

**CERTIFIED RECORD OF TRIAL**

(and accompanying papers)

of

Bass James H [REDACTED] GySgt  
(Last Name) (First Name) MI (DoD ID No.) (Rank)

H&S Bn, MCI-East, MCB CLJN U. S. Marine Corps Camp Lejeune  
(Unit/Command Name) (Branch of Service) (Location)

By

Special Court-Martial (SPCM)  
(GCM, SPCM, or SCM)

**COURT-MARTIAL**

Convened by

Commanding Officer  
(Title of Convening Authority)

H&S Bn, MCI-East, MCB CLJN  
(Unit/Command of Convening Authority)

Tried at

Camp Lejeune  
(Place or Places of Trial)

On

27 February, 13 March, 17 April, and 18 April 2023  
(Date or Dates of Trial)

Companion and other cases

None

(Rank, Name, DOD ID No., (if applicable), or enter "None")

# CONVENING ORDER

THERE IS NO CONVENING ORDER:

Referred for trial to the Special Court-Martial to be tried by judge alone pursuant to Article 16(c)(2)(A) UCMJ.

# CHARGE SHEET



# CHARGE SHEET

## I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) <b>BASS, James H.</b>		2. EDIPI [REDACTED]	3. RANK/RATE <b>GySgt</b>	4. PAY GRADE <b>E-7</b>
5. UNIT OR ORGANIZATION <b>Headquarters and Support Battalion, Marine Corps Installations East, Marine Corps Base, Camp Lejeune, North Carolina</b>		6. CURRENT SERVICE		
		a. INITIAL DATE <b>16 Dec 20</b>		b. TERM <b>4 Yrs</b>
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED <b>None</b>		9. DATE(S) IMPOSED <b>N/A</b>
a. BASIC <b>\$4,888.50</b>	b. SEA/FOREIGN DUTY <b>\$0.00</b>	c. TOTAL <b>\$4,888.50</b>		

## II. CHARGES AND SPECIFICATIONS

10. Charge: **Violation of the UCMJ, Article 92**

**Specification 1 (Violation of a General Order):** In that Gunnery Sergeant James H. BASS, U.S. Marine Corps, on active duty, did, at an unknown location, between on or about 6 September 2021 and on or about 16 September 2021, violate a lawful general order, which was his duty to obey, to wit: paragraph 5, ALNAV 074/20, dated 24 July 2020, by wrongfully using Tetrahydrocannabinol-8.

**Specification 2 (Violation of a General Order):** In that Gunnery Sergeant James H. BASS, U.S. Marine Corps, on active duty, did, at an unknown location, between on or about 5 November 2021 and on or about 15 November 2021, violate a lawful general order, which was his duty to obey, to wit: paragraph 5, ALNAV 074/20, dated 24 July 2020, by wrongfully using Tetrahydrocannabinol-8.

## III. PREFERRAL; SERVICE OF CHARGES

11a. NAME OF ACCUSER (Last, First, MI) [REDACTED]	b. GRADE <b>PFC</b>	c. ORGANIZATION OF ACCUSER <b>HqSptBn, MCI-East, MCB, Camp Lejeune, NC</b>
d. SIGNATURE OF ACCUSER [REDACTED]	e. DATE <b>21 June 2022</b>	

**AFFIDAVIT:** Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this **21st** day of **June, 2022**, and signed the foregoing charges and specifications under oath that he is a person subject to the Uniform Code of Military Justice and that he either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his knowledge and belief.

**M.B. EHRHARDT**  
\_\_\_\_\_  
Typed Name of Officer  
**Captain, U. S. Marine Corps**  
\_\_\_\_\_  
Grade and Service  
**EHRHARDT, MCKENZIE**  
Digitally signed by  
**E.BLAINE**  
\_\_\_\_\_  
Date: 2022.06.21 13:55:24 -0400  
\_\_\_\_\_  
Signature

**HqSptBn, MCI-East, MCB, Camp Lejeune, NC**  
\_\_\_\_\_  
Organization of Officer  
**Judge Advocate**  
\_\_\_\_\_  
Official Capacity to Administer Oaths  
(See R.C.M. 307(b)—must be commissioned officer)

**ORIGINAL**

12. On 23 JUNE, 2022, the accused was informed of the charges against him and of the name of the accuser known to me. (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

\_\_\_\_\_  
Typed Name of Immediate Commander

H&S Bn, MCIEAST-MCB, Camp Lejeune, NC

Organization of Immediate Commander

First Sergeant, U.S. Marine Corps

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1200 hours, 22 JUNE, 2022 at H&S Bn, MCIEAST-MCB,  
Camp Lejeune, NC Designation of Command or

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

\_\_\_\_\_  
Typed Name of Officer

FOR THE<sup>1</sup>

COMMANDING OFFICER

COMPANY COMMANDER  
~~Legal Officer~~

Official Capacity of Officer Signing

CAPTAIN, U.S. MARINE CORPS  
GS-09

Grade

\_\_\_\_\_  
Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY  
Headquarters and Support Battalion, Marine Corps  
Installations East, Marine Corps Base

b. PLACE

Camp Lejeune, North Carolina

c. DATE

JUN 27 2022

Referred for trial to the Special court-martial convened by this document.

Which convenes a Special Court-

Martial to be tried by judge alone pursuant to Article 16(c)(2)(A), UCMJ.

dated \_\_\_\_\_, 2022, subject to the following instructions<sup>2</sup> The court may not adjudge punishment

in excess of the limitations under Article 19(b), UCMJ. Prior to referral, I consulted with Trial Counsel in accordance with R.C.M. 406A.

