

(2) *Stop and Frisk*. Evidence is admissible if seized from a person who was lawfully stopped and who was frisked for weapons because he or she was reasonably suspected to be armed and dangerous. Contraband or evidence that is located in the process of a lawful frisk may be seized.

(3) *Vehicles*. Evidence is admissible if seized in the course of a search for weapons in the areas of the passenger compartment of a vehicle in which a weapon may be placed or hidden, so long as the person lawfully stopped is the driver or a passenger and the official who made the stop has a reasonable suspicion that the person stopped is dangerous and may gain immediate control of a weapon.

(g) *Searches Incident to Apprehension*.

(1) *General Rule*. Evidence is admissible if seized in a search of a person who has been lawfully apprehended or if seized as a result of a reasonable protective sweep.

(2) *Search for Weapons and Destructible Evidence*. A lawful search incident to apprehension may include a search for weapons or destructible evidence in the area within the immediate control of a person who has been apprehended. "Immediate control" means that area in which the individual searching could reasonably believe that the person apprehended could reach with a sudden movement to obtain such property.

(3) *Protective Sweep for Other Persons*.

(A) *Area of Potential Immediate Attack*. Apprehending officials may, incident to apprehension, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of apprehension from which an attack could be immediately launched.

(B) *Wider Protective Sweep*. When an apprehension takes place at a location in which another person might be present who might endanger the apprehending officials or others in the area of the apprehension, a search incident to arrest may lawfully include a reasonable examination of those spaces where a person might be found. Such a reasonable examination is lawful under subdivision (g) if the apprehending official has a reasonable suspicion based on specific and articulable facts that the area to be examined harbors an individual posing a danger to those in the area of the apprehension.

(h) *Searches within Jails, Confinement Facilities, or Similar Facilities*. Evidence obtained from a search within a jail, confinement facility, or similar facility is admissible even if conducted without probable cause provided that it was authorized by persons with authority over the institution.

(i) *Emergency Searches to Save Life or for Related Purposes*. Evidence obtained from emergency searches of persons or property conducted to save life, or for a related purpose, is admissible provided that the search was conducted in a good faith effort to render immediate medical aid, to obtain information that will assist in the rendering of such aid, or to prevent immediate or ongoing personal injury.

(j) *Searches of Open Fields or Woodlands*. Evidence obtained from a search of an open field or woodland is admissible provided that the search was not unlawful within the meaning of Mil. R. Evid. 311.

Rule 315. Probable Cause Searches

(a) *General Rule*. Evidence obtained from reasonable searches conducted pursuant to a search warrant or search authorization, or under the exigent circumstances described in this rule, is admissible at trial when relevant and not otherwise inadmissible under these rules or the Constitution of the United States as applied to members of the armed forces.

(b) *Definitions*. As used in these rules:

(1) "Search authorization" means express permission, written or oral, issued by competent military authority to search a person or an area for specified property or evidence or for a specific person and to seize such property, evidence, or person. It may contain an order directing subordinate personnel to conduct a search in a specified manner.

(2) "Search warrant" means express permission to search and seize issued by competent civilian authority.

(c) *Scope of Search Authorization*. A search authorization may be valid under this rule for a search of:

(1) the physical person of anyone subject to military law or the law of war wherever found;

(2) military property of the United States or of nonappropriated fund activities of an armed force of the United States wherever located;

(3) persons or property situated on or in a military installation, encampment, vessel, aircraft, vehicle, or any other location under military control, wherever located; or

(4) nonmilitary property within a foreign country.

(d) *Who May Authorize*. A search authorization under this rule is valid only if issued by an impartial individual in one of the categories set forth in subdivisions (d)(1) and (d)(2). An otherwise impartial authorizing official does not

lose impartiality merely because he or she is present at the scene of a search or is otherwise readily available to persons who may seek the issuance of a search authorization; nor does such an official lose impartial character merely because the official previously and impartially authorized investigative activities when such previous authorization is similar in intent or function to a pretrial authorization made by the United States district courts.

(1) *Commander*. A commander or other person serving in a position designated by the Secretary concerned as either a position analogous to an officer in charge or a position of command, who has control over the place where the property or person to be searched is situated or found, or, if that place is not under military control, having control over persons subject to military law or the law of war; or

(2) *Military Judge or Magistrate*. A military judge or magistrate if authorized under regulations prescribed by the Secretary of Defense or the Secretary concerned.

(e) *Who May Search*.

(1) *Search Authorization*. Any commissioned officer, warrant officer, petty officer, noncommissioned officer, and, when in the execution of guard or police duties, any criminal investigator, member of the Air Force security forces, military police, or shore patrol, or person designated by proper authority to perform guard or police duties, or any agent of any such person, may conduct or authorize a search when a search authorization has been granted under this rule or a search would otherwise be proper under subdivision (g).

(2) *Search Warrants*. Any civilian or military criminal investigator authorized to request search warrants pursuant to applicable law or regulation is authorized to serve and execute search warrants. The execution of a search warrant affects admissibility only insofar as exclusion of evidence is required by the Constitution of the United States or an applicable federal statute.

(f) *Basis for Search Authorizations*.

(1) *Probable Cause Requirement*. A search authorization issued under this rule must be based upon probable cause.

(2) *Probable Cause Determination*. Probable cause to search exists when there is a reasonable belief that the person, property, or evidence sought is located in the place or on the person to be searched. A search authorization may be based upon hearsay evidence in whole or in part. A determination of probable cause under this rule will be based upon any or all of the following:

(A) written statements communicated to the authorizing official;

(B) oral statements communicated to the authorizing official in person, via telephone, or by other appropriate means of communication; or

(C) such information as may be known by the authorizing official that would not preclude the officer from acting in an impartial fashion. The Secretary of Defense or the Secretary concerned may prescribe additional requirements through regulation.

(g) *Exigencies*. Evidence obtained from a probable cause search is admissible without a search warrant or search authorization when there is a reasonable belief that the delay necessary to obtain a search warrant or search authorization would result in the removal, destruction, or concealment of the property or evidence sought. Military operational necessity may create an exigency by prohibiting or preventing communication with a person empowered to grant a search authorization.

Rule 316. Seizures

(a) *General Rule*. Evidence obtained from reasonable seizures is admissible at trial when relevant and not otherwise inadmissible under these rules or the Constitution of the United States as applied to members of the armed forces.

(b) *Apprehension*. Apprehension is governed by R.C.M. 302.

(c) *Seizure of Property or Evidence*.

(1) *Based on Probable Cause*. Evidence is admissible when seized based on a reasonable belief that the property or evidence is an unlawful weapon, contraband, evidence of crime, or might be used to resist apprehension or to escape.

(2) *Abandoned Property*. Abandoned property may be seized without probable cause and without a search warrant or search authorization. Such seizure may be made by any person.

(3) *Consent*. Property or evidence may be seized with consent consistent with the requirements applicable to consensual searches under Mil. R. Evid. 314.

(4) *Government Property*. Government property may be seized without probable cause and without a search warrant or search authorization by any person listed in subdivision (d), unless the person to whom the property is