QUESTIONS(S) FROM COURT MEMBER

FOR: PFC STEWART
(NAME OF WITNESS)

WHAT TEAM DURING THE RAID ~~WERE~~ WERE YOU ON?

WHO WAS YOUR LEADER DURING THE RAID?

2ND LT RICHARD
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: N/A (Yes) (No)

Objection by DC: NO (Yes) (No)

APJ APPELLATE EXHIBIT XXVII

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: PFC STEWART
(NAME OF WITNESS)

HOW CLOSE WAS THE BRADLEY VEHICLES FROM YOUR ~~LOCATION~~ LOCATION DURING THE TIME OF YOU HOLDING ~~THE DETAINEE~~ MR ISMAIL JAN IN THE HOUSE ?

DWIGHT RICHARD
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

APPELLATE EXHIBIT XXVIII

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: PFC Stewart
(NAME OF WITNESS)

Once the shots were fired by SSG Wurst was it SOP for other members of the squad to move in to a house to provide reinforcement?

If so was it standard to wait a minute? two minutes?

Were there any procedures covering what to do if gun shots took place in a house?

Why do you believe it took almost a minute before other members move in?

BEIGER, WILLIAM A
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: (Yes) (No)

Objection by DC: (Yes) (No)

APPELLATE EXHIBIT XXIX
APJ
RECOGNIZED R. ____

******* QUESTIONS BY A COURT MEMBER *******

NAME OF WITNESS: PFC STEWART

QUESTIONS:

During your Tour Did you EVER come in contact with any Direct or In Direct Fire while on a Raid or ~~[redacted]~~ Protrol Other Than This Time?

RICHARD DWIGHT
Printed Name of Member

Signature of Member

Objection by Trial Counsel: (Initials) (No) (Yes)

Basis of Objection:

Objection by Defense Counsel: (Initials) (No) (Yes)

Basis of Objection:

APPELLATE EXHIBIT XXX

AE RECOGNIZED R. ___

QUESTIONS(S) FROM COURT MEMBER

FOR: COL POLO
(NAME OF WITNESS)

(1) Do you have any way of measuring the accuracy or truthfulness of a patient recalling the events ~~of the PEO event~~ that caused the PTSD?

(2) Are the descriptions of the events of those diagnosed with PTSD accurate? Is it characteristic of the ~~D~~ PTSD that the sufferer recalls the exact ~~pere~~ precise details of the event that caused the disorder?

MAJ Owens
(PRINTED NAME OF COURT MEMBER)

[signature]
(SIGNATURE OF COURT MEMBER)

Objection by TC: [initials] (Yes) (No) — No circled

Objection by DC: [initials] (Yes) (No) — Yes circled

All human (to defender

APPELLATE EXHIBIT XXXII

APP RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: COL Pallo
(NAME OF WITNESS)

Is it possible for a soldier to have an attack ie ~~[redacted]~~ unable to perform after leader ~~[redacted]~~ friend or love one pass away?

Could a person relate one event to another or may think that they was apart of another event.?

1.

RICHARD DWIGHT
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: [redacted] (Yes) (No)

Objection by DC: [redacted] (Yes) (No)

APPELLATE EXHIBIT XXXII

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: Phizer
(NAME OF WITNESS)

when you Arrived inside the house you SAW the BODY -

① what Position was the body laying in the Floor FACE up OR DOWN

②

RARANGOL RENE
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: ___ (Yes) (No)

Objection by DC: ___ (Yes) (No)

APPELLATE EXHIBIT XXXII

RECOGNIZED R. ____

******* QUESTIONS BY A COURT MEMBER *******

NAME OF WITNESS: Pizer

QUESTIONS:

1. For Detainys How many Did your squad cuf & send to the Detainys colection Point. ?

2. what Brought you to the conclution that target #5 was shot & killed when you Heard the shots. what made you Look For the Body Bag

3. was it SOP to Just take the I.D. to D C P or the Individule with the I.D.

4 time Fram From Leving with I.D. and Return.

