

**DEPARTMENT OF THE NAVY
GENERAL COURT-MARTIAL
WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY**

| | | |
|---------------------|---|----------------------------|
| UNITED STATES |) | |
| |) | |
| |) | |
| v. |) | DEFENSE MOTION TO SUPPRESS |
| |) | |
| |) | M.R.E. 311, 315 |
| AARON V. WYLDE |) | |
| PRIVATE FIRST CLASS |) | 30 AUG 2010 |
| U.S. MARINE CORPS |) | |
| |) | |

1. Nature of Motion.

This is a defense motion for a ruling on the admission of evidence pursuant to Military Rules of Evidence (M.R.E.) 311 and 315. Pursuant to M.R.E. 311, the defense respectfully requests that all evidence discovered in the search of PFC Wylde’s assault pack be suppressed. The Defense further requests suppression of all statements and testimony from the investigators who searched PFC Wylde’s room regarding what was found in his assault pack. Finally, the Defense requests suppression of the statement taken by CID from PFC Wylde and suppression of testimony at trial from LCpl Wiley and LCpl Logsdon regarding PFC Wylde’s involvement with Spice. In the alternative, the Defense seeks to suppress all the aforementioned evidence pursuant to M.R.E. 315.

2. Summary of Facts.

a. The accused is charged with five specifications under Article 92 of the Uniform Code of Military Justice (UCMJ) for violations of two general orders. One specification alleges a violation of Marine Corps Air Station Miramar Order 5300.1, to wit: wrongfully possessing the prohibited substance “Spice.” The other four specifications allege violations of Marine Corps Forces, Pacific Order 5355.2, to wit: wrongfully possessing “Spice” with an intent

to distribute, wrongfully using "Spice", wrongfully distributing "Spice" to LCpl Logsdon, and wrongfully distributing "Spice" to LCpl Wiley. The accused is also charged with three specifications under Article 134 of the UCMJ, to wit: wrongfully possessing brass knuckles, wrongfully manufacturing "Spice", wrongfully distributing "Spice" to an unknown "smoke shop", and wrongfully introducing "Spice" onto an aircraft used by or under the control of the armed forces, with the conduct forming the basis to all specifications alleged as prejudicial to good order and discipline.

b. The Government alleges that on 4 May 2010, between approximately 0935 and 0945, LCpl Michael D. Wiley was observed crawling on the ground aboard Naval Air Station Fallon. It is further alleged that he was breathing heavily, that he had a rapid pulse rate, and that he was foaming at the mouth.

c. LCpl Wiley and the Accused shared the barracks room #6483 of building #475 aboard NAS Fallon. A key was acquired to the room by several patrolmen who later claimed that they were searching the room to see if LCpl Wiley had any medication that was possibly needed. They entered without authorization by a commander, an analogue to a commander (as contemplated by M.R.E. 315(d)(1)), a military judge or magistrate. According to one investigator's notes, a search of the room began at 1001. (See Enclosure 1).

d. During the search of the room, the investigators opened and went through a standard-issue Marine Corps assault pack clearly marked with the name "Wylde" (Enclosure 2) when there two assault packs were in plain sight (Enclosure 3). This assault pack belonged to PFC Wylde. While looking through PFC Wylde's assault pack, the investigators found a "green leafy substance." After finding the green leafy substance, the investigators immediately ceased the search and exited the room.

e. Based on the search, Investigator James Williams, Criminal Investigation Division, NAS Fallon, signed an Affidavit for Search Authorization. This affidavit included a portion where the affiant is to provide “the facts and circumstances known to me to establish the foregoing grounds for authorization to search and seize.” Investigator Williams wrote in an attachment to the statement, “A clear plastic bag containing an unknown green leafy substances was discovered and a set of brass knuckles. The Unknown green leafy substance is believed to be a controlled substance known to be Salvia/Spice.”

f. Based on Investigator Williams’s affidavit, a Command Authorization for Search and Seizure for the barracks room shared by LCpl Wiley and the Accused was issued by the Commanding Officer of NAS Fallon. CID began its search at 1031. In the course of the investigation, the investigators went through PFC Wylde’s assault pack. They also went through the pages of a personal notebook that they found in the assault pack. Based on this search, the investigators seized all the items listed in Enclosure 4. In addition, the search prompted a criminal investigation in which LCpl Wiley, LCpl Logsdon, and PFC Wylde were interviewed.

g. During the time the search was being conducted, PFC Wylde was interviewed by a patrolman. He gave no incriminating statements. (Enclosure 5).

h. After the search was conducted, PFC Wylde was questioned again by CID. This statement was self-incriminating. Moreover, CID then questioned LCpl Wiley specifically about PFC Wylde and his involvement with “Spice” use and distribution. LCpl Wiley gave a statement that incriminates PFC Wylde. Finally, LCpl Wiley’s statement mentioned LCpl Logsdon, who theretofore had not been a person of interest for CID. CID then interviewed LCpl Logsdon, who also gave a statement incriminating PFC Wylde.