By XXXXXXXXXXXXXXXXXX of \_\_\_\_\_  
Command or Order

\_\_\_\_\_  
Typed Name of Officer

COMMANDING OFFICER

Official Capacity of Officer Signing

Colonel, U.S. Marine Corps

15. On 27 JUNE, 2022, I caused to be served a copy hereof on the above named accused.

M.B. EHRHARDT

\_\_\_\_\_  
Typed Name of Trial Counsel

Captain, U. S. Marine Corps

\_\_\_\_\_  
Grade or Rank of Trial Counsel

FOOTNOTES

1 - When an appropriate commander signs personally, inapplicable words are stricken.

2 - See R.C.M. 601(e) concerning instructions. If none, so state

ORIGINAL



DD Form 458, Charge Sheet, Supplemental Page 1 of 1  
U. S. v. GySgt BASS, J. H.

CHARGE SHEET				
I. PERSONAL DATA				
1. NAME OF ACCUSED (Last, First, MI) BASS, James H.		2. EDIPI [REDACTED]	3. RANK/RATE GySgt	4. PAY GRADE E-7
5. UNIT OR ORGANIZATION Headquarters and Support Battalion, Marine Corps Installation-East, Camp Lejeune, North Carolina		6. CURRENT SERVICE		
		a. INITIAL DATE 16 Dec 2020		
		b. TERM 4 Yrs		
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		N/A
\$5,258.70\$	\$0.00	\$5,258.70		
II. CHARGES AND SPECIFICATIONS				
10. Charge I: Violation of the UCMJ, Article 92				
<b>Specification 1 (Violation of a General Order):</b> In that Gunnery Sergeant James H. BASS, U.S. Marine Corps, on active duty, did, at an unknown location, on or about 19 October 2022, violate a lawful general order, which was his duty to obey, to wit: paragraph 5, ALNAV 074/20, dated 24 July 2020, by wrongfully using Tetrahydrocannabinol-8.				
<b>Specification 2 (Violation of a General Order):</b> In that Gunnery Sergeant James H. BASS, U.S. Marine Corps, on active duty, did, at an unknown location, on or about 13 December 2022, violate a lawful general order, which was his duty to obey, to wit: paragraph 5, ALNAV 074/20, dated 24 July 2020, by wrongfully using Tetrahydrocannabinol-8.				
<del>Charge II: Violation of the UCMJ, Article 112a</del>				
<del><b>Specification 1 (Wrongful Use of a Controlled Substance):</b> In that Gunnery Sergeant James H. BASS, U.S. Marine Corps, on active duty, did, at an unknown location, on or about 19 October 2022, wrongfully use Tetrahydrocannabinol-8, a Schedule I controlled substance.</del>				
<del><b>Specification 2 (Wrongful Use of a Controlled Substance):</b> In that Gunnery Sergeant James H. BASS, U.S. Marine Corps, on active duty, did, at an unknown location, on or about 13 December 2022, wrongfully use Tetrahydrocannabinol-8, a Schedule I controlled substance.</del>				
III. PREFERRAL; SERVICE OF CHARGES				
11a. NAME OF ACCUSER (Last, First, MI) [REDACTED]		b. GRADE PFC	c. ORGANIZATION OF ACCUSER H&S Bn, MCI-EAST, MCB, Camp Lejeune, NC	
d. SIGNATURE OF ACCUSER [REDACTED]		e. DATE 27 Jan 2023		
AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 27th day of January, 2023, and signed the foregoing charges and specifications under oath that she is a person subject to the Uniform Code of Military Justice and that she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of her knowledge and belief.				
D. T. SCANLON Typed Name of Officer		HqSptBn, MCI-East, MCB, Camp Lejeune, NC Organization of Officer		
Captain, U. S. Marine Corps Grade and Service		Judge Advocate		
[REDACTED] Signature		Official Capacity to Administer Oaths (See R.C.M. 307(b)--must be commissioned officer)		

ORIGINAL

DD Form 458, Charge Sheet, Supplemental Page 1 of 1  
U. S. v. GySgt BASS, J. H.

12. On 31 JANUARY, 2023, the accused was informed of the charges against him and of the name of the accuser known to me. (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

\_\_\_\_\_  
Typed Name of Immediate Commander

HqSptBn, MCI-East-MCB, Camp Lejeune, NC  
Organization of Immediate Commander

1st Sgt, U.S. Marine Corps

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1430 hours, 31 Jan, 2023 at HqSptBn, MCI-East-MCB,  
Camp Lejeune, NC Designation of Command or

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE: COMMANDING OFFICER

\_\_\_\_\_  
Typed Name of Officer

Legal Officer

Official Capacity of Officer Signing

GS-09, U.S. Marine Corps  
Grade

\_\_\_\_\_  
Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE

HqSptBn, MCI-East-MCB

Camp Lejeune, North Carolina

20230201

Referred for trial to the Special court-martial convened by this document, Which convenes a Special Court-Martial to be tried by judge alone pursuant to Article 16(c)(2)(A), UCMJ.

dated 28 July, 2021, subject to the following instructions:<sup>2</sup> The court may not adjudge punishment in excess of the limitations under Article 19(b), UCMJ. Prior to referral, I consulted with Trial Counsel in accordance with R.C.M. 406A.

By XXXXXXXXXXXXXXXXXX of \_\_\_\_\_  
Command or Order

\_\_\_\_\_  
Typed Name of Officer

COMMANDING OFFICER  
Official Capacity of Officer Signing

Colonel, U.S. Marine Corps

15. On 1 February, 2023, I caused to be served a copy hereof on the above named accused.

D. T. SCANLON

Typed Name of Trial Counsel

Captain, U. S. Marine Corps

Grade or Rank of Trial Counsel

FOOTNOTES

1 -- When an appropriate commander signs personally, inapplicable words are stricken.  
2 -- See R.C.M. 601(e) concerning instructions. If none, so state.