SFC STEVENS
Printed Name of Member

Signature of Member

Objection by Trial Counsel: (Initials) (No) (Yes)

Basis of Objection:

Objection by Defense Counsel: (Initials) (No) (Yes) 1;34

Basis of Objection: T2 Speculation

APPELLATE EXHIBIT XXXIV

APP. RECOGNIZED R.

QUESTIONS(S) FROM COURT MEMBER

FOR: Jason Pizer
(NAME OF WITNESS)

Did you and SSG West conversate along or outside of the presence of other squad members prior to going on this mission. What did you talk about?

When you went back into the house and check the Nam's body. How many bullet wounds did you see? Did you see the 9mm in the House when you checked the Body? Did PFC Stewart appear to be upset or what was his demeanor?

Michael E. Williams
(PRINTED NAME OF COURT MEMBER)

M. E. W.
(SIGNATURE OF COURT MEMBER)

Objection by TC: SMF (Yes) (No)

Objection by DC: MMS (Yes) (No)

APPELLATE EXHIBIT XXXV
A
RECOGNIZED R. ___

QUESTIONS(S) FROM COURT MEMBER

FOR: Pisner
(NAME OF WITNESS)

Why didn't your team take Nasar TO the detainee point instead of just his ID? Was this SOP?

~~Where was the ID found?~~

When you arrive back at the house from the collection point, who did you see outside the house?

Was Nasar wearing a coat/jacket?

GEIGER, WILLIAM A
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: [illegible] (Yes) (No)

Objection by DC: [illegible] (Yes) (No)

APPELLATE EXHIBIT XXXVI

RECOGNIZED R. ___

QUESTIONS(S) FROM COURT MEMBER

FOR: MR Pizer
(NAME OF WITNESS)

Why didn't you zip-tie ~~to~~ the Iraqi male?

MAJ OWEN
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

APPELLATE EXHIBIT XXXVII

AP RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: Pisner
(NAME OF WITNESS)

Did Pannell enter the house with you, before you or after you?

Did you get a body bag every time you heard shots? Why this time? Was there something said that led you to believe there was someone dead?

LEIGER, WILLIAM A
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: ___ (Yes) (No)

Objection by DC: ___ (Yes) (No)

APPELLATE EXHIBIT XXXVIII

APPE RECOGNIZED R. ___

QUESTIONS(S) FROM COURT MEMBER

FOR: MR P.
(NAME OF WITNESS)

Was there ANY ONE IN YOUR squad. THAT WAS ~~On~~ THE Holding A Flashlight ~~[illegible]~~

Richard Dwight LT
(PRINTED NAME OF COURT MEMBER)

[signature]
(SIGNATURE OF COURT MEMBER)

Objection by TC: [initials] (Yes) (No) — No circled

Objection by DC: [initials] (Yes) (No) — No circled

APPELLATE EXHIBIT XXXIX

APP RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: Pisner
(NAME OF WITNESS)

Do you recall any discussion of a cover up and Pannell being engaged?

Any discussion of the Iraqi male having a 9mm?

Any discussion / back brief / out brief on the events that took place in the house of the Iraqi male?

GEIGER, WILLIAM A
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

AP. APPELLATE EXHIBIT XL

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: Phizey
(NAME OF WITNESS)

When you went back inside w/ Body bag
(1) where was PFC Stewart standing? (Compared to Clock Number).
(2) Who help put the body inside the bag & carry the body
(3)

RARANGOL, Rene
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: ____ (Yes) (No)

Objection by DC: ____ (Yes) (No)

APPELLATE EXHIBIT XLII

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: Pizer
(NAME OF WITNESS)

Did ANYONE IN YOUR SQUAD TALK ABOUT GETTING BACK FOR WHAT HAPPENED EARLIER WITHIN THE UNIT

Richard Durell
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: (Yes) (No)

Objection by DC: (Yes) (No)

APPELLATE EXHIBIT XLI

APPELL RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: SPC Plato
(NAME OF WITNESS)

Did you hear the 50cal fire from the AMM first or the M16? How can you tell the difference between the two?

Michael Williams
(PRINTED NAME OF COURT MEMBER)

M. S. Williams
(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

APPEL APPELLATE EXHIBIT XLIII

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: SPC PLATO
(NAME OF WITNESS)

What team enter the house first?

