

Sailor: Tea, Not Drugs, Made Me Pop Positive

They weren't really doing lines of cocaine — they were just drinking some herbal tea.

That's what Air Traffic Controllers 2nd Class Javier Trevino and Sean Lee claimed after both popped positive for cocaine during random drug tests last summer.

That defense worked for Lee, who was cleared by a military jury Monday and is now back at work at Naval Station Mayport, Fla.

Trevino, however, wasn't so lucky.

A separate jury at a special court-martial convicted Trevino on Nov. 26 of wrongful use of cocaine. The 31-year-old married father of three received 45 days' restriction, 45 days' hard labor and will likely get kicked out of the Navy. He began his restriction Jan. 10.

The unusual cases hinged on an obscure herbal brew known as mate de coca tea, which is made with coca plant leaves.

Popular in South America, the tea has no euphoric effects but contains traces of the same metabolites found in cocaine. It is legal to purchase in the U.S. but is considered a banned substance by the military.

"I always thought of cocaine in white-powdered form, where you get it and snort it. I never, ever thought it would be in an herbal tea," Trevino said in a telephone interview Tuesday.

Trevino told the jury he first got the mate de coca tea from an old friend while visiting his hometown of San Antonio. The friend, he said, gave him a Ziploc bag full of tea bags with Spanish-language labels that Trevino could not read. Trevino said he liked the tea and brought it back to Mayport.

Trevino shared some of the tea with Lee and others, including his own 11-year-old son. Lee drank the tea at Trevino's home during the July 4 holiday weekend. Lee said he even took some home to share with his pregnant wife. After the holiday weekend, their aviation operations unit was called in for a routine drug screen.

Both Trevino and Lee refused a non-judicial punishment and opted to take their case before a jury at a special court-martial. Military and medical officials are skeptical of the tea excuse.

"In our hospital, if somebody tests positive to cocaine and tries to use that defense, I demand that they show us that kind of tea bag and I analyze it to show that they are not lying," said Dr. Amitava Dasgupta, a toxicology expert at the University of Texas.

"He could have 'Googled' that information from somewhere and now he could be lying. How do I know?" Dasgupta said. The military tested the tea Trevino provided and found it to have 7.8 milligrams of cocaine, a level military officials said could trigger a positive test result up to 29 hours after ingestion.

Some drug tests show large amounts of cocaine consumption that would make mate de coca

tea a completely unbelievable explanation. But Trevino and Lee both showed only trace amounts of cocaine in their urinalysis, evidence that supported their claim.

The key issue at the trials was whether Trevino and Lee “knowingly” consumed cocaine. It may have been in the form of tea, but the sailors knew it was cocaine, the prosecutor in both cases said.

After the jury found Trevino guilty in November, the judge made a rare on-the-record statement disagreeing with the finding. The panel included two officers and one chief. The judge, Marine Col. William Rapp, said the convening authority should disapprove the guilty finding because “real doubt exists about the element of knowledge.”

“The innocent ingestion evidence that was put forward by the defense was extremely credible, quite believable, and in and of itself worthy of a not-guilty finding,” Rapp said, according to the record of trial.

Nevertheless, the case’s convening authority, Capt. Aaron Bowman, commander of Naval Station Mayport, formally approved the jury’s verdict Jan. 9.

Lee’s special court-martial ended Monday, when a panel of five jurors found the petty officer not guilty of taking cocaine. Bowman is the convening authority in both cases. He could reconsider Trevino’s punishment in light of Lee’s verdict.

Lt. Cmdr. Janelle Beal, the chief legal consult for the command, said Wednesday that she could not comment on Trevino’s case because the administrative separation board proceedings are pending.

Different verdicts and sentences for essentially the same case are not uncommon.

“That happens all the time in the military, and it happens all the time in the civilian courts. No two facts are the same. No two witnesses are the same,” said Greg Rinckey, an attorney in Albany, N.Y., and a former Army lawyer who tried a similar case several years ago. In Rinckey’s case, an Army captain from Peru drank a tea his grandmother gave him. The captain was acquitted.

The Navy faced a similar case in 2005. Gas Turbine System Technician (Electrical) 3rd Class Juan Santa Cruz, an 11-year veteran assigned to the San Diego-based frigate *Curts*, was busted down one rank through non-judicial punishment. He has since left the Navy.

All sailors who test positive on a urinalysis are processed for potential separation. Under the Navy’s “zero tolerance” policy, failing a drug test for cocaine is grounds for dismissal. Trevino thinks he’s been wrongly condemned by what he claims is the Navy’s overzealous culture of drug abuse prevention.

“I guess the jurors are just trying to protect the credibility of the Navy’s drug policy. It seemed like from day one in the Navy, we’re taught ‘zero tolerance, zero tolerance, zero tolerance.’ If you get caught, you are guilty. That is the thinking that got me convicted.”

Trevino expects to have to fight to keep his air traffic controller’s license with the Federal Aviation Administration, which he’ll depend on for a post-Navy job.

“I don’t want to have my career thrown away because I was made an example.”