UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.		**12-CR-231 (RC)**
	:	
JAMES HITSELBERGER	:	

DEFENDANT'S MOTION TO SUPPRESS TANGIBLE EVIDENCE SEIZED FOLLOWING UNLAWFUL STOP AND SEARCH OF BACKPACK AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Mr. James Hitselberger, the defendant, through undersigned counsel, respectfully moves this Honorable Court to suppress the use as evidence at trial of all tangible objects seized from him and the search of a backpack on April 11, 2012. Mr. Hitselberger requests an evidentiary hearing on this motion. In support of this motion, counsel submits the following.

Factual Background

Mr. Hitselberger is charged in a six count superseding indictment with three counts of unlawful retention of national defense information, in violation of 18 U.S.C. § 793(e) and three counts of unauthorized removal of a public record, in violation of 18 U.S.C. § 2071(a). According to the discovery provided by the government, the charges arose out of an incident that occurred on April 11, 2012. On that date, officers of the United States military stopped and arrested Mr. Hitselberger on the United States Naval base in Bahrain. The officers searched Mr. Hitselberger's backpack and, according to the officers, found two classified documents.[1] The officers did not have probable cause to arrest or search Mr. Hitselberger.

[1]According to the discovery provided pursuant to Federal Rule of Criminal Procedure 16, no additional tangible evidence was recovered from Mr. Hitselberger or the backpack.

Argument

Probable cause is an essential prerequisite to an arrest. Dunaway v. New York, 442 U.S. 200, 213 (1979). Mr. Hitselberger was arrested at the point that the military officers stopped him. At that point, the officers had no information that suggested that Mr. Hitselberger had committed a crime. The warrantless arrest of Mr. Hitselberger, therefore, was unlawful. The evidence seized must be suppressed as the fruit of the unlawful arrest of Mr. Hitselberger. Wong Sun v. United States, 371 U.S. 471, 488 (1963) (if the evidence has been obtained through the exploitation of a Fourth Amendment violation the evidence must be suppressed).

The evidence also must be suppressed as a fruit of the unlawful warrantless search of the backpack. The Supreme Court has held that, "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment -- subject only to a few specifically established and well delineated exceptions." Katz v. United States, 389 U.S. 347, 357 (1967) (footnote omitted). Where the government seeks to introduce evidence seized without a warrant, it has the burden of showing that the evidence falls within one of the "few specifically established and well delineated exceptions" to the warrant requirement of the Fourth Amendment. Coolidge v. New Hampshire, 403 U.S. 443, 455 (1971); Katz v. United States, 389 U.S. 347, 357 (1967). Here, the officers did not have a search warrant to search the backpack. Because Mr. Hitselberger was not lawfully under arrest at the time of the search, there is no applicable exception to the warrant requirement. Absent a showing of an exception to the warrant requirement, the evidence seized from Mr. Hitselberger and from the backpack must be suppressed.

Conclusion

For the reasons set forth above, and for such other reasons as this Court may determine at a hearing on this motion, Mr. Hitselberger respectfully requests that this motion be granted and that the Court suppress the use as evidence of all items seized from him or the backpack.

Respectfully submitted,

A. J. KRAMER
FEDERAL PUBLIC DEFENDER

/s/

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