Where did your Squad get the Body bag from?

How many floors was there in the house?

RICHARD DWIGHT
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: ___ (Yes) (No)

Objection by DC: ___ (Yes) (No)

APPELLATE EXHIBIT XLIV

RECOGNIZED R. ___

QUESTIONS(S) FROM COURT MEMBER

FOR: Plateau
(NAME OF WITNESS)

(1) Which shots or rounds did you hear first? M9 OR M16

(2) The blast did not open OR Damage the Gate
How Did you get inside the Compound? was there any other help.

(3)

RARANGOL, RENE
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: ___ (Yes) (No)

Objection by DC: ___ (Yes) (No)

APPELLATE EXHIBIT XLV

APPE RECOGNIZED R. ___

(1)

******* QUESTIONS BY A COURT MEMBER *******

NAME OF WITNESS: SPC Platow

QUESTIONS:

1. Did SGT Pizer Look For something Befor you all Returned to the House From the DCP?
2. as A team member would you move to gether as A team or not, ?
3. Had the House Be surched Befor you and your nco went to the D.C.P ?
4. IF you can Remember where and what type of shell casing there were why can you not Remember where your other team members were.
5. where you given or Did you Hear any specail instrution About the Detainys in this mission.

SFC STEVENS
Printed Name of Member

Signature of Member

Objection by Trial Counsel: (Initials) (No) (Yes)

Basis of Objection:

Objection by Defense Counsel: (Initials) (No) (Yes)

Basis of Objection:

APPELLATE EXHIBIT XLVI

RECOGNIZED R. ___

Continued

(2)

******* QUESTIONS BY A COURT MEMBER *******

NAME OF WITNESS: SPC Platow

QUESTIONS:

6. Why Did you and SGT Pizer Go to the D.C.P.?

7 AS you Enter the Front Room in your words Discribe the Room

SFC STEVENS
Printed Name of Member

Signature of Member

Objection by Trial Counsel: (Initials) (No) (Yes)

Basis of Objection:

Objection by Defense Counsel: (Initials) (No) (Yes)

Basis of Objection:

APPELLATE EXHIBIT XLVII

RECOGNIZED R. ___

QUESTIONS(S) FROM COURT MEMBER

FOR: SPC Plato
(NAME OF WITNESS)

~~Did your team first search the house, take an ID to the collection point and returning to the house once hearing gun fire?~~

Did SGT Pisner look for a body bag before going to/returning to the house?

Was there any discussion or back briefing on the mission? An AAR session to determine what happen and develop new TTPs for detainee operations or house clearing?

WEBER, WILLIAM A
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

APPELLATE EXHIBIT XLVIII

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: SPC Plato
(NAME OF WITNESS)

Can you draw a picture of the lay out of the room to include where the body was, where the furniture was where the light was and where the shell casings were found?

GEIGER, WILLIAM A
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: (Yes) (No)

Objection by DC: (Yes) (No)

APPELLATE EXHIBIT XLIX

RECOGNIZED R. ____

OFFICE OF THE CLERK OF COURT
US ARMY JUDICIARY
ARLINGTON, VIRGINIA 22203-1837

THE RECORD OF TRIAL HAS BEEN REVIEWED FOR RELEASE UNDER THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT. THE DOCUMENT[S] DESCRIBED AS FOLLOWS HAVE BEEN REMOVED FROM THIS COPY OF THE RECORD BECAUSE THE RELEASE WOULD BE IN VIOLATION OF THE DOD FREEDOM OF INFORMATION ACT PROGRAM, DOD 5400.7-R, EXEMPTION (b)(6) 5 U.S.C. 552(b)6):

Exhibit

Not Suitable for the Photocopier

QUESTIONS(S) FROM COURT MEMBER

FOR: SPC Plato
(NAME OF WITNESS)

Did your team clear the house first then go with SGT Pisner to the collection point?

If your team did clear the house first why not the upstairs?

Did you see the 9mm that fired the shell casings? Who had it (9mm)?

