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Herbal tea jeopardizes sailor's future

Air-traffic controller fails drug test, convicted in court-martial

By Timothy J. Gibbons Story updated at 6:06 AM on Saturday, Jan. 10, 2009

Navy Petty Officer 2nd Class Javier Trevino blames herbal tea for his court-martial conviction.

There's nothing like a nice cup of tea to relax, Navy Petty Officer 2nd Class Javier Trevino used to think.

Particularly herbal tea — no caffeine to get his hands shaking while he was working as an air traffic controller in Mayport Naval Station or to keep him awake at night.

So he was pretty amiable when a friend he was visiting last May in San Antonio offered him some herbal tea from Mexico. It was pretty good, Trevino remembers, kind of grassy tasting — good enough to bring back home, share with his 11-year-old son and best friend's pregnant wife.

Not good enough, though, to put his entire career in jeopardy, possibly getting him drummed out of the Navy or tossed in jail.

That herbal tea was mate de coca, a beverage made from the plant leaves that are used to make cocaine.

Although it appears to be legal in the United States, it shows up on a drug test as cocaine — which is what happened to Trevino when he was pulled in for a random test at the Mayport base in July.

Trevino's life since then has been a roller coaster of legal fights and research as he tries to clear his name.

On Monday, having been convicted at a court-martial late last year, he will begin 45 days of restricted duty and faces not only a discharge from the Navy but loss of his air traffic controller's license. This is the first time he's failed one of the estimated dozen drug tests he's received, and his record is otherwise clean.



“I didn’t know there was a tea made from a coke leaf,” he said, tearing up as he discussed his case Thursday. “I didn’t know that even existed. It has a cup of tea on the package, not a line of cocaine.”

Trevino has been in the Navy for about four years, stationed in Mayport for most of that time. He’d been in the reserves but signed up for active duty after being laid off from his computer job in the civilian world.

Stumbling into the air traffic control rating was one of the best things that happened to him, he said.

“I love going to work,” he said. “Now they’re taking it away from me.”

Although he’d wrestled with the idea of re-upping when his enlistment runs out this year, the idea of providing stability for his wife and three children won out over seeing the world on a brand-new amphibious assault ship, a job he had initially requested.

On a fishing trip over the July 4th weekend, a fellow air traffic controller who had recently got out was singing the praises of the civilian sector, and that sealed the deal.

When he got back from the trip, he and the rest of his unit were brought in for the drug test, a regular occurrence after holiday weekends. That morning, he had enjoyed a cup of the mate de coca before heading to work.

Trevino had brought a handful of the tea bags back from Texas and drank it along with other teas he enjoys, sometimes making it hot, sometimes iced. Along the way, he shared it with friends and neighbors, several of whom testified on his behalf at his court-martial, one of whom — a fellow air traffic controller — will be court-martialed himself beginning Monday.

Never, he said, did he think the beverage might make him fail a drug test.

“I’m not an uneducated guy,” Trevino said. “I just don’t speak Spanish.”

Trevino’s claims of ignorance are credible, said the judge at his court-martial.

Based on the military legal code, the judge was barred from issuing the equivalent of a civilian directed verdict, in which he would tell the jury how to decide the case.

However, according to a record of the trial, the judge doubted that Trevino had acted with sufficient knowledge to make him guilty.

“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,” said William Rapp, an attorney and colonel in the Marine Corps Reserves who served as judge.

The judge then requested the commanding officer toss out the verdict, or at least suspend the sentence for a year.

Rapp did not return messages left at his office Friday.

His statement, though, was “unusual,” said his attorney, Lt. Deborah Loomis, as was the punishment handed down by the three-person jury: 45 days of restricted duty and forfeiture of \$2,400.

“It was a lenient punishment,” Loomis said, although she declined to “get into the minds of the jurors” and discuss what that leniency might mean.

Trevino’s commanding officer, Capt. Aaron Bowman, made that punishment even more lenient: Although he upheld the findings of the court-martial and the restricted duty, he dismissed the forfeiture of pay.

Rapp’s statement should carry weight, both with the commanding officer and the appeals board, said Greg Rinckey, an attorney in Albany, N.Y., who specializes in military law and has defended soldiers on similar charges. “That’s a defense attorney’s dream. It has to be a knowing violation.”

Coca leaves typically contain less than 1 percent cocaine, and are widely chewed or made into tea throughout the central Andean region.

The particular bags used by Trevino can be bought directly from Windsor, the company that makes them, for \$15 for 100.

“Retrieved from the coca leaf, the infusion of coca is an excellent diuretic and digestive ideal against altitude sickness, because it improves oxygenation of the organism,” the company’s catalog says. “Very comforted after meals to help better digestion.”

The same product is available for \$21 on Amazon, among an array of coca leaf-derived products.

The cocaine in the leaves must be removed to make it legal in the United States, a process known as decocainization, but just as decaffeinated coffee contains a small amount of caffeine, so too is a small amount of cocaine left in tea.

The leaves used to make the tea Trevino drank did contain cocaine, said Naresh Jain, director of National Toxicology Laboratories Inc. in Bakersfield, Calif., which tested the product.

Jain, who testified in Trevino’s trial, found 4.8 milligrams of cocaine in the tea bag.

A similar test done by the military found 7.8 milligrams, a level the Armed Forces Institute of Pathology said could result in a failed drug test 29 hours after drinking a cup of the tea.

The prosecution never presented evidence that Trevino used cocaine in any form other than drinking the tea, but argued that he did so knowing it contained cocaine.

Jain, who has served as an expert witness for the government in other drug cases, said he was surprised Trevino was convicted.

“If you believe the guy took it thinking it was decocainized, he did not think he was taking cocaine,” he said.

Trevino has turned into a mate de coca expert in the past six months, learning things that he thinks he should have been told long ago.

Over the next few months he’ll go before an administrative separation board, which will decide if he should be discharged and, if so, what type of discharge. The Federal Aviation Administration will also decide if he’ll be allowed to keep his air traffic controller’s license, without which his dreams of a civilian career are dashed.

Both of those decisions, as well as his conviction, are appealable, a route Trevino said he plans to take depending on what happens.

The one thing he does know he’ll be doing, though, is making sure other sailors know about the dangers of mate de coca.

“The Navy should educate their sailors,” he said. “Maybe God put me here to be an advocate for the next guy.”