# **TRIAL COURT MOTIONS & RESPONSES**



NAVY-MARINE CORPS TRIAL JUDICIARY  
EASTERN JUDICIAL CIRCUIT  
SPECIAL COURT-MARTIAL

UNITED STATES

V.

JAMES BASS  
GUNNERY SERGEANT  
USMC

DEFENSE MOTION TO COMPEL  
DISCOVERY

7 March 2023

**MOTION**

Pursuant to Rules for Court-Martial (R.C.M.) 701, 703, 905 and 906(b)(7), Gunnery Sergeant (GySgt) James Bass, U.S. Marine Corps, through counsel, moves this Court for an order directing the Government to produce all discovery requested by the Defense.

**SUMMARY**

The Government has charged Gunnery Sergeant (GySgt) Bass with two specifications of violating a lawful general order and two specifications of wrongful use of a controlled substance. The Defense has made several specific discovery requests that are required to provide an effective defense of GySgt Bass. A number of the Defense's specific requests for discovery have been denied. It is essential to the conduct of a fair trial in this case that this Court compel the Government to produce the specific discovery requests contained within this motion.

**FACTS**

1. The Defense filed its Initial Discovery Request on 8 February 2023.
2. The Government responded to Defense's Initial Discovery Request on 3 March 2023.
3. The Defense filed a Supplemental Discovery Request on 3 March 2023.

4. The Government responded to Defense's Supplemental Discovery Request on 6 March 2023.

### BURDEN

As the moving party, the Defense has the burden of persuasion. R.C.M. 905(c)(2). The burden of proof is by a preponderance of the evidence. R.C.M. 905(c)(1).

### LAW

"In a case referred for trial by court-martial, the trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe." 10 U.S.C. § 846 (2019); see also R.C.M. 703(a). "Each party is entitled to the production of evidence which is *relevant and necessary*." R.C.M. 703(e)(emphasis added). "Relevant evidence is necessary when it is not cumulative and when it would contribute to a party's presentation of the case in some positive way on a matter in issue." R.C.M. 703(e), Discussion.

The Defense is also entitled to certain discovery. R.C.M. 701; see also *United States v. Graner*, 69 M.J. 104, 107 (C.A.A.F. 2010). "An accused's right to discovery is not limited to evidence that would be known to be admissible at trial; it includes materials that *would assist the defense in formulating a defense strategy*." *United States v. Luke*, 69 M.J. 309, 320 (C.A.A.F. 2011) (emphasis added). It also includes evidence that is favorable to the defense. R.C.M. 701(a)(6). "Evidence is favorable if it is exculpatory, substantive evidence or evidence capable of impeaching the government's case." *United States v. Behenna*, 71 M.J. 228, 238 (C.A.A.F. 2012).

"Discovery in the military justice system, which is broader than in federal civilian criminal proceedings, is designed to eliminate pretrial "gamesmanship," reduce the amount of

pretrial motions practice, and reduce the potential for surprise and delay at trial." *United States v. Jackson*, 59 M.J. 330, 333 (C.A.A.F. 2004) (citing MCM, United States (2002 ed.). Analysis of the Military Rules of Evidence A21-32). The Court of Appeals for the Armed Forces has held that trial counsel's obligation under Article 46, UCMJ, includes removing obstacles to defense access to information and providing such other assistance as may be needed to ensure that the defense has an equal opportunity to obtain evidence. *United States v. Williams*, 50 M.J. 436, 442 (C.A.A.F. 1999). "If the Government fails to disclose discoverable evidence, the error is tested on appeal for prejudice, which is assessed in light of the evidence in the entire record." *Id.* at 334 (citing *United States v. Stone*, 40 M.J. 420, 423 (C.M.A. 1994)).

### ARGUMENT

The Government denied several specific discovery requests made by Defense. The following specific items were denied in the Government's Responses. All items are both relevant and necessary to Defense's case and required for the conduct of a fair trial on the merits.

- a. **All unredacted command testing registers from 1 September 2019 through 1 January 2023, and a copy of the morning reports utilized in selecting the Marines to be tested for any "OO" urinalysis during the requested range.**

The requested information is both relevant and necessary to the preparation of Defense's case. Through interviewing GySgt [REDACTED] the H&S Battalion SACO, and a thorough review of the discovered evidence, it has become clear that there are issues in the testing codes utilized in urinalyses conducted within H&S Battalion. As it pertains to GySgt Bass's urinalyses, the "OO" code appears to be unutilized without the underlying factual predicate being met - i.e., the testing code is utilized for purposes not outlined in the applicable Marine Corps Order. "Service-directed and Other Service-Directed (OO). Testing directed by the Secretary of the Navy or the

CMC. Premise code OO is used for SACC personnel, Marines involved in the collection and shipment of urine samples, security personnel, reenlistments, brig staff, prisoners, reservists, and Marines reporting in from PCS, leave or UA. Testing dates are randomly selected." See MCO 5300.17A. Since GySgt Bass has been at H&S Battalion, he has been tested on more than one occasion without meeting the aforementioned criteria. Defense requires the information articulated in subparagraph (a) to determine if this is a systemic problem with all urinalyses conducted withing H&S Battalion or if GySgt Bass has been personally targeted with improper urinalyses. This information is necessary to the preparation of the Defense's case and will assist in the cross examination of GySgt [REDACTED] a named Government witness.


- b. All correspondence between Capt. [REDACTED] Col [REDACTED], LtCol [REDACTED], SgtMaj [REDACTED] and GySgt [REDACTED] referencing GySgt Bass's October 2022 Special Court Martial acquittal or his pending Special Court Martial.

The requested evidence is both relevant and necessary to Defense's case. GySgt Bass was acquitted at Special Court-Martial on 13 October 2022. At the first possible opportunity after acquittal, H&S Bn "randomly" selected GySgt Bass to provide a urine sample. The emails and communications are necessary to determine whether GySgt was inappropriately targeted for a "random" urinalysis.

