

CHARGE SHEET

1. NAME OF ACCUSED Law. Phil. Garcia del Real

2. GRADE OR RANK [REDACTED] 4. PAY GRADE [REDACTED]

3. UNIT OR ORGANIZATION
994TH MILITARY POLICE COMPANY, 759TH MILITARY POLICE BATTALION
FT CARSON, COLORADO

4. CURRENT SERVICE
a. INITIAL DATE 17 Aug 2001 b. TERM 6 years

5. PAY PER MONTH
a. BASIC \$2,400.90
b. SEPARATION DUTY a. TOTAL \$2,400.90

6. NATURE OF RESTRAINT OF ACCUSED NONE

7. DATE(S) IMPOSED N/A

10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE 92

11. SPECIFICATION: United States Army, 994th Military Police Company, 759th Military Police Battalion, did, at or near Naval Station Guantanamo, Cuba, on or about 26 March 2003, violate a lawful general order, to wit: Standing Operating Procedures for Use of Aerosol Teargas System (Classified Capetecum), dated 11 November 2002, by wrongfully using Oborois Capetecum Spray against a detainee.

12. NAME OF ACCUSED Law. Phil. Garcia del Real

13. SIGNATURE OF ACCUSED [REDACTED]

14. PREFERRED
a. GRADE Colonel
b. ORGANIZATION OF ACCUSED Joint Detention Operations Group
c. DATE 07/17/2003

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

[REDACTED]
/s/ [REDACTED] Major
[REDACTED] Grade

Joint Task Force Guantanamo
Operation of Officer

Assistant Staff Judge Advocate
Officer Capetecum to Administer Oath
(See A.C.M. 307(b), must be commissioned officer)

12. On _____, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 309(a). (See R.C.M. 308 if notification cannot be made.)

Typed Name of Immediate Commander

Joint Detachment Operations Group
Organization of Immediate Commander

Grade

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at _____ hours, _____ at Joint Task Force
Designation of Command or

Guantanamo, Guantanamo Bay, Cuba (0360)
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE COMMANDER

Typed Name of Officer

Grade

Staff Judge Advocate
Official Capacity of Officer Signing

Signature

V. REFERRAL: SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY | b. PLACE | c. DATE (YYYYMMDD)
Joint Task Force Guantanamo | Naval Station Guantanamo, Cuba |

Referred for trial to the _____ court-martial convened by

_____, subject to the following instructions: 2

By _____ of
Command or Order

Typed Name of Officer

Official Capacity of Officer Signing

Grade

Signature

15. On _____, I (caused to be) served a copy hereof on (each of) the above named accused.

Typed Name of Trial Counsel

Grade or Rank of Trial Counsel

Signature

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken.
2 - See R.C.M. 607(a) concerning instructions. If none, so state.

00060

RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ
 The use of this form is to be in accordance with the provisions of the Manual for Courts-Martial, 1969 Edition, Part II, Section 107.1, and the provisions of the Manual for Courts-Martial, 1969 Edition, Part II, Section 107.2.

1. I am considering whether you should be punished under Article 15, UCMJ, for the following misconduct:

wh: The Use of Aerial Rocket System (Oscorox) System (Oscorox) Standard Operating Procedure, dated 29 August 2002, by wrongfully
 do that you, did, at U.S. Naval Station Quantico Bay, Calif, on or about 26 March 2003, failed to obey a lawful general order, to
 spray Oscorox Capcans at a detainee. This is in violation of Article 52, UCMJ.

2. You are not required to make any statement, but if you do, anything you say can be used against you in this proceeding or at a trial by court-martial.
 You have several rights under this Article 15 proceeding. First I want you to understand I have not yet made a decision whether or not you
 will be punished. I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense(s).
 You may ordinarily have an open hearing before me. You may request a person to speak on your behalf. You may present witnesses or
 other evidence to show why you shouldn't be punished at all (waiver of rights) or why punishment should be very light (waiver of
 examination and mitigation). I will consider everything you present before deciding whether I will impose punishment or the type and amount
 of punishment I will impose. If you do not want me to dispose of this report of misconduct under Article 15, you have the right to demand trial
 by court-martial instead. If I'm deciding what you want to do you have the right to consult with legal counsel.
 You now have 48 hours to decide what you want to do.

