM that "an informant [] had told [Investigator AM] about some drugs and firearms inside" appellant's house.⁷⁰ Defense counsel also verified that the informant mentioned "the use of cocaine"⁷¹

The drug dealer named Ootz, who was a recent victim of a theft, and the information from the informant solicited by defense counsel, corroborate appellant's confession to stealing cocaine from a drug dealer named Ootz.

2. CID found the handgun used by appellant four days after the larceny

The handgun corroborates the precise means by which appellant accomplished the larceny and the handgun's return onto Fort Drum after the completion of the larceny. Appellant confessed to using his Smith and Wesson .40 caliber handgun and

⁶⁷ *Id.*

⁶⁸ *United States v. McCastle*, 43 M.J. 438 (C.A.A.F. 1996).

⁶⁹ Supplemental Joint Appendix (SJA) at 1.

⁷⁰ SJA 1.

⁷¹ SJA 1.

returning to Fort Drum with it in his pants.⁷² The Smith and Wesson .40 caliber handgun described in appellant's confession matches the one found in his home four days after the larceny.⁷³ The quality of this corroboration stems from the exactness of the match.

3. Appellant's specific instructions that Ootz proceeded from Wal-Mart to Microtel matches the locations of these two businesses outside Fort Drum

The location of Wal-Mart and Microtel corroborates appellant's explanation of the preparatory steps to choose the precise location for the robbery. Appellant and his accomplice instructed Ootz to drive over to Microtel.⁷⁴ Neither the record nor appellant's confession explicitly state a reason or purpose for the change in location, but circumstantially the Microtel must have proven a better location for the commission of the larceny or a drug deal. As such, the fact that both businesses exist in close proximity provides quality corroboration.

The evidence goes above and beyond the "very slight" threshold of corroboration required by Military Rule of Evidence 304(g).⁷⁵

⁷² JA 99.

⁷³ JA 5, 92, 99, 102-03.

⁷⁴ JA 97.

⁷⁵ *Id.* at 146 (citation omitted).

D. Corroboration of the existence of the cocaine and the actual taking is not required

Authorities learned of the larceny days after it occurred and days after the consumption of the stolen cocaine.⁷⁶ Based on the facts of this case, there is a reasonable inference that the government could not bring the stolen cocaine into court.⁷⁷ As such, the corroboration of the cocaine came through circumstantial evidence due to the perishable nature of the stolen property, the fact that they stole from a known dealer, and the informant's confirmation of the presence of cocaine.⁷⁸

Even if the stolen item is not a perishable good, direct corroboration of its existence may not be required. In *Seay*, this court found sufficient corroboration of the confession to stealing a wallet even without direct evidence of an actual wallet.⁷⁹ The court-martial convicted the appellant of conspiracy, premeditated murder, larceny, and kidnapping.⁸⁰ The appellant argued that the government failed to corroborate his confession, as it related to the charge of larceny of the victim's wallet.⁸¹ The appellant essentially argued that because

⁷⁶ JA 97.

⁷⁷ JA 97.

⁷⁸ JA 72; SJA 1.

⁷⁹ 60 M.J. at 79-80.

⁸⁰ *Id.* at 74.

⁸¹ *Id.* at 79.

CID never found a wallet, his confession lacked sufficient corroboration.⁸²

The appellant confessed and "gave a detailed narrative of the murder."⁸³ The appellant and his accomplice murdered the victim by stabbing him in the neck and chest.⁸⁴ They fled the scene, leaving the victim's body in a field but returned a few days later to take the victim's wallet.⁸⁵ They took the money out of the wallet and appellant thought the wallet got tossed out of the vehicle as they drove down the road.⁸⁶

This court found the confession corroborated by the following facts: (1) appellant knew the victim; (2) the victim died as a result of foul play; (3) the body was found in a concealed place; and (4) the body did not have a wallet.⁸⁷ This court explained that "[i]t is not necessary for the [fact-finder] to conclude that [the victim] carried a wallet."⁸⁸ Notably absent from the list of sufficient corroboration is anything that directly corroborates the existence of the object of the larceny or that the appellant took it.

Appellant's case has more compelling corroboration than Seay. Finding that a known drug dealer possessed drugs is more

⁸² *Id.*

⁸³ *Id.* at 76.

⁸⁴ *Id.* at 75.

⁸⁵ *Id.*

⁸⁶ *Id.* at 79.

⁸⁷ *Id.* at 80.

⁸⁸ *Id.*

logical than finding that a soldier carried a wallet. Unlike Seay, which lacked independent evidence from which to infer the existence of a wallet, the independent CID investigation identifying Ootz as a drug dealer begs the inference that he possessed a drug - cocaine.⁸⁹

Even though the corroboration rule does not require independent evidence that a larceny victim possessed the stolen item, the government offered evidence to corroborate Ootz's possession of cocaine.⁹⁰ The CID investigation revealed that Ootz, a current "drug dealer in the local area," had fallen victim to a recent robbery and defense counsel confirmed the presence of cocaine.⁹¹

E. The corroboration shows that the military judge did not abuse his discretion in admitting appellant's confession into evidence

The independent confirmation of the existence of the known drug dealer named Ootz, the cocaine, appellant's Smith and Wesson .40 caliber handgun, and the locations of Wal-Mart and Microtel allowed the military judge or any reasonable fact-finder to infer the truth of the essential facts of appellant's confession. The military judge did not abuse his discretion when he properly admitted the confession into evidence.

⁸⁹ Seay, 60 M.J. at 82 (Erdmann, J., dissenting).

⁹⁰ JA 72; See Seay, 60 M.J. at 80.

⁹¹ JA 72; SJA 1.

Conclusion

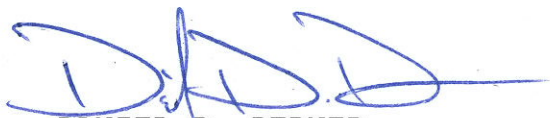
WHEREFORE, the Government respectfully requests that this Honorable Court affirm the decision of the Army Court and grant appellant no relief.



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CERTIFICATE OF COMPLIANCE WITH RULE 24(d)

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November 12, 2014

CERTIFICATE OF FILING AND SERVICE

I certify that the foregoing brief on behalf of appellant was electronically filed with the Court to efiling@armfor.uscourts.gov on November 12, 2014, and contemporaneously served electronically on appellate defense counsel, Captain Nicholas J. Larson at Nicholas.j.larson2.mil@mail.mil.

A handwritten signature in black ink, appearing to read 'Daniel Mann', with a long horizontal line extending to the right.

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