### **RELIEF REQUESTED**

The Defense respectfully requests the Court order the Government to immediately disclose and/or produce the requested materials.


1. Oral Argument. The Defense requests oral argument on this motion, if opposed.

  
J. M. BUNKER  
Captain, U.S. Marine Corps  
Detailed Defense Counsel



CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion was served electronically on Trial Counsel and the Court on 7 March 2023.

  
J. M. BUNKER  
Captain, U.S. Marine Corps  
Detailed Defense Counsel

**NAVY-MARINE CORPS TRIAL JUDICIARY  
EASTERN JUDICIAL CIRCUIT  
SPECIAL COURT-MARTIAL**

UNITED STATES

v.

JAMES BASS  
Gunnery Sergeant/ E-7  
U.S. Marine Corps

**GOVERNMENT RESPONSE TO  
DEFENSE MOTION TO COMPEL  
DISCOVERY**

10 March 2023

**MOTION**

On 7 March 2023, the Defense filed a motion to compel discovery pursuant to R.C.M. 906(b)(7) and R.C.M. 701(a)(2). This is the Government's response to the Defense's motion. The Government respectfully requests that the Court **DENY** the Defense's motion in part.

**SUMMARY**

On 7 March 2023, pursuant to the Trial Management Order (TMO), the Defense filed a motion to compel discovery. Some of the items the Defense requested were granted by the Government and the Government is awaiting receipt of those granted items in order to facilitate discovery. Some of the items have since been discovered to the Defense. Accordingly, the Government respectfully requests that this Court **DENY** the Defense request in part.

**BURDEN**

As the moving party, the Defense bears the burden of proof and persuasion by a preponderance of the evidence.<sup>1 2</sup>

**FACTS**

<sup>1</sup> "Unless otherwise provided in this manual the burden of proof on any factual issue the resolution of which is necessary to decide a motion shall be by a preponderance of the evidence." R.C.M. 905(c)(1).

<sup>2</sup> "Except as otherwise provided in this Manual the burden of persuasion on any factual issue the resolution of which is necessary to decide a motion shall be on the moving party." R.C.M. 905(c)(2)(A).

The Government adopts the Defense's summary of facts for the limited purpose of this Motion response.

## LAW

The foundation for military discovery practice is Article 46, UCMJ, in which Congress mandated that "the trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe." *United States v. Williams*, 50 M.J. 436 (C.A.A.F. 1999). R.C.M. 701 identifies specific discovery and disclosure responsibilities that effectuate the mandates set forth in Article 46, UCMJ, and related case law. *Id*

The broad discovery obligations mandated by Article 46, UCMJ, are also implemented by R.C.M. 703, which governs the production of witnesses and evidence. R.C.M. 703(f) provides that "[e]ach party is entitled to the production of evidence which is relevant and necessary," and requires that any request for the production of evidence shall list each piece of evidence and a description of each item "sufficient to show its relevance and necessity." Although these rules are intended to put into effect the broad discovery mandate set forth in Article 46, UCMJ, they are themselves grounded on the fundamental concept of relevance. *United States v. Graner*, 69 M.J. 104, 107 (C.A.A.F. 2010) (quoting 1 John Henry Wigmore, *Evidence in Trials at Common Law* 655 (Peter Tillers rev. 1983) ("[n]one but facts having rational probative value are admissible.")).

The Defense is not entitled to send government agents on a "fishing expedition," as the evidence sought must ultimately be "material to the preparation of the defense." *United States v. Morris*, 52 M.J. 193, 197 (C.A.A.F. 1999). Evidence is material only if there is a reasonable

probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. *United States v. Bagley*, 473 U.S. 667, 682 (1985).

The standard of review for the denial of a request for production is abuse of discretion. *United States v. Powell*, 49 M.J. 220 (C.A.A.F. 1998); *United States v. Mosley*, 42 M.J. 300 (C.A.A.F. 1995). If the military judge abused his discretion, then the test for prejudice is harmless beyond a reasonable doubt. *See generally Powell*.

### DISCUSSION

The following is a list of evidence that the Defense has requested that this Court compel in the order it appears in the Defense's Motion:

- a. *All unredacted command testing registers from 1 September 2019 through 1 January 2023 and a copy of the morning reports utilized in selecting the Marines to be tested for any "OO" urinalysis during the requested range.*

The Defense requested unredacted command testing registers from a period that spans over three years along with the corresponding morning reports. This request is overly broad on its face and is nothing but a fishing expedition. The Defense has not established why this information is relevant and necessary in this case. The Defense has already discussed GySgt Bass's tests and their belief that some of these tests did not follow the proper procedures elucidated in the Marine Corps Order governing the urinalysis program. They have not articulated why this additional information in this overly broad request is in any way relevant and necessary for this case. This broad request paired with no established relevance to the specific tests at issue in this case is reason enough for this Court to deny this request.

- b. *All correspondence between Capt [REDACTED] Col [REDACTED] LtCol [REDACTED] SgtMaj [REDACTED] and GySgt [REDACTED] referencing GySgt Bass's October 2022 special Court-Martial acquittal or his pending Special Court-Martial.*

The Defense has requested any message traffic within the Accused's chain of command in connection with the Accused's prior acquittal in October of 2022 or his current pending court-martial. The Government denied this request as overly broad on its face and not requesting materials relevant and necessary for Defense preparation. The Defense has failed to meet their burden as it relates to the production of these supposed emails between members of the Accused's chain of command because they have not established why they are relevant and necessary for the Defense's preparation. In their Motion, the Defense intimates that the reason for this request is that the command is somehow targeting GySgt Bass despite this being a random urinalysis, simply based off the timing of the test. This broad swath request for all messages within the command is exactly the type of fishing expedition contemplated by the aforementioned case law and the rules. The Defense has not pointed with any specificity as to what they are actually looking for or why it is relevant for their preparation the case at bar. A simple statement that these might show that GySgt Bass was targeted by the command without any supporting evidence is not enough to meet their burden for this overly broad request. Moreover, the Government provided the Defense with the testing registers from the week of 14-21 October 2022 which contained the random urinalysis GySgt Bass took part in on 19 October 2022. Eighty-six (86) Marines from HQSPTBN were randomly tested in that particular urinalysis. The Defense has failed to articulate how they believe these requested emails will show that GySgt Bass was targeted, aside from the test being the week after his first court-martial ended. This request is an overly broad fishing expedition and the Government requests that the Court deny this Defense request.