3. Having been afforded the opportunity to consult with counsel, my decision are as follows: (Printed appropriate block, date, and sign)

a. I demand trial by court-martial.
 b. I do not demand trial by court-martial and in the Article 15 proceedings:
 (1) I request the hearing be Open Closed. (2) A person to speak in my behalf is is not requested.
 (3) Matters to discuss, mitigate, and/or exonerate: Are not presented Will be presented in person Are
 presented.
 Date: **030414**
 Name: **[REDACTED]**

**4. In a(n) Open Closed hearing, all matters presented in defense, mitigation, and/or exonerate, having been
 considered, the following punishment is imposed: **[REDACTED]****

5. Direct the original DA Form 2627 be filed in the Performance folder Restricted files of the OADR.
 You are advised of your right to appeal to the **MG MILM, ITP CDR**
 within 5 calendar days. An appeal made after that
 time may be rejected as untimely. Punishment is effective immediately unless otherwise stated above.

6. I have considered the appeal and it is my opinion that:
 a. I do not agree with the appeal.
 b. I agree and do not submit additional matters.
 c. I agree and submit additional
 matters: **[REDACTED]**

7. (Printed appropriate block, date, and sign)
 a. I do not agree with the appeal.
 b. I agree and do not submit additional
 matters: **[REDACTED]**

8. I have considered the appeal and it is my opinion that:
 a. I do not agree with the appeal.
 b. I agree and do not submit additional
 matters: **[REDACTED]**

9. After consideration of all matters presented in appeal, the appeal is:
 a. Denied Granted in full Granted in part **[REDACTED]**

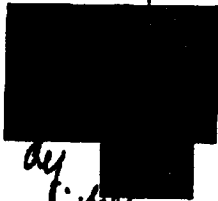
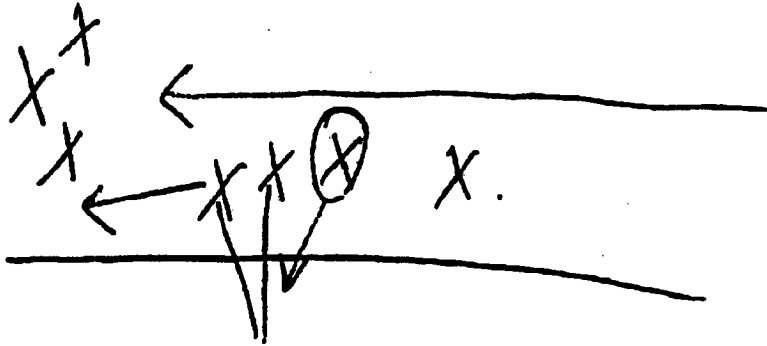
10. I have seen the action taken on my appeal.
 a. **[REDACTED]**
 b. **[REDACTED]**

11. After reviewing my comments
 DA Form 2627, 25
 Use of Aerial Rocket System (Oscorox) System (Oscorox) SOP
 Commander's Inquiry Memorandum 2 & Certificate of Finding

DA FORM 2627, AUG 84

similar to
instruction

get out police
officer



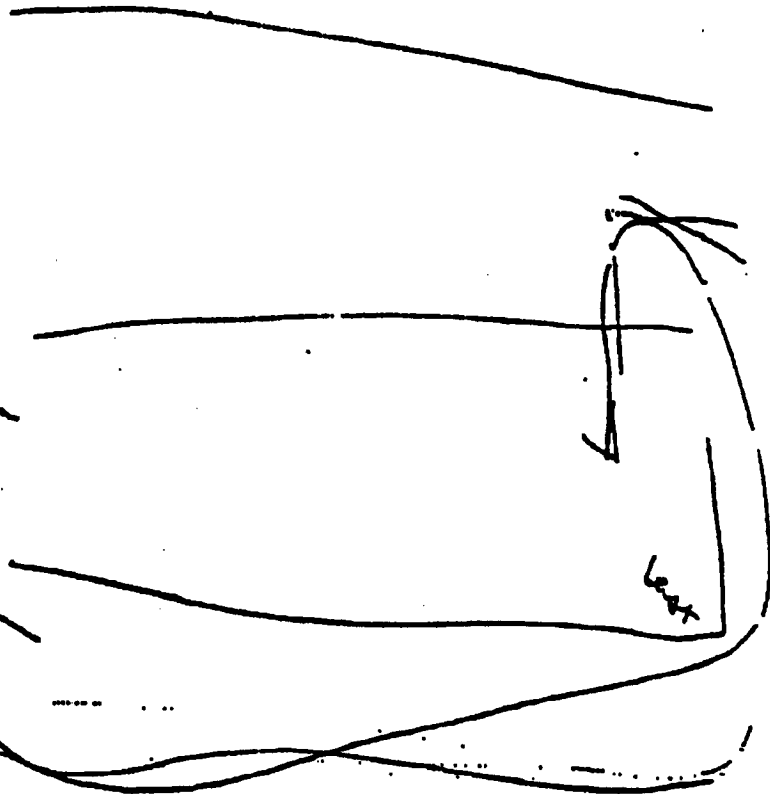
3.