3. Discussion.

A. PFC Wyld had a reasonable expectation of privacy from government intrusion in an assault pack that was stored in his secured living area.

The Fourth Amendment protects against illegal search and seizures by government officials. Historically rooted in the Founding Fathers' reaction to abuse of power during colonial times, the protection against unlawful search and seizure has blossomed steadily. It has expanded beyond protecting intrusions into personal property and into protecting intrusions where citizens have a reasonable expectation of privacy. *Katz v. United States*, 389 U.S. 347 (1967).

The Fourth Amendment's protections expand to the military. M.R.E. 311; *U.S. v. Thatcher*, 28 MJ 20 (C.M.A., 1989)(stating, "It is a time honored precedent of this Court that a servicemember has protection against unreasonable search and seizures."); *U.S. v. Middleton*, 10 M.J. 123 (C.M.A., 1981)("While certain protections have been deemed inapplicable, neither this Court nor the Supreme Court has ever held that the Fourth Amendment does not shield the American servicemember. Indeed, the opposite is true.")(quoting *U.S. v. Ezell*, 6 M.J. 307, 313 (C.M.A., 1979)). M.R.E. 311 states that evidence obtained as a result of an unlawful search or seizure made by a person acting in a government capacity is inadmissible if the accused makes a timely motion to suppress and if the accused had a reasonable expectation of privacy in the place searched. A search and seizure is unlawful if it is conducted by military personnel or other agents of the United States. M.R.E. 311(c). A motion is timely if made by the Defense prior to submission of a plea. M.R.E. 311(d)(2).

The question of what constitutes a "reasonable expectation of privacy" has been visited regularly by the military courts. Whether a person had a reasonable expectation of privacy is driven by the facts and circumstances at the time of the search. In examining Fourth Amendment

privacy interests, the courts look to first whether the individual had a subjective expectation of privacy; if so, the courts then examine whether the expectation is one that is objectively reasonable. *U.S. v. Long*, 64 M.J. 57 (C.A.A.F., 2006). *U.S. v. Monroe*, 52 M.J. 326, 330 (C.A.A.F., 2000).

A person has a reasonable expectation of privacy from government intrusion into his personal “effects.” *Bond v. U.S.*, 529 U.S. 334 (2000). In *Bond*, a border patrol agent boarded a bus to conduct an inspection on the immigration status of the passengers. During the course of the investigation, he squeezed the soft luggage which passengers had stowed in the overhead storage space. In so doing, he felt a brick-like object in the Defendant’s luggage, and after obtaining the Defendant’s consent, he opened the bag and found drugs. The Court found that the agent’s physical examination of the bag amounted to an improper search of an object in which the defendant had a reasonable expectation of privacy. The court found that the Defendant had an intent to keep the contents of the bag private due to the bag’s opaqueness. The Court rejected the Government’s argument that by exposing his bag to the public, the Defendant lost his reasonable expectation that the bag would not be physically manipulated. *Id.* at 1462. The Court reached this decision despite acknowledging that the bus passengers will expect their luggage to be handled by bus employees and noting that citizens still can expect to not have their personal effects handled in an “exploratory” manner. *Id.*

In *U.S. v. Carter*, 1 M.J. 318 (C.M.A., 1976), the court found reversible error where the trial judge did not suppress the evidence found within a bag that had been stapled shut by the accused and was later opened by a concerned non-commissioned officer. In so deciding, the court distinguished an earlier decision in which it found that there was no reasonable expectation of privacy where a package was not being lawfully stored (*U.S. v. Torres*, 46 C.M.R. 96 (1973)).

Notably, the *Carter* court further determined that admissions from the accused which were derivative of the unlawful search should also be suppressed. *Carter* at 320.