#### EVIDENCE

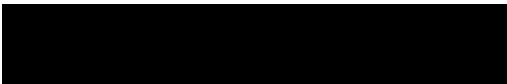


Witnesses: None

Enclosure(s): Encl 1: Unredacted Testing Register dtd 19 Oct 22

**RELIEF REQUESTED**

The Government respectfully requests that this Court DENY the Defense's request for the aforementioned reasons. The Government anticipates the opportunity to litigate the merits of the pertinent filings at an Article 39(a) Hearing on 13 March 2023.

  
C. J. LEMBO  
Captain, U.S. Marine Corps  
Government Trial Counsel

\*\*\*\*\*

**Certificate of Service**

I hereby attest that a copy of the foregoing motion was served on the court and opposing counsel electronically on 10 March 2023.

  
C. J. LEMBO  
Captain, U.S. Marine Corps  
Government Trial Counsel

NAVY-MARINE CORPS TRIAL JUDICIARY  
EASTERN JUDICIAL CIRCUIT  
SPECIAL COURT-MARTIAL

UNITED STATES

V.

JAMES BASS  
GUNNERY SERGEANT  
USMC

DEFENSE RESPONSE TO  
GOVERNMENT MOTION IN LIMINE:  
BRADY NOTICE

11 March 2023

**MOTION**

This is the Defense's response to the Government's Motion in *limine* seeking a preliminary ruling under R.C.M. 906(b)(13) on the admissibility of evidence. The Government's motion was filed on 6 March 2023.

**SUMMARY**

The Government's Motion in *limine* filed on 6 March 2023, seeks to prevent the Defense from presenting evidence or cross-examining witnesses on the Brady Notice provided by Judge Advocate Division (JAD) on 9 February 2023. The Notice focuses on name-brand poppy seed contamination and the possibility of positive urinalysis results for codeine.

**ARGUMENT**

The Defense moves this Court to permit the Defense's to present evidence and cross-examine witnesses on JAD's Brady Notice Regarding Possible Positive Urinalysis Results for Codeine from Ingestion of Poppy Seeds (hereafter "Notice"). While the Government is correct in asserting that the Notice specifically relates to the chemical properties and contamination of certain brands/types of poppy seeds, the Defense should still be permitted to present evidence on

AE

XIV

Pg


1 of 3

the topic. By admitting evidence of underlying subject-matter of the Notice, Defense intends to highlight how otherwise legal products can at times be contaminated with substances of a contraband nature and can trigger positive urinalysis results. In essence, the Notice is one example of how an innocent or unknowing ingestion can occur through consumption of commercially legal products. While not the crux of the defense theory, the Defense believes that this is evidence that the fact-finder should weigh in determining GySgt Bass's guilt or innocence.

### **RELIEF REQUESTED**


The Defense respectfully requests the Court permit the Defense to introduce evidence and cross-examine witnesses on JAD's Notice.

1. Oral Argument. The Defense requests oral argument on this motion, if opposed.

  
J. M. BUNKER  
Captain, U.S. Marine Corps  
Detailed Defense Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion was served electronically on Trial Counsel and the Court on 11 March 2023.

  
J. M. BUNKER  
Captain, U.S. Marine Corps  
Detailed Defense Counsel

NAVY-MARINE CORPS TRIAL JUDICIARY  
EASTERN JUDICIAL CIRCUIT  
SPECIAL COURT-MARTIAL

UNITED STATES

v.

JAMES BASS  
Gunnery Sergeant  
U.S. Marine Corps

**Bench Brief**

17 April 2023

**DISCUSSION**

The Navy-Marine Corps Court of Criminal Appeals (N.M.C.C.A.) analyzed the use of the permissive inference in *United States v Hildebrandt*, 60 M.J. 642 (N.M.C.C.A. 2004). In *Hildebrandt*, the Appellant was convicted of wrongful use of cocaine in violation of Article 112a, UCMJ. The Court stated, “[w]e agree with the appellant’s assertion that much of the Government’s evidence is circumstantial as to his actual use of cocaine. However, we also find that some of the evidence, and in particular that of the chemist, is direct and compelling evidence that the appellant’s urine sample contained the metabolite, indicating his prior ingestion of a proscribed substance.” *Id.* at 645. The Court continued, “[i]n fact, military precedent permits the Government to satisfy both elements of an article 112a charge with circumstantial evidence alone.” *Id.* at 646.