def. Kelly A.
one door built
Kelly A. doesn't apply

in diag. right of
72 cars
on film

- IR set away
- then IR - w/oc spring
- spring would more
likely trigger block
than gun

156



Res
6 x 6 x 6

1/2 hour

00062



DEPARTMENT OF THE ARMY
JTF-OTMO
GUANTANAMO BAY, CUBA

USE OF AEROSOL RESTRAINT SYSTEM
(OLEORESIN CAPSICUM)
STANDING OPERATING PROCEDURES

APPLICABILITY. This procedure applies to all military and civilian personnel assigned to or working at Camp Delta.

rev 11Nov02

1. **References:**

- a. Messages, HQDA, DAMO-ODL, 14 December 1994, subject: Review for Legal Review/Opinion—Use of Oleoresin Capsicum Pepper Spray for Correctional Purposes.
- b. AR 190-47, The Army Corrections System.
- c. JTF-160 ROE/RUF dated 09Jun02.
- d. E-mail from JDOG CDR re: Policy Guidance, Procedures for Use of Aerosol Restrain (OLEORESIN CAPSICUM) dated 21Jun02.

2. **PURPOSE:** The purpose of this SOP is to establish a policy and procedure for the training, use, delegation of authority and reporting for the use of Oleoresin Capsicum (OC) spray.

3. **RESPONSIBILITY.** All military and civilian personnel working in Camp Delta will be familiar with and conform to the procedure prescribed by this policy. Unit leaders and shift OICs/NOICs are responsible for ensuring that their personnel are familiar with and comply with this procedure. Personnel may be held accountable under the UCMJ for failing to follow the guidelines set forth under this SOP.

4. **EXECUTION.**

- a. **Use of Force:** The JTF-160 ROE/RUF GTA card dated 09Jan02 lists the "Priorities of Force" as the following:

"When force is necessary to protect or control Detainees, follow these steps, if time and circumstances permit:

- 1) Use Verbal Persuasion.
- 2) Use Show of force.
- 3) Use Pepper Spray or CS Gas.
- 4) Use Physical Force, then Non-Lethal Weapons (NLW).
- 5) Present Deadly Force.
- 6) Use Deadly Force as authorized below."