The *Carter* and *Bond* decisions demonstrate that citizens – including servicemembers – have a reasonable expectation of privacy from government intrusion in personal effects stored in nonpublic places. Additionally, the exceptions prove the rule: in cases where the Defendants entrusted their personal effects with others or left them unsecured, the courts have reached different results. *See U.S. v. Miller*, 13 M.J. 75 (C.M.A. 1982)(no reasonable expectation of privacy inside a jacket in an unsecured, unattended automobile that belonged to someone other than the accused); *See U.S. v. Sanford*, 12 M.J. 170 (C.M.A. 1981)(Fourth Amendment rights not violated where accused gave a leather pouch containing drugs to another on his way to see an officer and said, “Hold this for me.”)

Here, PFC Wylde had a reasonable expectation of privacy with the contents stored in his assault pack. The package was stored lawfully as in *Carter*; indeed, he had gone a step further than the appellant in that case by storing it in his living quarters. Had the assault pack had been left out an open area, the Government’s case for the admissibility of evidence found therein would be significantly stronger. *See U.S. v. McCarthy*, 38 M.J. 398 (C.M.A., 1993). But here, the investigators took the added step of looking through a bag that had been closed shut, had clearly been marked with his name, and was being kept in a secured room to which there was not public access.

Moreover, PFC Wylde clearly had subjective expectation of privacy which was objectively reasonable. An assault pack is not made of transparent material, and his personal expectation of privacy is further made clear by the fact the bag was conspicuously marked with his name. If his squadron been in the field, where “line outs” are customarily done to ensure

Marines haven't intentionally or unwittingly maintained possession of ammunition, his subjective expectation of privacy – and its objective reasonableness – would be lessened. Here, the assault pack was being utilized for personal use. Even if the personnel who entered the room had been conducting a normal military inspection, PFC Wylde could have reasonably expected that those conducting it would not have begun rummaging through his personal effects. If military members have no expectation of privacy in their luggage, we are one step short of finding no reasonable expectation of privacy in their cargo pockets.

It is immediately questionable what medication the responders were expecting to find, and how they were expecting to administer it, if LCpl Wiley was in such a state that he would not have been able to communicate the medication he needed. Given the little information they had, the problem could have just as easily been triggered by overmedicating. But beyond that, the Government cannot bootstrap a search of an assault pack clearly marked with PFC Wylde's name to a search ostensibly conducted to find medication for LCpl Wiley. The picture of the room taken by investigators clearly shows that there were two assault packs in the room. The *first* thing an emergency responder would be expected to do if he was truly on a search to for someone's medication would be to ensure he was not getting the *wrong* medication. This could kill someone who was not already in an endangered state. The investigators had no justification for opening PFC Wylde's assault pack and rifling through his belongings.

The investigators' motives are further called into question by the fact that they immediately ceased the search as soon as they discovered a "leafy green substance." If this search was truly in reaction to a medical emergency, with the purpose of saving LCpl Wiley's life and not to investigate the cause of his condition, then simply discovering possible contraband would not be a reason to call off the search and to re-secure the room. This is exactly what they

did. As in *U.S. v. Hayes*, they acted in a manner more consistent with crime scene investigators than first responders.

Finally, one need not look any further than the Affidavit for Search Authorization (Enclosure 7) to be immediately skeptical of the Government's claim that the investigators stumbled innocently upon incriminating evidence. According to the investigators' timeline, their search of the room ceased at 1009. At 1031, the CID report (Enclosure 4) states they initiated the investigation pursuant to a Command Authorization for Search and Seizure (Enclosure 6). While oral authorization by a commanding officer is legal, the authorization provided by the Government is actually in written form. The affidavit upon which the search authorization is based notably surmises that "The Unknown (sic) green leafy substance is believed to be a controlled substance known to be Spice/Salvia." This is highly suspicious. Both of these vaguely defined substances were at the time and continue to be largely enigmatic to commands and military personnel alike. It is almost unfathomable that the investigators knew the substance to be "Spice" after their short exposure to it, and it draws into question when the search authorization was actually written. The most logical explanation for the investigator's description of the substance as Spice is that LCpl Wiley, even in his incoherent state, was able to relay to the personnel attending to him that he had used Spice/Salvia. This would explain why the investigators also searched Wylde's assault pack and the unlikely specificity of their affidavit.

