

UNITED STATES)	
)	Defense Motion to Suppress
)	Evidence
v.)	
)	
1ST LT TRAVIS C. BAKER)	
Delta 4 Detachment 2 (SpOC))	
Buckley Space Force Base, Colorado)	15 May 2023
)	

NOW COMES the Accused, 1st Lt Travis C. Baker, by and through counsel, and requests this Court exclude evidence illegally seized from 1st Lt Travis C. Baker, and evidence derived therefrom, in violation of the Fourth Amendment to the United States Constitution. The Defense requests an Article 39(a) session for additional evidence and argument on the motion.

1st Lt Baker faces one charge and two specifications in violation of Article 107, Uniform Code of Military Justice (U.C.M.J.), one charge and two specifications in violation of Article 113, U.C.M.J., and one charge and two specifications in violation of Article 133, U.C.M.J. The Prosecution intends to offer a blood sample from 1st Lt Baker seized on 18 October 2022, and evidence derived therefrom, specifically, blood alcohol level, seized pursuant to a search authority granted by someone without such authority. Therefore, the blood sample evidence, analysis conducted, and results should be suppressed.

1. 1st Lt Baker faces one charge and two specifications in violation of Article 107, Uniform Code of Military Justice (U.C.M.J), one charge and two specifications in violation of Article 113, U.C.M.J, and one charge and two specifications in violation of Article 133, U.C.M.J.
2. On 18 October 2022, [REDACTED] requested authority from [REDACTED], Commander, Delta 4, to seize blood from 1st Lt Baker for testing, while 1st Lt Baker was on Buckley Space Force Base, Colorado, in the 460th Security Forces building, building number 1028. Attachment 1.
3. On 18 October 2022, 1st Lt Baker was transported from building 1028 to building 600, the 460th Medical Group building, on Buckley Space Force Base, Colorado, where medical personnel obtained a blood sample from 1st Lt Baker pursuant to the purported authority they had obtained from [REDACTED]. Attachments 1, 2.

4. On 19 October 2022, [REDACTED] executed an affidavit for apprehension and arrest of 1st Lt Baker, which was also used in support of search authorization for the blood search authority. Attachment 2.
5. On 20 October 2022, [REDACTED] purported to grant search authority in writing. Attachment 3.
6. Following seizure of blood from 1st Lt Baker, Delta 2 medical personnel sent that evidence to AFMES for testing. Attachment 4.
7. On 18 October 2022, [REDACTED] was the Commander of Space Delta 2, which includes authority over all locations on Buckley Space Force Base, to include the 460th Security Forces building, building 1028, and the Medical Group building, building 600. Attachments 1, 5.
8. On 18 October 2022, [REDACTED] was the Commander of Space Delta 4, and did not have authority over the 460th Security Forces building, building 1028, or the Medical Group building, building 600, on Buckley Space Force Base. Attachments 1, 5.
9. Buckley Space Force Base, the 460th Security Forces building, and the Medical Group building are all places under military control. Attachments 1, 5.

BURDEN

10. Once a timely objection is made concerning an unlawful search and seizure, the Prosecution bears the burden of proof. R.C.M. 311(d). Any disputed facts necessary to decide the motion must be proved by a preponderance of the evidence. R.C.M. 905(c)(1).

LAW

11. The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

12. The Fourth Amendment does not prohibit all searches and seizures. Rather, the Fourth Amendment bars unreasonable searches and seizures. A search does not implicate the Fourth Amendment unless the “government violates a subjective expectation of privacy that society recognizes as reasonable.” *United States v. Izizarry*, 72 M.J. 100 (C.A.A.F. 2013) (quoting *Kyllo v. United States*, 533 U.S. 27, 33 (2001)).

13. In *United States v. Ezell*, the Court of Military Appeals held that the Fourth Amendment protection against unreasonable searches and seizures applies to military members. 6 M.J. 307 (C.M.A. 1979). *See also* M.R.E. 311. The Fourth Amendment expressly imposes two requirements for a search to be lawful. First, all searches and seizures must be reasonable. Second, a warrant may not be issued unless probable cause is properly established. *Payton v. New York*, 445 U.S. 573, 584 (1980).

14. Probable cause relies on a “common-sense decision whether, given all the circumstances set forth in the affidavit[,], there is a fair probability that contraband will be found in a particular place.” *U.S. v. Leedy*, 65 M.J. 208, 213 (2007) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). When determining whether probable cause exists, the magistrate must demand a detailed description from the affiant. The requirement of a detailed description helps ensure the magistrate has sufficient information on which to base his determination of probable cause, while simultaneously ensuring he does not simply ratify the “bare conclusions of others.” *Gates*, 462 U.S. at 239.