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- b. OC Spray is not to be used as a punitive measure to punish a Detainee. It is to be used only in self-defense or as a planned use of force prior to using physical force.
 - c. OC Pepper Spray will be used in a planned use of force scenario when a detainee must be subdued, when a detainee is suspected of having a weapon, has barricaded his cell or coated his body or cell with a slippery substance or body fluids. Additionally, in nearly all circumstances OC pepper spray will be used in cell extractions requiring the IRF to physically remove a detainee from a confined area. If the detainee complies with the instructions given by the IRF, OC pepper spray will not be used. OC Pepper Spray will be carried for On Post Escorts (GTMO Hospital, NAVBASE Brig, etc.)
5. **TRAINING.** All training for the use of OC Pepper Spray and treatment of individuals exposed will be conducted IAW the Ft. Leonard Wood NLWC Program of Instruction (POI) for Oleoresin Capsicum (OC) Spray.
6. **DELEGATION.**
- a. The CJDOG delegates authority for Deputy Facility Commander (DFC) may authorize the use of OC pepper spray to preclude the need for use of physical force by the Internal Reaction Force (IRF) or Escorts to control an unruly detainee or detainees; to prevent the commission of a serious offense involving violence and threatening death or serious bodily harm; in self defense; to prevent a detainee from escaping; or to extract a detainee(s) involved in a riot or disturbance.
 - b. Escorts: The CJDOG delegates authority for escorts to carry and employ OC pepper spray while escorting detainees on appointments outside the wire. (Refer to section governing use of OC by escorts.) Any use of OC based on this delegation will be done IAW this SOP.
 - c. Deputy Facility Commanders, Duty Officers and Guard Commanders are authorized to possess and carry on their person during the duration of their shift OC Pepper Spray for use during emergency or urgent circumstances. The same use of force requirements remain as previously stated.
7. **General.** OC Pepper Spray is an inflammatory agent that typically causes involuntary closing of the eyes, uncontrollable coughing, loss of strength, stamina and power and loss of coordination and balance. No special decontamination is required after OC application, but effects will be minimized if the subject is exposed to airflow and cool water. OC pepper spray typically has a debilitating impact on the subject sprayed and a psychological impact of the subject sprayed and witnesses.
8. **Specific Instructions.**
- a. Each Delta CP will maintain a list of Detainees who have medical problems that would preclude the pre-planned use of OC. The list will be provided by the JDOG to both camp CPs.
 - b. The application of OC and the decontamination process should be video taped, along with the IRF actions. The video tape will include as part of its documentation, the name and rank of OIC/Guard Commander, ISN Number of Detainee and cell number, reason

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for use of OC and approving authority, name and rank of IRF team members and the decontamination process. The video tape will be turned in to JDOG.

- c. Use of OC within a confined, specialized environment (i.e. hospital, etc) should be limited to only when an extreme, life-threatening emergency exists.
- d. OC should be administered by aiming at the eyes, nose and mouth using a double-tap method of two bursts. If possible, the OC pepper spray will be administered from approximately 3-6 feet away from the Detainee when sprayed. If control is not achieved within approximately 15 seconds after the first application of OC, a second burst will be applied.
- e. The IRF team should wait until the Detainee is visibly incapacitated or complies with orders and has assumed a position appropriate for restraining before entering the cell. The IRF team should remember that OC affects different people in different ways and to different levels. The incapacitating effect of the OC pepper spray is expected to eliminate or significantly reduce the Detainee's ability to struggle and minimizes the amount of physical force needed by the IRF to physically restrain and maintain security of the Detainee.
- f. Once the Detainee is secured, he will be decontaminated by, at a minimum, having the affected areas exposed to airflow and washed with water. The recreation area is an ideal area to perform decontamination since it provides airflow, access to water and containment. These decontamination actions will be documented.
- g. Based on the Detainee's behavior, once being placed in a pre-designated cell, the Guard Commander will determine whether the restraints will remain on the Detainee or be removed. If the Detainee is to remain in restraints, he will be placed in an upright position or on his side.
- h. After OC is administered and the Detainee is under control and restrained, the Detainee's condition will be immediately evaluated by medical personnel. Block personnel will monitor the Detainee for one hour. Should the Detainee complain of shortness of breath or other medical conditions, the block NCO will notify the Guard Commander/OIC. The Guard Commander/OIC will notify medical personnel. Based on the Detainee's medical condition, the medic will determine if further medical care is needed. With the rare exception, OC spray does not have a lasting impact.
- i. Escorts. The Commander delegates authority for escorts to carry and employ OC pepper spray while escorting Detainees on appointments outside the wire. Only MPs who are trained and certified to carry and use OC pepper spray will be authorized to carry OC when escorting. Prior to leaving Camp Delta, the Duty Officer/Guard Commander will inform the escort if the Detainee has any medical conditions where OC pepper spray should not be used. In the event of an escape attempt or combative behavior, OC pepper spray will be used to control and subdue the Detainee prior to using physical force. When possible, the following steps will be followed prior to utilizing OC pepper spray:
 - (1) In a loud, clear voice order the Detainee to halt three times or to stop the threatening behavior in the appropriate language.
 - (2) Allow the Detainee time to comply with the commands prior to using OC.