Even if the government agents conducting the search were truly just looking for medication and not acting out of a desire for evidence or even a curiosity over its possible presence, they have to be held to a greater standard of constraint than was displayed. It is specifically in situations of heightened panic when constitutional rights are always the most

vulnerable and our vigilance in their safekeeping them is therefore most necessary. A perceived emergency does not give government agents carte blanche to disregard constitutional protections.

B. The “Exclusionary Rule” blocks the admission of all evidence obtained as a result of an illegal search and seizure. Here, that evidence includes all evidence found in PFC Wylde’s assault pack, as well as the live testimony of the investigators that found the contraband, LCpl Wiley, and LCpl Logsdon.

Evidence seized during an unlawful search and seizure cannot constitute proof against the victim of the search. *Wong Sun v. U.S.*, 83 S. Ct. 407, 484 (1963). The exclusionary provision extends to the indirect products of such invasions as well. *Id.* The exclusionary rule may not apply where the evidence comes from an independent source, the link between the illegal search and the evidence seized is sufficiently attenuated, or the evidence would likely have been discovered anyway through “inevitable discovery.” *See Silverthorne Lumber Co. v. U.S.*, 251 U.S. 385 (1920), *see Wong Sun v. U.S.*, 371 U.S. 471 (1963), and *see Nix v. Williams*, 467 U.S. 431 (1984).

The evidence seized by investigators from PFC Wylde’s assault pack was obtained solely from the illegal search; the investigators were not following any independent “leads” when they opened it. There is also no attenuation – the discovery of contraband within the assault pack was a direct result of and occurred during the illegal search. Finally, there’s no indication at all that the evidence would have been inevitably discovered. PFC Wylde was not a suspect of any crime when they entered his room and he was not being investigated.

Moreover, a live witness may be subject to exclusion as “fruit of the poisonous tree” as well. *See U.S. v. Ceccolini*, 435 U.S. 268 (1978). Among the factors to be considered are free

will, the absence of collateral exploitation of the initial legality, the passage of time between the illegality and the contact of the witness, the lack of egregiousness of the initial illegality, and the possibility of discovery “in due course.”

Here, allowing the testimony of the investigators who entered the room to testify to what they found would essentially be indistinct from admitting the seized evidence itself. The Defense further contends that testimony by LCpl Logsdon and LCpl Wiley regarding PFC Wylde’s involvement with “Spice” should be suppressed. Both of them were confronted with illegally seized evidence and therefore their statements and testimony are direct derivatives of the illegal search.

C. The Command Authorization for Search and Seizure did not authorize search of personal effects. The investigator’s search therefore exceeded the authorization they were given.

The Defense does not believe the legal analysis for the present issue even needs to get to M.R.E. 315 and the legal sufficiency of the Command Authorization for Search and Seizure; the first search was unlawfully conducted and the “fruit” it yielded was therefore unlawfully obtained. Nonetheless, the Command Authorization for Search and Seizure does not authorize the search of personal effects. It simply authorizes search of “Barracks room #6483 in Carlin building #475, and the closets, drawers or other areas where drugs may be hidden.” The Defense contends that “other areas where drugs may be hidden” is fatally overbroad, and more specifically, is too broad to justify a search as invasive as the one conducted here.

4. Relief Requested.

The defense respectfully requests that all evidence discovered in the search of PFC Wylde's assault pack and listed in Enclosure 4 be suppressed. The Defense further requests suppression of all statements and testimony from the investigators who searched PFC Wylde's room regarding what was found in his assault pack. Finally, the Defense requests the suppression of testimony at trial from LCpl Wiley and LCpl Logsdon regarding PFC Wylde's involvement with Spice.

5. Evidence

Enclosure (1) Investigator's notes delineating the timeline of the search

Enclosure (2) Picture of PFC Wylde's assault pack taken by CID

Enclosure (3) Picture of both PFC Wylde's and LCpl Wiley's assault packs taken by CID

Enclosure (4) List of evidence found in PFC Wylde's assault pack

Enclosure (5) Sworn statement of PFC Wylde

Enclosure (6) Command Authorization for Search and Seizure Enclosure

Enclosure (7) The Affidavit for Search Authorization

6. Argument. Oral argument is requested.

//S//

R. CROSSWELL
Captain, USMC
Detailed Defense Counsel

A true copy of this motion was served on the Court and trial counsel via electronic mail this 20th day of July, 2010.