The Court of Appeals of the Armed Forces (C.A.A.F.) analyzed the Government’s utilization of the permissive inference in *United States v Green*, 55 M.J. 76 (C.A.A.F. 2001). The *Green* Court stated, “[t]he military judge, as gatekeeper, may determine in ‘appropriate circumstances’ that the test results, as explained by the expert testimony, permit consideration of the permissive inference that presence of the controlled substance demonstrates knowledge and wrongful use.” *Id.* at 80. The Court continued, “[i]n the context of the permissive inference, the



military judge has discretion to determine the issue of admissibility by considering whether: (1) the metabolite is naturally produced by the body or any substance other than the drug in question; (2) the permissive inference of knowing use is appropriate in light of the cutoff level, the reported concentration, and other appropriate factors; and (3) the testing methodology is reliable in terms of detecting the presence and quantifying the concentration of the drug or metabolite in the sample.” *Id.* Additionally, “[i]f the military judge determines that scientific evidence—whether novel or established—is admissible, the prosecution may rely on the permissive inference during its case on the merits. A urinalysis properly admitted under the standards applicable to scientific evidence, when accompanied by expert testimony providing the interpretation required by *Murphy* (internal citation omitted), provides a legally sufficient basis upon which to draw the permissive inference of knowing, wrongful use, without testimony on the merits concerning the physiological effects. *Id.* at 81. See *United States v Bond*, 46 M.J. 86, 89 (1997).

In the case at bar, the Government has charged the Accused with two violations of Article 92 for wrongfully using THC-8 on two separate occasions in October and December of 2022. The Government concedes that from an elemental standpoint, violations of Article 92 are different from violations of Article 112a in that the Government must prove that the Accused violated or failed to obey an order or regulation. In this the case, the order that the Government has charged the Accused with violating is ALNAV 074/20 which reads in part, “[s]ailors and Marines are prohibited from using any product made or derived from hemp (as defined in 7 U.S.C. 1639o), including CBD, regardless of the products THC concentration, claimed or actual, and regardless of whether such product may lawfully be bought.” The Accused is charged with this violation for wrongfully using THC-8. Accordingly, although this case is on its face an

orders violation. It is really a layered wrongful use case, albeit not a standard Article 112a case. This is readily apparent from the Government's evidence at trial, which includes testimony from the observers and UPCs from both urinalysis failures as well as the SACO. Finally, the Government has called an expert from NDSL, Doctor [REDACTED] who testified to the efficacy of urinalysis testing and the validity of the tests in this case. All of these factors should weigh in favor of the Government in this court's analysis of whether the Government can use the permissive inference in the case at bar.

Although this case is a military judge alone court martial pursuant to Article 16(c)(2)(A), UCMJ, the Government respectfully requests that this Court allow the Government to argue that this Court should consider the permissive inference in the case at bar for the reasons discussed above.

[REDACTED]

C. J. LEMBO  
Captain, U.S. Marine Corps  
Government Trial Counsel

\*\*\*\*\*

#### Certificate of Service

I hereby attest that a copy of the foregoing motion was served on the court and opposing counsel electronically on 17 April 2023.

[REDACTED]

C. J. LEMBO  
Captain, U.S. Marine Corps  
Government Trial Counsel

# REQUESTS

**THERE ARE NO REQUESTS**

# NOTICES

**THERE ARE NO NOTICES**

# **COURT RULINGS & ORDERS**

**THERE ARE NO COURT RULINGS  
AND ORDERS**



# STATEMENT OF TRIAL RESULTS

## STATEMENT OF TRIAL RESULTS

## SECTION A - ADMINISTRATIVE

1. NAME OF ACCUSED (last, first, MI) BASS, James H.	2. BRANCH Marine Corps	3. PAYGRADE E-7	4. DoD ID NUMBER [REDACTED]
5. CONVENING COMMAND MCI-East, MCB Camp Lejeune	6. TYPE OF COURT-MARTIAL Special (referred judge alone)	7. COMPOSITION Judge Alone - MJA16	8. DATE SENTENCE ADJUDGED Apr 18, 2023

## SECTION B - FINDINGS

SEE FINDINGS PAGE

## SECTION C - TOTAL ADJUDGED SENTENCE

9. DISCHARGE OR DISMISSAL Not adjudged	10. CONFINEMENT N/A	11. FORFEITURES N/A	12. FINES N/A	13. FINE PENALTY N/A	
14. REDUCTION E-5	15. DEATH Yes <input type="radio"/> No <input checked="" type="radio"/>	16. REPRIMAND Yes <input checked="" type="radio"/> No <input type="radio"/>	17. HARD LABOR Yes <input type="radio"/> No <input checked="" type="radio"/>	18. RESTRICTION Yes <input type="radio"/> No <input checked="" type="radio"/>	19. HARD LABOR PERIOD N/A
20. PERIOD AND LIMITS OF RESTRICTION N/A					

## SECTION D - CONFINEMENT CREDIT

21. DAYS OF PRETRIAL CONFINEMENT CREDIT 0	22. DAYS OF JUDICIALLY ORDERED CREDIT [REDACTED]	23. TOTAL DAYS OF CREDIT 0 days
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## SECTION E - PLEA AGREEMENT OR PRE-TRIAL AGREEMENT

24. LIMITATIONS ON PUNISHMENT CONTAINED IN THE PLEA AGREEMENT OR PRE-TRIAL AGREEMENT There was no plea-agreement.
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## SECTION F - SUSPENSION OR CLEMENCY RECOMMENDATION

25. DID THE MILITARY JUDGE RECOMMEND SUSPENSION OF THE SENTENCE OR CLEMENCY? Yes <input type="radio"/> No <input checked="" type="radio"/>	26. PORTION TO WHICH IT APPLIES [REDACTED]	27. RECOMMENDED DURATION [REDACTED]
28. FACTS SUPPORTING THE SUSPENSION OR CLEMENCY RECOMMENDATION [REDACTED]		

## SECTION G - NOTIFICATIONS

29. Is sex offender registration required in accordance with appendix 4 to enclosure 2 of DoDI 1325.07?	Yes <input type="radio"/> No <input checked="" type="radio"/>
30. Is DNA collection and submission required in accordance with 10 U.S.C. § 1565 and DoDI 5505.14?	Yes <input checked="" type="radio"/> No <input type="radio"/>
31. Did this case involve a crime of domestic violence as defined in enclosure 2 of DoDI 6400.06?	Yes <input type="radio"/> No <input checked="" type="radio"/>
32. Does this case trigger a firearm possession prohibition in accordance with 18 U.S.C. § 922?	Yes <input type="radio"/> No <input checked="" type="radio"/>

## SECTION H - NOTES AND SIGNATURE

33. NAME OF JUDGE (last, first, MI) WORKMAN, ADAM J.	34. BRANCH Marine Corps	35. PAYGRADE O-6	36. DATE SIGNED May 8, 2023	37. JUDGE'S SIGNATURE WORKMAN, ADAM J. [REDACTED] Digitally signed by WORKMAN, ADAM J. Date: 2023.05.08 14:42:26 -04'00'
37. NOTES This is a corrected SOTR.				