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- (3) Visually scan the area for bystanders prior to dispensing the OC spray.
- (4) The escort will hold the OC spray dispenser in their hand, extended out and away from their body aiming at the Detainee's eyes, nose and mouth, then if still justified, utilize the OC pepper spray in the manner described above.
- (5) Once the situation has stabilized, the Detainee will be decontaminated and the process documented.
- (6) Once the Detainee has been subdued and restrained, the escort will contact the command post and inform the Guard Commander/OIC of the situation and then return back to the camp.
- (7) Medical complaints should be coordinated with the camp health clinic while enroute back to camp.
- (8) Once the Detainee has been returned to the camp, the escort will place the Detainee in a cell in the maximum-security cellblock.
- (9) After the Detainee has been placed into the cell medical personnel will immediately evaluate the Detainee's condition. Block personnel will monitor the Detainee for one hour. Should the Detainee complain of shortness of breath or other medical conditions, the block NCO will notify the Guard Commander/OIC. The Guard Commander/OIC will notify medical personnel. Based on the Detainee's medical condition, the medic will determine if further medical care is needed.
- f. An SIR will be submitted IAW AF 190-40 and annotated in the facility blotter.
- k. Bulk quantities of OC dispensers will be maintained in the arms room outside of the camp. Operational quantities of OC are stored in a locked container in the camp CP. Issue and turn-in will be IAW camp and arms room SOP.
- l. Documentation of all OC spraying, RFF actions and decontamination process will be done by video and written reports.

DEPARTMENT OF THE ARMY
984TH MILITARY POLICE COMPANY
GUANTANAMO BAY, CUBA
APO-AE 09360

AFZC-Y-P-984

31 MARCH 2003

MEMORANDUM FOR 984TH COMMANDER

SUBJECT: Commander's Inquiry findings and recommendations for misuse of OC
Pepper Spray for retaliatory means

Findings:

1. The Camp Delta SOP states that the use of "OC Spray is not to be used as a punitive measure to punish a Detainee. It is to be used only in self-defense...
2. The SOP also states that the Guard Commander is authorized to "posses and carry" OC pepper spray during the entirety of their shift.
3. In [REDACTED] statement, he states that [REDACTED] did warn the detainee several times before administering the OC spray.
4. According to both statements the contents of the liquid being thrown at the IRF team and [REDACTED] was unknown.
5. [REDACTED] states his knowledge of the SOP on proper decontamination procedures for the detainee had he been affected by the spray.
6. There are contradictory statements on the emotional level of [REDACTED] during the event of the disturbance.
7. [REDACTED] is trained on the use of OC through FT. Carson's enhanced training program.

Recommendations:

[REDACTED] should be counseled on his use of OC pepper spray on the block. It was not in direct procedure with the SOP, although his actions were very close to the standard set in place by the SOP. I recommend [REDACTED] receive a counseling statement from the commander and company mandated retraining on OC Spray, use of force and ROE.

00067

SWORN STATEMENT

For use of this form, see AR 190-48; the approving agency is ODCBOPS

LOCATION

GUANTANAMO BAY, CUBA

LAST NAME FIRST NAME MIDDLE NAME

DATE 31 MAR 05 TIME 1116

FILE NUMBER

SOCIAL SECURITY NUMBER

GRADE STATUS

ORGANIZATION OR ADDRESS

9800 WAREHOUSE POLICE COMPANY

... WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Q: [REDACTED]

Q: Did you see [REDACTED] use OC spray on Lima Block on 26 March 05?

A: Yes.

Q: What was the situation regarding the use of OC spray?

A: I was directed to ensure that [REDACTED] received a haircut and beard cut by [REDACTED]. The rest of the block did not like it that we were going to cut [REDACTED] his hair. I alerted the IRF team to hold [REDACTED] in the barber chair and to escort [REDACTED] back to his cell because the block was starting to get riled up. After the IRF team escorted [REDACTED] back to his cell and were walking to leave the cell block, [REDACTED] tried to initiate a disturbance by throwing some liquid out of his cell onto the IRF team and [REDACTED] he sprayed [REDACTED] in order to stop the disturbance.

Q: Was [REDACTED] emotional or very angry when he attempted to spray the detainee?

A: Yes, he was emotional because he had just had some liquid thrown in his face.

Q: Were the contents of the liquid known?