15. In addition to reasonableness and probable cause, the search warrant itself must be specific. “Search warrants must be specific and specificity has two aspects, particularity and breadth.” *United States v. Osorio*, 66 M.J. 632, 635 (A.F.C.C.A. 2008) (citing *United States v. Hill*, 459 F.3d 966, 973 (9th Cir. 2006) and *United States v. Towne*, 997 F.2d 537, 544 (9th Cir. 1993)). “This level of detail is required to comply with the Fourth Amendment.” *Id.* (citing *United States v. Knights*, 534 U.S. 112, 118 (2001)). General warrants authorizing for example, “the seizure of all the papers of a named person alleged to be connected with the publication of a libel” have long been “judicially condemned.” *Marcus v. Search Warrants*, 367 U.S. 717, 727–28 (1961).

16. Military Rule of Evidence 315(d) dictates who may issue a military search authorization based on probable cause. Rule 315(d)(2) allows for search authorizations to be granted by military judges or magistrates, if authorized by that service’s regulations.

17. Rule 315(d)(1) also authorizes certain commanders to issue search authorization in only two circumstances: (1) when the commander “has control over the place where the property or person to be searched is situated or found” or (2) “if that place is not under military control, [when the commander has] control over persons subject to military law or the law of war.”

18. Rule 315(d) also requires the authorizing official to be impartial. *See United States v. Huntzinger*, 69 M.J. 1, 5 (C.A.A.F. 2010).

19. Prior to Congress passing the National Defense Authorization Act of 2016, Article 26a, U.C.M.J., did not exist, which now requires a magistrate to be a licensed attorney and certified by the Judge Advocate General to be a magistrate. Instead, in the Air Force, magistrates were appointed by installation commanders. *See* Attachment 4, at 4. Now, magistrates are not authorized in the Air Force. *See* Attachment 5, at 8.

20. Pursuant to M.R.E. 311(c)(3)(A), the good-faith exception only applies when the authorization was “issued by an individual competent to issue the authorization under Mil. R. Evid 315(d).”

ARGUMENT

21. Here, the seizure of 1st Lt Baker’s blood on 18 October 2022 was unlawful, as [REDACTED] had no authority or control over building 1028, the Security Forces building, and did not have any authority or control over building 600, the medical group building, both of which are located on Buckley Space Force Base. *See* M.R.E. 315(d)(1). The proper authority could have been a military judge (as the Air Force and Space Force have not authorized the use of magistrates). *See* M.R.E. 315(d)(2). Additionally, while [REDACTED], the Delta 2 Commander, would

qualify as a commander with control of the place where 1st Lt Baker was found and searched, he did not grant the authorization.

22. [REDACTED] potential authority to authorize a search of 1st Lt Baker and his blood, as a member under his command, only applies if the member is not at a location under military control. *See* M.R.E. 315(d)(1). This is the U.C.M.J.'s version of requiring proper jurisdiction over the place to be searched. Because Buckley Space Force Base and the buildings on Buckley Space Force Base are under military control, [REDACTED] does not have authority to authorize a search of 1st Lt Baker's blood when 1st Lt Baker was located on Buckley Space Force Base.

23. Additionally, the good-faith exception cannot apply to this case, as the first requirement of good faith under M.R.E. 311(c)(3)(A) is the authorization was "issued by an individual competent to issue the authorization under Mil. R. Evid 315(d)." Good faith does not apply if the requesting agent *thought* the commander had such authority, but did not. *See* M.R.E. 311(c)(3)(A).

24. Moreover, the search authorization lacks particularity and breath, as the 1176 indicates the purported authorization from [REDACTED] was for zero days, from 18 October 2022, and was signed 20 October 2022.

25. Accordingly, the search of 1st Lt Baker's person and the seizures of his blood did not follow M.R.E. 315, and were not legal probable cause searches permitted under the Fourth Amendment to the United States Constitution. As such, the evidence itself, plus the analyses derived therefrom, should be suppressed.

RELIEF REQUESTED

26. Accordingly, the Defense requests this Court suppress the blood evidence seized from 1st Lt Baker and all analyses conducted thereafter.

27. The Defense requests a hearing under Article 39(a), U.C.M.J, to present additional evidence and argument.

Respectfully submitted,

[REDACTED]

ANNE K. FREEBY, Capt, USAF
Defense Counsel

5 Attachments:

1. Excerpt from Security Forces Incident Report, 18 October 2022, 2 pages
2. Affidavit, 19 October 2022, 3 pages
3. Air Force Form 1176, 20 October 2022, 1 page
4. AFMES Report, issued 4 November 2022, 1 page
5. Web pages for Space Delta 2 and Space Delta 4 organization, last accessed 15 May 2023, 2 pages

CERTIFICATE OF SERVICE

I certify that I have served a true copy via e-mail of the above on the Military Judge and Trial Counsel on 15 May 2023.



ANNE K. FREEBY, Capt, USAF
Defense Counsel