# STATEMENT OF TRIAL RESULTS - FINDINGS

## SECTION I - LIST OF FINDINGS

CHARGE	ARTICLE	SPECIFICATION	PLEA	FINDING	ORDER OR REGULATION VIOLATED	LIO OR INCHOATE OFFENSE ARTICLE	DIBRS
Charge:I Plea: Not Guilty Finding: Guilty	92	Specification 1:	<input type="text" value="Not Guilty"/>	<input type="text" value="Guilty"/>	5300.17A		<input type="text" value="092-A0"/>
		Offense description	Violation of a lawful general order				
		Specification 2:	<input type="text" value="Not Guilty"/>	<input type="text" value="Guilty"/>	5300.17A		<input type="text" value="092-A0"/>
		Offense description	Violation of a lawful general order				
Charge:II Plea: No Plea Finding: W/D	112a	Specification 1:	<input type="text" value="No plea entered"/>	<input type="text" value="W/D"/>			<input type="text" value="112AC1"/>
		Offense description	Use of Schedule I / II / III controlled drugs				
		Withdrawn and Dismissed					
		Specification 2:	<input type="text" value="No plea entered"/>	<input type="text" value="W/D"/>			<input type="text" value="112AC1"/>
		Offense description	Use of Schedule I / II / III controlled drugs				
		Withdrawn and Dismissed					

# MILITARY JUDGE ALONE SEGMENTED SENTENCE

## SECTION J - SENTENCING

CHARGE	SPECIFICATION	CONFINEMENT	CONCURRENT WITH	CONSECUTIVE WITH	FINE
Charge:I Plea: Not Guilty Finding: Guilty	Specification 1:		Example: all others	Example: I.2, I.4, II.1	
	Specification 2:		Example: all others	Example: I.2, I.4, II.1	
Charge:II Plea: No Plea Finding: W/D	Specification 1:		Example: all others	Example: I.2, I.4, II.1	
	Specification 2:		Example: all others	Example: I.2, I.4, II.1	

# CONVENING AUTHORITY'S ACTIONS

# POST-TRIAL ACTION

## SECTION A - STAFF JUDGE ADVOCATE REVIEW

1. NAME OF ACCUSED (LAST, FIRST, MI) Bass, James H		2. PAYGRADE/RANK E7	3. DoD ID NUMBER [REDACTED]
4. UNIT OR ORGANIZATION HqSptBn, MCI-E		5. CURRENT ENLISTMENT 16 December 2020	6. TERM 4 Yrs
7. CONVENING AUTHORITY (UNIT/ORGANIZATION) HqSptBn, MCI-E	8. COURT-MARTIAL TYPE Special (referred judge a	9. COMPOSITION Judge Alone - MJA16	10. DATE SENTENCE ADJUDGED 17 April 2023

### Post-Trial Matters to Consider

11. Has the accused made a request for deferment of reduction in grade?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
12. Has the accused made a request for deferment of confinement?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
13. Has the accused made a request for deferment of adjudged forfeitures?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
14. Has the accused made a request for deferment of automatic forfeitures?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
15. Has the accused made a request for waiver of automatic forfeitures?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
16. Has the accused submitted necessary information for transferring forfeitures for benefit of dependents?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
17. Has the accused submitted matters for convening authority's review?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
18. Has the victim(s) submitted matters for convening authority's review?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
19. Has the accused submitted any rebuttal matters?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
20. Has the military judge made a suspension or clemency recommendation?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
21. Has the trial counsel made a recommendation to suspend any part of the sentence?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
22. Did the court-martial sentence the accused to a reprimand issued by the convening authority?	<input checked="" type="radio"/> Yes	<input type="radio"/> No

23. Summary of Clemency/Deferment Requested by Accused and/or Crime Victim, if applicable.

On 24 April 2023, detailed defense counsel requested deferment of the adjudged reduction. Applying the R.C.M. 1103 MCM (2019 Ed.) criteria, that request was denied on 28 April 2023.

On 28 April 2023, detailed defense counsel submitted matters for your consideration, specifically requesting the convening authority suspend the adjudged reduction below the pay grade of E-6. You are required to consider these matters in determining the action you take on the findings of guilty or on the sentence.

I have advised the Convening Authority of clemency authority based on the earliest findings of guilty for an offense committed on or after 1 January 2019 pursuant to R.C.M. 1110, MCM (2019 Ed.)

24. Convening Authority Name/Title [REDACTED]/COMMANDING OFFICER	25. SJA Name [REDACTED]
26. SJA signature [REDACTED]	27. Date May 15, 2023

**SECTION B - CONVENING AUTHORITY ACTION**

28. Having reviewed all matters submitted by the accused and the victim(s) pursuant to R.C.M. 1106/1106A, and after being advised by the staff judge advocate or legal officer, I take the following action in this case: [If deferring or waiving any punishment, indicate the date the deferment/waiver will end. Attach signed reprimand if applicable. Indicate what action, if any, taken on suspension recommendation(s) or clemency recommendations from the judge.]