EXHIBIT

INITIALS OF PERSON MAKING STATEMENT

PAGE 1 OF 2 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF [REDACTED] TAKEN AT [REDACTED] DATED [REDACTED] CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE [REDACTED] OF [REDACTED] PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

DA FORM 2823, JUL 72

SUPSEDES DA FORM 2823, 1 JAN 68, WHICH WILL BE USED.

USE PRE 7/20

EJ

00068

STATEMENT (Continued)

A: NO

Q: Did he verbally warn the detainee, and tell him to stop?

A: Yes, numerous times

Q: After he sprayed the OC spray did the detainee and the others stop?

A: Yes, the block quieted down following the use of AOC

Q: Did any OC Spray touch any part of the detainee's skin or clothing?

A: Yes, both

Q: What were the actions following the spray of the detainee?

A: Day shift Block NCO monitored the detainee until shift change. The detainee showed no signs of OC contamination, so he passed it on to his relief at shift change to continue to monitor the detainee.

Q: Do you have anything else to add to this statement?

A: NO

///END OF STATEMENT///

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

[REDACTED]
Signature of Person Making Statement

WITNESSES:

Subscribed and sworn to before me, a person authorized by law, to administer oaths, this 31 day of MARCH, 2003
at BTMO - CAJAN

ORGANIZATION OR ADDRESS

[REDACTED]
Signature of Person Administering Oath

[REDACTED]
Typed Name of Person Administering Oath

ART 124 (b)(4) NEM 1
(Authority To Administer Oath)

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

PAGE 2 OF 2 PAGES

SD:

SWORN STATEMENT

For use of this form, see AR 190-45; the [redacted] agency is [redacted] PS

LOCATION

Guantanamo Bay, Cuba
LAST NAME, FIRST NAME, MIDDLE NAME

DATE

3 MAR 03

TIME

1044

FILE NUMBER

SOCIAL SECURITY NUMBER

GRADE STATUS

ORGANIZATION OR ADDRESS

99TH MILITARY POLICE COMPANY

WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Q: [redacted]

A: [redacted]

Q: DID YOU USE OC SPRAY ON LIMA BLOCK ON 26 MAR 2003?

A: YES

Q: WHAT WAS THE SITUATION OR REASON FOR USING THE SPRAY?

A. I was returning to the front of the block with the IFF team around the exterior of the building. The detainees threw an unknown liquid at one of the members of the IFF team. The detainees then began to throw another cup at us. Due to the risk of exposing my soldiers to various diseases, I wanted to end the situation before the entire block got involved. I believe my use of OC spray was warranted to protect my soldiers from ~~any~~ harm.

Q: You were unaware of the contents of the cup?

A. Yes

Q: Did you think the use of OC spray would stop the detainees actions?

A. Yes

Q: If spray did get onto the detainee what would be your actions?

A. Medical was already on sight so I would enter the cell using the least amount of force necessary, take the detainee to the block Recreation Area and thoroughly decontaminate the detainee. I would then have medical examine the detainee for any injuries according to SOP.

EXHIBIT

INITIALS OF [redacted] MAKING STATEMENT

PAGE 1 OF 2 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF [redacted] TAKEN AT [redacted] DATED [redacted] CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE [redacted] OF [redacted] PAGES." WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

DA FORM 2823, JUL 72

SUPERSEDES DA FORM 2823, 1 JAN 68, WHICH WILL BE USED.

201

00070

STATEMENT (Continued)

Q: Do you have anything else to add to this statement?

A: Yes this act was not based on emotion. I have had no personal feelings of anger or hatred towards the detainees that particular day. I sprayed the detainees to protect my soldiers and myself from exposure to the diseases that could have been present in the fluid thrown on us.

Q: Do you have anything else to add to this statement?

A: NO

/// END OF STATEMENT ///

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

[REDACTED]

(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 31 day of MARCH, 2003 at GTMO CUBA

[REDACTED]

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

ART 134 (1)(A) UCMJ
(Authority To Administer Oaths)

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

INITIALS OF PERSON MAKING STATEMENT

U-33

PAGE 2 OF 2 PAGES

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SWORN STATEMENT

For use of this form, see AR 190-45; the presiding agency is DDCS/CP

LOCATION

Guantanamo Bay, Cuba

LAST NAME, FIRST NAME, MIDDLE NAME

ORGANIZATION OR ADDRESS

98444ndp

DATE

TIME

FILE NUMBER

SOCIAL SECURITY NUMBER

GRADE STATUS

Active

WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH

Q:

A:

Q: Did you see [redacted] use OC spray?

