

**NAVY-MARINE CORPS TRIAL JUDICIARY  
WESTERN JUDICIAL CIRCUIT**

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UNITED STATES	)	
	)	
	)	GENERAL COURT-MARTIAL
v.	)	
	)	DEFENSE MOTION IN LIMINE
AARON V. WYLDE	)	
XXX XX 0964	)	SUPPRESS FOR LACK OF
PRIVATE FIRST CLASS	)	CORROBORATION
U.S. MARINE CORPS	)	
	)	18 October 2010

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1. Nature of Motion.

This is a motion to suppress statements made by the accused pursuant to Mil.R.Evid. 304g. Specifically, the defense seeks to suppress any admission made by the accused that is contained within the statement taken on May 4, 2010. The defense also seeks to suppress any other uncorroborated admissions made by the accused, whether oral or in writing, that the Government may seek to admit through testimony or other evidence.

2. Statement of the Law.

Under Mil. R. Evid 304(e), when the defense makes a motion to suppress statements by the accused, the burden of proof is on the prosecution, by a preponderance of the evidence, to establish the admissibility of the evidence. *See also* R.C.M. 905(b)(3).

Under M.R.E. 304g no confession may be admitted into evidence without independent corroboration. The Rule Provides:

(1) *Quantum of evidence needed.* The independent evidence necessary to establish corroboration need not be sufficient of itself to establish beyond a reasonable doubt the truth of facts stated in the admission or confession. The independent evidence need raise only an inference of the truth of the essential facts admitted. The amount and type of evidence introduced as corroboration is a factor to be considered by the trier of fact in determining the weight, if any, to be given to the admission or confession.

(2) *Procedure*. The military judge alone shall determine when adequate evidence of corroboration has been received. Corroborating evidence usually is to be introduced before the admission or confession is introduced but the military judge may admit evidence subject to later corroboration.

Mil.R.Evid. 304g

The Rule finds its genesis in Supreme Court case law. In *Opper v. United States*, 348 U.S. 84 (1954), and *Smith v. United States*, 348 U.S. 147 (1954), the Supreme Court held that corroboration was needed to establish the truthfulness or trustworthiness of a confession before it could be used as evidence:

[T]he corroborative evidence need not be sufficient, independent of the statements, to establish the *corpus delicti*. It is necessary, therefore, to require the Government to introduce substantial independent evidence which would tend to establish the trustworthiness of the statement. Thus, the independent evidence serves a dual function. It tends to make the admission reliable, thus corroborating it while also establishing independently the other necessary elements of the offense. . . . [Citation omitted.] It is sufficient if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth. . . .

*Opper*, 348 U.S. at 93. See also *Escobedo v. Illinois*, 378 U.S. 478, 488-89 (1964). Historically, this inquiry has involved two competing theories: independent proof of the corpus delicti or independent evidence establishing the truthfulness of the statement. 1 John W. Strong et al., *McCormick on Evidence* §§ 146-47 (5th ed. 1999). There is no general requirement, however, that the independent corroborating evidence be sufficient for conviction by itself. *United States v. Afflick*, 18 U.S.C.M.A. 462, 40 C.M.R. 174 (1969). The Court explained:

It is agreed that the corroborative evidence does not have to prove the offense beyond a reasonable doubt, or even by a preponderance, as long as there is *substantial* independent evidence that the offense has been committed, and the evidence as a whole proves beyond a reasonable doubt that defendant is guilty. [Citations omitted.] . . .

*Smith*, 348 U.S. at 156. (Emphasis added). This view of the scope of the corroboration rule is

well established.<sup>1</sup> The same rule of corroboration also exists in the military. *United States v. Melvin*, 26 M.J. 145, 147 (1988). It is also worth noting that other uncorroborated statements of confession or admission by the accused may not be used to provide independent corroboration. M.R.E.304g.

3. Relief Requested.

Pursuant to M.R.E. 304g, the accused, by and through counsel requests that this court exclude any reference to the accused smoking spice, manufacturing spice, selling spice to a smoke shop, researching damiana, “smoking spice on a regular basis,” earning money from spice, having financial problems, the last time the accused smoked spice, and statements by the accused related to his knowledge of the law prohibiting possession or use of spice as it relates to members of the military unless the Government can produce independent corroboration of the admissions.

4. Argument. Requested only if the government opposes this motion.

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<sup>1</sup> See *United States v. Garth*, 773 F.2d 1469, 1479 (5th Cir.1985), *cert. denied*, 476 U.S. 1140 (1986); *United States v. Pennell*, 737 F.2d 521, 537 (6th Cir.1984), *cert. denied*, 469 U.S. 1158 (1985); *United States v. Moore*, 735 F.2d 289, 293 (8th Cir.1984); *United States v. O'Connell*, 703 F.2d 645, 648 (1st Cir.1983); *United States v. Fasolino*, 586 F.2d 939, 941 (2d Cir.1978).

**CERTIFICATE OF SERVICE**

I certify that a copy of this document was served upon government counsel on 18

October 2010.

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