

MEMORANDUM THRU Staff Judge Advocate, 82nd Airborne Division

14 January 2015

FOR Commanding General, Headquarters, 82nd Airborne Division

SUBJECT: Supplement to Rule for Courts-Martial (RCM) 1107 Request for Modification of Initial Action in *United States v. Lorance*

1. BACKGROUND. On 10 January 2015, counsel for the defense submitted additional newly-discovered exculpatory and mitigating evidence to the Staff Judge Advocate (SJA) and the Commanding General, Major General (MG) Clarke. Since that time, still additional evidence has surfaced linking Mohammad ASLAM to at least six (6) Improvised Explosive Device (IED) events and Jam MOHAMMAD to one IED event.

2. REQUEST. We respectfully ask that this information be incorporated and made a part of 1LT Lorance's 10 January 2015 Request for Modification and that it be considered when the SJA and MG Clarke evaluate the merits of the *Brady* and RCM constitutional legal errors which denied 1LT Lorance a fair trial.

3. BACKGROUND. Abdul AHAD (released from the Detention Facility in Parwan in 2009 and linked to at least 4 IED events between 2010 and 2013), told the Criminal Investigation Division (CID) that his uncle Haji KARIMULLAH (attempted murder), his brother Ghamai Abdul HAQ (murder) and his father, Mohammad ASLAM (murder) were the three men riding together on a single motorcycle.

a. HAJI KARAMULLAH. As previously discussed, 1LT Lorance stands convicted of attempting to murder this man as the third rider from the motorcycle. What the government has not disclosed is that he is linked to a common IED event with AIDULLAH which occurred in August 2012 in the Zharay district of Kandahar. AIDULLAH is linked to 14 other IED events in the area of operations; and

b. GHAMAI ABDUL HAQ. As also previously discussed, 1LT Lorance stands convicted of murdering this man, one of the motorcycle riders. What the government has not disclosed is that he is linked to a common IED event with Gul NAZI which occurred prior to 2 July 2012. Gul NAZI is linked to 13 other IED events in the Zharay district of Kandahar. Gul NAZI was convicted at the Justice Center in Parwan by Afghan prosecutors and Judges. He received a 20 year sentence to confinement. Not only is he linked with GHAMAI for the common IED event, he is also associated with at least 6 other co-conspirators.

4. THE NEW EVIDENCE. What has surfaced recently from US government databases is newly-discovered exculpatory and mitigating evidence, as follows:

a. Mohammad ASLAM (murder). His name is biometrically linked to 6 IED events. These events occurred prior to 2 July 2012 and occurred in Nahr E Saraj, Helmand Province. Helmand province borders Kandahar Province and intelligence data shows that it is common for IED facilitators to move from one Province to another to transport and conduct their operations; and

b. Jam MOHAMMAD (EKIA). Abdul AHAD stated that is man was his cousin and was killed by 1st Platoon in the second engagement which occurred minutes and meters way from the motorcycle engagement. Nobody was court-martialed for killing this man. His name is linked to an IED event in the Badakhshan Province.

5. SIGNIFICANCE. The evidence suggests that all three riders are linked with terror. Had the government turned over the evidence showing that the people shot at and killed were linked to terror, that would have changed the whole dynamic and landscape of this case. There are very practical reasons why

this evidence denied Clint a fair trial under the 5th Amendment to the US Constitution. This mistake is prejudicial to Clint's constitutional rights.

a. THE DECISION TO COURT-MARTIAL WOULD HAVE BEEN DIFFERENT. If the company, battalion, brigade, Article 32 investigating officer, and division commanders (the preferral and referral of charges chain-of-command) knew that the purported victims were associated with IED networks, they probably would not have recommended court-martial for murder and attempted murder.

b. HOW DEFENSE COUNSEL COULD HAVE PREPARED DIFFERENTLY.

1. If defense counsel were provided this information before trial (when it is supposed to be turned-over), then he could have used it when interviewing the witnesses who testified against Clint. Presenting them with knowledge that those killed were associated with terror may have changed their testimony;

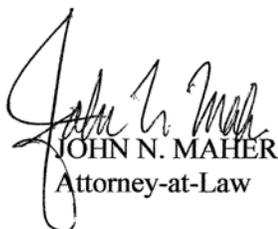
2. This information could have led to further defense discovery requests, and an altogether different defense strategy at trial (charts, graphs, links, pictures, *etc.*). This case may have become a classified case given the need to search for and turn-over exculpatory and mitigating evidence; and

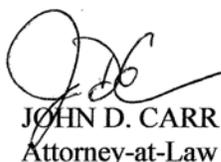
3. Counsel for the defense could have used it to cross-examine those witnesses at trial.

c. THE PANEL MEMBERS (JURY). The jury would have heard that the alleged victims were associated with terror. That would have changed their minds about guilt and/or punishment.

d. THE PROSECUTOR'S PREJUDICIAL ARGUMENT(S). The prosecutor argued during opening statements that the men shot-at and killed were "village elders," during closing statements that there is "no suggestion that they were Taliban," and at least 3 times during his sentencing argument that they were "innocent civilians." All the while, an unclassified database search would have revealed what is now revealed. The jury was certainly influenced by the prosecution's comments coupled with the lack of evidence showing the alleged victims to be associated with terror.

6. CONCLUSION. These examples show how Clint did not receive a fair trial. There is no real reason to send this case to the US Army Court of Criminal Appeals. The Staff Judge Advocate and the Commanding General have a solid record on which to disapprove the findings and the sentence, as the US Constitution as interpreted by the Supreme Court directs. No interest is served by sending this case to the appellate courts. Justice and the US Constitution are served by granting a new trial where the government turns over exculpatory and mitigating evidence. That would set the stage for a fair fight.


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