A: Yes

Q: What position were you on the IRT team?

A: IRT team I was securing detainees arms

Q: A detainee was throwing liquids and being hostile towards several M.P.s

Q: What made [redacted] use O.C. on the detainee?

Q: What made [redacted] use O.C. spray?

A: The detainee was being hostile and yelling and throwing liquids and general shirk and M.P.s [redacted] use the O.C. spray to stop the detainee from doing it.

Q: Did any O.C. spray hit the detainee on the skin or clothing?

A: No the detainee had a towel holding it up in front of him it never touch him.

Q: Did it seem like [redacted] was personally attacking or punishing the detainee who threw liquid?

A: No he was doing it in self defense to get the detainee to stop.

Q: Do you have anything else to add to this statement?

A: No [redacted] in End of Statement [redacted]

EXHIBIT

INITIALS OF PERSON MAKING STATEMENT

PAGE 1 OF 2 PAGES

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DA FORM 2823, JUL 72

SUPERSEDES DA FORM 2823, 1 JAN 68, WHICH WILL BE USED.

132.00

00072

STATEMENT (Continued)

NOT USED

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

[REDACTED]
(Signature of Person Making Statement)

WITNESSES

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 21 day of March, 1953, at Quantico, Va. City.

ORGANIZATION OR ADDRESS

[REDACTED]
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

ART 174 (b)(4) (RM)
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

001

PAGE 2 OF 2 PAGES

7240

00073

STATEMENT (Continued)

NOT USED

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE 1. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

[REDACTED]
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 31 day of MARCH 2005 at FTAD - (KFA)

ORGANIZATION OR ADDRESS

[REDACTED]
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

[REDACTED] RT AP
(Typed Name of Person Administering Oath)
APT P4 (b)(4) (K.M.)
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

[Handwritten initials]

PAGE 2 OF 2 PAGES

SPC 71 00

00075

DA FORM 2823, JUL 72 SUPersedes DA FORM 2823, 1 JAN 68, WHICH WILL BE USED.

ADDITIONAL PAGES MUST CONTAIN THE HEADINGS: STATEMENT OF [REDACTED] TAKEN AT [REDACTED] DATED [REDACTED] CONTINUED. THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS PAGES. WHEN ADDITIONAL PAGES ARE UTILIZED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE SIDE OF ANOTHER COPY OF THIS FORM.

EXHIBIT INITIALS OF PERSON MAKING STATEMENT: [REDACTED] PAGE 1 OF 2 PAGES

/// END OF STATEMENT ///

A: No. It seemed like self-defense.

Q: Do you have anything else to add to this statement?

A: No. He never actually got hit. His eyes were not team at all. When I went back on the block the detainee was not even complaining, acting like nothing happened.

Q: Did it seem like [REDACTED] was personally attacking or punishing the detainee who threw the liquid?

A: Did you see any OC spray hit the detainee on the skin or clothing?

Q: Did you see [REDACTED] begin to spray him to stop him from throwing the liquid on us?

A: A detainee was upset and hostile towards us while we were putting another detainee back in his cell. He began throwing some type of liquid on us. From what I said, [REDACTED] began to spray him to stop him from throwing the liquid on us.

Q: What caused [REDACTED] to use OC spray?

A: I was on the IEF team as the shield man.

Q: What was your position on the 20 mar 2003?

A: Yes.

Q: Did you see [REDACTED] use OC spray?

WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH.