GEIGER, WILLIAM A
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: (Yes) (No)

Objection by DC: (Yes) (No)

APPELLATE EXHIBIT LI

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: SPC Plato
(NAME OF WITNESS)

WHERE DID THE DETAINEE COME FROM WHAT HOUSE THAT YOUR TEAM HAD AT THE POINT BEFORE THE FIRING

RICHARD DWIGHT
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: (Yes) (No) Clarification

Objection by DC: (Yes) (No)

APPELLATE EXHIBIT LII

RECOGNIZED R. ___

QUESTIONS(S) FROM COURT MEMBER

FOR: SPC Plato
(NAME OF WITNESS)

How many missions did you + SSG Wurst go on w/ A/1-8 IN? Not the squad but you and SSG Wurst?

GEIGER, WILLIAM A
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: (Yes) (No)

Objection by DC: (Yes) (No)

APPELLATE EXHIBIT LIII

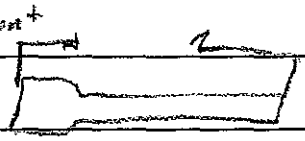
API RECOGNIZED R. ____

******* QUESTIONS BY A COURT MEMBER *******

NAME OF WITNESS: SPC Platou

QUESTIONS:

with you Hand or explain in inches How Long the Flash Light was that SPC Stewart carried



SPC STEVENS
Printed Name of Member

Signature of Member

Objection by Trial Counsel: (Initials) (No) (Yes)

Basis of Objection:

Objection by Defense Counsel: (Initials) (No) (Yes)

Basis of Objection:

APPELLATE EXHIBIT LIV

RECOGNIZED R. ___

QUESTIONS(S) FROM COURT MEMBER

FOR: SPC PLATO
(NAME OF WITNESS)

~~What are~~
Did your TEAM HAVE HOME THAT you CLEARED WHILE THE OTHER TEAM CLEARED THE OTHER HOME'S?

RICHARD DWIGHT
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: (Yes) (No)

Objection by DC: (Yes) (No)

AP. APPELLATE EXHIBIT LV

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: SFC Pennell
(NAME OF WITNESS)

Did Plato go in the house w/ your team to search the house?

~~Do you recall the lighting in the house?~~

Did your squad conduct an AAR on the night's mission? Was there any discussion of what went on?

Did you see 9mm shells on the floor in the vicinity of the body / body bag?

Who was on the clearing team other than SSG Worst and PFC Stewart?

LEIGER, WILLIAM A
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: (Yes) (No)

Objection by DC: (Yes) (No)

APPELLATE EXHIBIT LVI
RECOGNIZED R. ___

APPJ

QUESTIONS(S) FROM COURT MEMBER

FOR: SPC P BIANCO
(NAME OF WITNESS)

Who was with the females of the house

How many level was in the house?

~~Where you park at for a guard DUR~~
~~(IF SO) Did you get it~~
~~(IF DO) I why?~~

Did any another squad that was on the raid of the PCI that you was with shot at any one?

RICHARD DWIGHT
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: (Yes) (No)

Objection by DC: (Yes) (No) APPELLATE EXHIBIT LVII

RECOGNIZED R. ____

A

QUESTIONS(S) FROM COURT MEMBER

FOR: SPC Pannell
(NAME OF WITNESS)

1. out of all the Houses you cleared that night were any of the multy leaved.

STEVENS
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: ____ (Yes) (No)

Objection by DC: ____ (Yes) (No)

APPELLATE EXHIBIT LVIII
API RECOGNIZED R. ___

QUESTIONS(S) FROM COURT MEMBER

FOR: SSC Bunnell
(NAME OF WITNESS)

Did you ARF Stewart go out on any other Raid after that night?