//S//

R. CROSSWELL
Captain, USMC
Detailed Defense Counsel

Room 6483

PAGE 1

Emergency searched begin 1001 w/ Fire Chief present

1009 - ROOM SECURED FOR CID, SUSPICIOUS SUBSTANCE FOUND INSIDE CASHMERE LAGE BACK PACK WHILE CONDUCTING EMERGENCY SEARCH.

1031 - CID ENTER ROOM - COMMENCING CASHMERE AUTHORITY

1037 - SO ENTER THE ROOM

1047 - CID WILLEY CAME OUT

1048 - SO WENT OUT OF ROOM

Enclosure (1)

Enclosure ()



Enclosure (a)



Enclosure (3)

COMMANDER, NAVY REGION SOUTHWEST
CRIMINAL INVESTIGATIONS DIVISION

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INVESTIGATIVE ACTION

11May10

NARCOTICS (II)

CONTROL: 104625500102

S/WILEY, MICHAEL DUFF/LCPL USMC

M/W/MEE3/U/595-92-9201/24JAN90/WINTERHAVEN, FL

RESULTS OF COMMAND AUTHORIZED SEARCH OF LIVING QUARTERS

1. On 04May10, security and medical units responded after being notified that S/WILEY was unconscious and foaming from the mouth in the rocks by Building 308. Patrol Officer's RUIZ, Manuel, MA2, USN, EDWARDS, Lyle, MA2, USN and Fire Chief MELLOTT, Lewis, Civ, conducted an exigency search of S/WILEY's living quarters; located at Building 475, Room 6483, Carlin Barracks, NAS Fallon, NV. During the search a pair of brass knuckles and a small plastic bag containing an unknown green leafy substance was discovered during the search. As a result, a Command Authorization for Search and Seizure was obtained from Michael H. GLASER, CAPT, USN, Commanding Officer, NAS Fallon. The search, which began at 1031, was conducted by Reporting Investigator (RI), and Investigator Scott A. WHALEY and ended at 1150. Enclosures (2A) and (2B) pertain.

2. The following items were seized, photographed, marked for identification, and turned over to the Consolidated Evidence Facility under Log Numbers 009-10, 010-10, 011-10 and 012-10. Enclosure (2C) pertains.

| Time | Item | Description |
|------|------|--|
| 1045 | A | 72 United States twenty dollar bills, seized from backpack on the bed. |
| 1046 | B | 1 United States one hundred dollar bill, seized from backpack on bed. |
| 1048 | C | White in color, glass type construction |

Page 1 of 3

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Enclosure (4)
EXHIBIT (2)

COMMANDER, NAVY REGION SOUTHWEST
CRIMINAL INVESTIGATIONS DIVISION

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- imitation cigarette smoking pipe, seized from top of bed.
- 1049 D Clear plastic bag with a red horizontal line above the seal containing a ¼ inch of green leafy substance, seized from top of notebook on the bed.
- 1051 E Yellow, white, green and black in color, plastic/paper type construction bound college rule notebook, seized from top of bed.
- 1054 F Roll of 36 clear plastic bags with a red Horizontal line above the seal held together by a red in color rubber band, seized from backpack on the bed.
- 1111 G Multicolored glass type construction pipe/ bowl containing ash residue wrapped in a white, black and red hanker chief, seized for top of bed.
- 1128 H Black in color, metal type construction, spike tipped set of brass knuckles, seized from top of bed.
- 1129 I Large clear plastic zip lock type bag containing an unknown green leafy substance, seized from laptop bag on floor beside the bed.
- 1131 J Black in color Toshiba Satellite L505 laptop, Serial Number Z9143558Q, in a black in color, cloth type Targus case, seized from floor beside the bed.

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Enclosure (4) EXHIBIT (2)

COMMANDER, NAVY REGION SOUTHWEST
CRIMINAL INVESTIGATIONS DIVISION

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ENCLOSURE(S)

- (2A) Command Authorization for Search and Seizure/04May10
- (2B) Affidavit for Search Authorization S/WILEY/04May10
- (2C) Twenty four (24) photographs of evidence seized from
Building 475, Room 6483, assigned to S/WILEY/04May10

Reported by: James C. WILLIAMS, Investigator
Office: FLCID NAS Fallon, NV

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Enclosure (4)

EXHIBIT (2)