GRADE STATUS: EA (EA)
FILE NUMBER: [REDACTED]

DATE: 21 MAR 03
TIME: 1328
SOCIAL SECURITY NUMBER: [REDACTED]

ORGANIZATION OR ADDRESS: [REDACTED]
LAST NAME, FIRST NAME, MIDDLE NAME: [REDACTED]

LOCATION: Guantanamo Bay

SWORN STATEMENT For use of the form, see DA 150-45; the proposing agency is OCS/OPS

STATEMENT (Continued)

Not Used

AFFIDAVIT

I, [REDACTED], HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1 AND ENDS ON PAGE [REDACTED]. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

[REDACTED]
(Signature of Person Making Statement)

WITNESSES

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 31 day of MARCH, 1967 at GUMMO-CAMP

ORGANIZATION OR ADDRESS

[REDACTED]
(Signature of Person Administering Oath)

[REDACTED]
(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

APT 134 (b)(4) (K.M.)
(Address To Administer Oath)

INITIALS OF PERSON MAKING STATEMENT

ST

PAGE 1 OF 2 PAGES

USAPPC 12-60

00077

**DEPARTMENT OF THE ARMY
984TH MILITARY POLICE COMPANY
GUANTANAMO BAY, CUBA
APO AE 09360**

AFZC-Y-P-984

31 March 2003

MEMORANDUM FOR Commander, JDOG, Guantanamo Bay, Cuba

SUBJECT: Commanders Inquiry on improper use of OC spray.

1. The purpose of this memorandum is to provide a recommendation based on the findings of [REDACTED] Commanders Inquiry. After reading the facts of the inquiry and discussing the matter with [REDACTED] I feel the use of OC spray in the situation was reactionary and not retaliatory. [REDACTED] was carrying the OC on that block because of an imminent force cell extraction, and not because he wanted to maliciously spray a detainee. I believe that [REDACTED] did not maliciously spray the detainee with OC Spray, even if it was inappropriate in this circumstance. [REDACTED] is an outstanding performer and one of my best platoon sergeants. I feel the best course of action for [REDACTED] would be a counseling from myself the company commander, reminding on the use of force, ROE and use of OC Spray.

2. Point of contact is the undersigned at 3150.

[REDACTED]
[REDACTED] MP
Commanding

00078

SJA ARTICLE 15 PROCESSING SHEET - ARMY

Rank/Name:



SSN:



Unit/Section:

984th MPCo

DATE COMPLETED

- DATE RECEIVED NJP REQUEST:
- REQUEST FORM FILLED OUT COMPLETELY:
- ALL ALLIED DOCUMENTATION SUPPORT REQUESTED ACTION:
- ENTER ARTICLE 15 INTO NJP LOG:
- ALL CHARGES ARE DRAFTED CORRECTLY:
- CHARGES HAVE BEEN REVIEWED BY JUDGE ADVOCATE:
- MAKE TWO COPIES OF ENTIRE PACKET (ORIGINAL TO UNIT, 1- COPY TO SOLDIER, 1 COPY TO SJA)
- CONTACT UNIT TO PICK-UP OF ARTICLE 15 PACKET:
- DATE AND TIME UNIT PICKED UP ARTICLE 15:
- CALL UNIT WITHIN 72 HOURS TO CHECK STATUS OF ARTICLE 15:
- DATE AND TIME OFFERED:
- ACKNOWLEDGEMENT OF RECEIPT OF CHARGES AND ELECTIONS (to accept Article 15 or demand courts-martial):
- DATE MEMBER IS SERVED PUNISHMENT (block 6):
- DATE RETURNED TO SJA OFFICE:
- REVIEW ALL SIGNATURES AND DATES (blocks 2, 3, 6 & 7)
- IS PUNISHMENT LEGAL:
- TRANSFER PUNISHMENT(S) FROM REQUEST SHEET ONTO 2627:
- DATE PUNISHMENT IMPOSED:
- UPDATE NJP LOG:
- DID SOLDIER APPEAL AND IF SO WITHIN 5 DAYS: (YES/NO)
- IF YES, DATE APPEAL SUBMITTED:
- DATE FORWARDED TO APPELLATE AUTHORITY (if applicable):
- DATE ACTED ON BY APPELLATE AUTHORITY (if applicable):
- DATE SOLDIER SIGNED ACTION ON THE APPEAL (if applicable):
- DATE ARTICLE 15 CLOSED OUT:
- DATE CLOSED OUT IN NJP LOG:
- COPIES: UNIT (1) MPC/FSC/FAO(2) RECONCILIATION

4 Apr 03
 "
 "
 5 April
 4 April
 "
 "
 "
 4 Apr @ 1700 HAND-DRAWN
 7 Apr @ 1700