Special Court-Martial No. I23-01

**Action.**

In the Special Court-Martial case of United States v. Gunnery Sergeant James H. Bass, U.S. Marine Corps, the sentence is approved and will be executed.

**Reprimand.**

Pursuant to the sentence of the court as approved, a punitive letter will be served upon the accused and a copy incorporated as part of this action upon entry of judgment.

**Disposition.**

Pursuant to Article 66, Uniform Code of Military Justice, the record of trial will be forwarded to the Navy-Marine Corps Appellate Review Activity (Code 40), Office of the Judge Advocate General, Washington Navy Yard, Washington, D.C. 20374 for appellate review.

29. Convening authority's written explanation of the reasons for taking action on offenses with mandatory minimum punishments or offenses for which the maximum sentence to confinement that may be adjudged exceeds two years, or offenses where the adjudged sentence includes a punitive discharge (Dismissal, DD, BCD) or confinement for more than six months, or a violation of Art. 120(a) or 120(b) or 120b:

N/A.

30. Convening Authority's signature



31. Date

22 May 2023

32. Date convening authority action was forwarded to PTPD or Review Shop.

06 JUN 2023

# ENTRY OF JUDGMENT



# ENTRY OF JUDGMENT

## SECTION A - ADMINISTRATIVE

<b>1. NAME OF ACCUSED (LAST, FIRST, MI)</b> Bass, James H.	<b>2. PAYGRADE/RANK</b> E7	<b>3. DoD ID NUMBER</b> <div style="background-color: black; width: 100px; height: 20px;"></div>
<b>4. UNIT OR ORGANIZATION</b> HqSptBn, MCI-E	<b>5. CURRENT ENLISTMENT</b> 16 December 2020	<b>6. TERM</b> 4 Yrs
<b>7. CONVENING AUTHORITY (UNIT/ORGANIZATION)</b> HqSptBn, MCI-E	<b>8. COURT-MARTIAL TYPE</b> Special (referred judge a	<b>9. COMPOSITION</b> Judge Alone - MJA16
<b>10. DATE COURT-MARTIAL ADJOURNED</b> 17 April 2023		

## SECTION B - ENTRY OF JUDGMENT

**\*\*MUST be signed by the Military Judge (or Circuit Military Judge) within 20 days of receipt\*\***

**11. Findings of each charge and specification referred to trial.** [Summary of each charge and specification (include at a minimum the gravamen of the offense), the plea of the accused, the findings or other disposition accounting for any exceptions and substitutions, any modifications made by the convening authority or any post-trial ruling, order, or other determination by the military judge. R.C.M. 1111(b)(1)]

Charge I: Violation of Article 92, UCMJ.

Plea: Not Guilty. Finding: Guilty.

Specification 1: Did, on or about 19 October 2022, violate a lawful general order, which was his duty to obey, to wit: Paragraph 5, ALNAV 074/20, dtd 24 July 2020, by wrongfully using Tetrahydrocannabinol-8. Plea: Not Guilty. Finding: Guilty.

Specification 2: Did, on or about 13 December 2022, violate a lawful general order, which was his duty to obey, to wit: Paragraph 5, ALNAV 074/20, dtd 24 July 2020, by wrongfully using Tetrahydrocannabinol-8. Plea: Not Guilty. Finding: Guilty.

Charge II: Violation of Article 112a, UCMJ.

Plea: No plea entered. Finding: Withdrawn and dismissed prior to entry of pleas.

Specification 1: Did, on or about 19 October 2022, wrongfully use Tetrahydrocannabinol-8, a Schedule I controlled substance.

Plea: No plea entered. Finding: Withdrawn and dismissed prior to entry of pleas.

Specification 2: Did, on or about 13 December 2022, wrongfully use Tetrahydrocannabinol-8, a Schedule I controlled substance.

Plea: No plea entered. Finding: Withdrawn and dismissed prior to entry of pleas.

Note: Specifications 1 and 2 of Charge II were referred to trial, but withdrawn and dismissed prior to entry of pleas.

**12. Sentence to be Entered.** Account for any modifications made by reason of any post-trial action by the convening authority (including any action taken based on a suspension recommendation), confinement credit, or any post-trial rule, order, or other determination by the military judge. R.C.M. 1111(b)(2). If the sentence was determined by a military judge, ensure confinement and fines are segmented as well as if a sentence shall run concurrently or consecutively.

Military Judge: Reduction to pay grade E-5 and to be reprimanded.

No confinement credit awarded.

**13. Deferment and Waiver.** Include the nature of the request, the CA's Action, the effective date of the deferment, and date the deferment ended. For waivers, include the effective date and the length of the waiver. RCM 1111(b)(3)

On 24 April 2023, detailed defense counsel requested deferment of the adjudged reduction. Applying the R.C.M. 1103 MCM (2019 Ed.) criteria, that request was denied on 28 April 2023.

**14. Action convening authority took on any suspension recommendation from the military judge:**

N/A.

15. Judge's signature:		16. Date judgment entered:	
<b>WORKMAN.ADA</b> <b>M.J.</b> [REDACTED]		Digitally signed by <b>WORKMAN.ADAM.J</b> [REDACTED] Date: 2023.06.23 11:11:48 -04'00'	
		Jun 23, 2023	
17. In accordance with RCM 1111(c)(1), the military judge who entered a judgment may modify the judgment to correct computational or clerical errors within 14 days after the judgment was initially entered. Include any modifications here and resign the Entry of Judgment.			
18. Judge's signature:		19. Date judgment entered:	

# APPELLATE INFORMATION

**THERE IS NO APPELLATE  
INFORMATION AT THIS TIME**

**REMAND**

**THERE WERE NO REMANDS**

**NOTICE OF COMPLETION OF  
APPELLATE REVIEW**