**COMMANDER NAVY REGION SOUTHWEST
CRIMINAL INVESTIGATIONS DIVISION
VOLUNTARY STATEMENT**

Place: CNRSW CID DET FALLON BLDG 427 RM 215

Date: 04MAY10

AVW I, WYLDE, AARON VICTOR make the following statement to Investigator WHALEY, whom I know to be an Investigator of Commander Navy Region Southwest, Criminal Investigations Division. I make this statement of my own free will and without any threats made to me or promises extended. I fully understand that this statement is given concerning my knowledge of POSSESSION, DISTRIBUTION AND WRONGFUL USE OF A CONTROLLED SUBSTANCE. AVW

AVW For the purpose of identification, I am a 21-year-old WHITE MALE. My date of birth is 17MAR89, and my place of birth is DENVER, CO. My social security number is 521-71-0964. I am currently employed by VMFA-323. I am a LCPL. AVW

AVW On July 2009, I got back to San Diego from a deployment on the U.S.S. John C Stennis. In August, I was introduced to spice from a buddy of mine. A month or so later I was at a smoke shop in San Diego talking to the worker that said if I could find out how to make it, he would buy it from me for sale in his smoke shop and my money problems would go away. I spent the next few months online researching damiana, and how to do it, and in November of 2009 I had ordered 3 kilos of damiana and made my first batch. I went on to make 2 more batches after that, and I sold the 3rd and only successful batch to the smoke shop. At around that time, I also was smoking spice on a regular basis, along with 2-3 other marines from VMFA-323. I did take about 100 grams from Mira Mar with me to Fallon, Nevada on a C5 for personal use. AVW

Q: Who was the buddy that introduced you to spice?

AVW A: I don't want to answer that question. AVW

Q: Who is the individual that works in the smoke shop?

AVW A: Norm, on friars road in San Deigo. AVW

Q: What did you do with the first two batches of spice that you made?

AVW A: I just ended up smoking it. AVW

Q: How much spice did the third batch consist of?

AVW A: 3 Kilos. AVW

Q: How much did you earn from the 3rd batch of spice?

AVW A: I earned \$2400.00. AVW

Q: Why did you decide to start selling spice to the smoke shop?

AVW A: Cause I was having financial issues. AVW

Q: Did you have spice in your possession when you were picked up by the MP's today?

AVW A: Yes. AVW

COMMANDER NAVY REGION SOUTHWEST
CRIMINAL INVESTIGATIONS DIVISION
VOLUNTARY STATEMENT

Q: Did you start making spice in order to sell it to the smoke shop?

AVW A: Yes. AVW

Q: Who are the other Marines that you would smoke spice with in VMFA-323?

AVW A: LCPL Wiley, but I don't want to give any other names.
Q. What are the ingredients you use to make spice? AVW

AVW A. Damiana, JWH-073, Acetone. AVW

AVW Q. When was the last time you smoked spice?

AVW A. Approximately 1700 yesterday outside my room at the barracks. AVW
Q. Did you know spice was prohibited for use/possession by military members?

AVW A. Yes. AVW

Q. Is there anything else you would like to add to your statement at this time?

AVW A. No. AVW

AVW I have read over this 2 page statement, which contains information/facts I have voluntarily provided to Investigator WHALEY. I have initialed corrections and made changes I desire. This statement is true and correct to the best of my knowledge and recollection. AVW

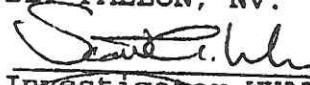

WYLDE, AARON VICTOR

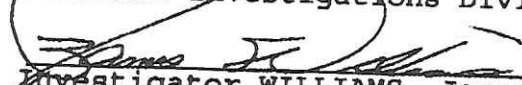
Date: 04MAY10

Time: 1626

Subscribed and sworn to before me this 04 day of MAY, ²⁰¹⁰~~2101~~, at ^{AVW}

CNRSW CID DET FALLON, NV.


Investigator WHALEY, Scott A.
Criminal Investigations Division


Investigator WILLIAMS, James C.
Criminal Investigations Division

DEPARTMENT OF THE NAVY

PERMISSIVE AUTHORIZATION FOR SEARCH AND SEIZURE

1. ADVISORY

I, (full name) AARON VICTOR WYLDE/VMFA-323/LCPL/USMC/521-71-0964

after being advised by INVESTIGATOR WHALEY

that the CNRSW CRIMINAL INVESTIGATIONS DIVISION

is conducting an investigation into the offense(s) of WRONGFUL USE, POSSESSION, AND DISTRIBUTION OF A CONTROLLED SUBSTANCE

have been requested to permit a search of my URINE

2. CONSTITUTIONAL RIGHT

AW I have been informed of my constitutional right to refuse to permit this search in the absence of a search warrant. In full understanding of this right, I have nevertheless decided to permit this search to be made. AW

3. PERMISSION

AW This search may be conducted on (date) 04MAY2010

by SSGT BRANCH, PHILLIP

and I hereby give him/her/them my permission to remove and retain any property or papers found during the search which are desired for investigative purposes. AW

4. FREE DECISION

AW I make this decision freely and voluntarily and it is made with no threats having been made or promises extended to me. AW

a. Date

04 MAY 2010

b. Signature



5. WITNESSES

a. Signature



b. Signature

6. TIMES OF SEARCH

a. Start

b. End

COMMAND AUTHORIZATION FOR SEARCH AND SEIZURE

UNITED STATES OF AMERICA

VS.

MICHAEL DUFF WILEY

To Investigator James WILLIAMS, NAS Fallon, Criminal Investigations Division

Affidavit(s) having been made before me by

Investigator James WILLIAMS

That there is reason to believe that on the person of and/or on the premises known as:

(Identify the person and/or describe the premises with particularity and in detail)

Barracks room #6483 in Carlin building #475, and the closets, drawers or other areas where drugs may be hidden.

There is now being concealed certain property, namely: which is/are under my jurisdiction,
Here describe the property

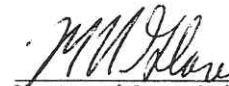
Evidence of use, possession, etc. of a controlled substance.

I am satisfied that there is probable cause to believe that the property so described is being concealed on the person and/or premises above described and that grounds for application for issuance of a command authorized search exists as stated in the supporting affidavit(s).

YOU ARE HEREBY AUTHORIZED TO SEARCH the person and/or place named for the property specified and if the property is found there to seize it, leaving a copy of this authorization and receipt for the property taken. You will provide a signed receipt to this command, containing a full description of every item seized.

Any assistance desired in conducting this search will be furnished by this command.

Date this 4th day of MAY 20 10



Signature of Person Authorizing Search

CAPT, USN, Commanding Officer

Rank, Service, Title

NAS FALLON

Command

Enclosure (6)

10082

DEPARTMENT OF THE NAVY
AFFIDAVIT FOR SEARCH AUTHORIZATION

UNITED STATES OF AMERICA

VS.

MICHAEL DUFF WILEY

Before the Commanding Officer, NAS Fallon, NV
(Identify person by title and command)

The undersigned, being duly sworn, requests authority to search:
(Identify the person and/or describe the premises with particularity and in detail)

Barracks room #6483 of Carlin building #475, the closet, and any drawers or other spaces where drugs may be hidden in the room.

Believing that there is now being concealed certain property, namely:
(Here describe the property)

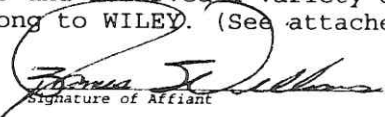
A controlled substance.

The request of authorization to search and seize is made in connection with an investigation into the offense(s) of:

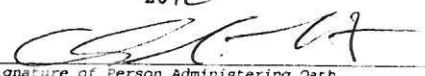
Violation of UCMJ Article 112a, wrongful use, possession, etc of a controlled substance.

The facts and circumstances known to me tending to establish the foregoing grounds for authorization to search and seize, including comments demonstrating the reliability of the information and/or informant, are as follows:
(Attach separate, sworn affidavit if more space needed)

On 4 May 2010, Medical/fire and security units responded to a unconscious male lying on the ground foaming from the mouth in the rocks between building 308 and building 380. The subject was identified as Michael WILEY and Stillwater Inn provided a room key for an emergency search for medication that may be needed or may have caused his condition. Patrolmen and Fire Chief entered room #6483 of building #475 and observed a variety of over the counter medications and a backpack believed to belong to WILEY. (See attached)


Signature of Affiant

Sworn to before me, and subscribed in my presence, this 4th day of May 2010


Signature of Person Administering Oath

LCDR, JAGC, USN
Rank, Service, Title

Enclosure (7) 0082

EXHIBIT (2)

A clear plastic bag containing an unknown green leafy substance was discovered and a set of brass knuckles. The Unknown green leafy substance is believed to be a controlled substance known to be Salvia/Spice .

Enclosure (7) 0084

ENCLOSURE (2)

ENCLOSURE (2)