Richard Dwight
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: ____ (Yes) (No)

Objection by DC: ____ (Yes) (No)

APPELLATE EXHIBIT LIX

RECOGNIZED R. ____

UNITED STATES	)	
	)	
v.	)	MOTION TO DISMISS
	)	
WERST, Shane,	)	
SSG, U.S. Army,	)	
Headquarters and Headquarters Company,	)	
4th Infantry Division,	)	25 May 2005
Fort Hood, Texas 76544	)	

Relief Sought

IAW R.C.M. 917 the Defense respectfully requests that the court dismiss Charge I, and the specification thereunder. Pleadings in military practice are in the nature of an information and may, subject to some limitations, be amended at any time prior to findings, if the accused is not prejudiced. See David A. Schlueter, Military Criminal Justice, Section 6-1(B)(2). Before arraignment, minor changes may be made by anyone, except the Article 32 officer, who has acted upon or forwarded the charges. Id. Citing cases therein.

After arraignment, the military judge must approve the changes, and he may do so only if a substantial right of the accused is not prejudiced. RCM 603(C). Amendments are normally not used to cure minor deficiencies. United States v. Loving, 41 MJ 213 (CAAF 1994)(changing information concerning employer of murder victim was minor change; focus was on identification of victim not the employer).

Thus, where the government alleges a charge that the accused killed a certain person, the government is bound by proving that charge and it constitutes a major variance or amendment to the charge.

Here, SSGT Werst was charged with the premeditated murder of one Nasser Ismail. The government has not put forward any evidence that Mr. Ismail was, in fact, murdered. A motion for a finding of not guilty is, thus, ripe and meritorious. To substitute "an unknown Iraqi male" for "Nasser Ismail" would constitute a major amendment. Loving, 41 MJ 213; see also United States v. Moreno, 46 MJ 216 (1997).

Allowing a variance or amendment that includes "an unknown Iraqi male" would virtually expand the number of individuals he would be accused of the premeditated murder of to literally millions. Even if the court rejects this argument, the accused was prejudiced in defending against the murder of Nasser Ismail in that the Government introduced evidence of another killing, on the same night, in the same village, within 30 minutes of the alleged death of on Nasser Ismail by US forces.

APPELLATE EXHIBIT LX

RECOGNIZED R. ____

Thus an amendment to the charge would be major and prejudice the Accused and should not be allowed. The Government has failed to prove the death of one "Nasser Ismail" and thus grounds for a motion for a finding of not guilty under R.C.M. 917 should be granted.

Respectfully Submitted,

Mark A. Santos
CPT, JA
Defense Counsel

David P. Sheldon
Civilian Defense Counsel

MARK A. SANTOS
CPT, JA
Defense Counsel

QUESTIONS(S) FROM COURT MEMBER

FOR: SSG Hicks
(NAME OF WITNESS)

What type of weapon if any was found?

DURING the firing what type of weapons was fired?

Where was Stewart in regard to the location to Mr. Ismail and SSG West?

Where or How was PFC Stewart and or SSG West being held?

What happen with the 9MM once you return Back to the F.O.B.?

RICHARD DWIGHT
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: [signature] (Yes) (No)

Objection by DC: [signature] (Yes) (No)

APPELLATE EXHIBIT LXI

APPELL RECOGNIZED R. ___

******* QUESTIONS BY A COURT MEMBER *******

NAME OF WITNESS: SSG Hill

QUESTIONS:

(1) At the time you saw the civilian motion SSG Wenst to go inside - who went in first, second & Third?

(2) at - what point did you hear the gun shots? after the door close or seconds after you saw SSG Wenst & PFC Stewart coming out of the House?

(3)

RARANGO, RENE
Printed Name of Member

Signature of Member

Objection by Trial Counsel: (Initials) (No) (Yes)

Basis of Objection:

Objection by Defense Counsel: (Initials) (No) (Yes)

Basis of Objection:

APPELLATE EXHIBIT LXII

RECOGNIZED R. ___

QUESTIONS(S) FROM COURT MEMBER

FOR: SSG Hiles
(NAME OF WITNESS)

1. How far was it From this House to the C.P.

2. were you at all times in Full view of the Front of the House and the entry gate to the House.

3. when the family was Removed From the House were they taken Just out side the House or out side the Entry Gate to the yard.

4. Do you know if there was any other Entry Point in the yard other than where your Location?

5. IF you were in eye contact with SSG werst From the Entry Gate and could see all the Hand and ARM movement at the door why could you not Tell How step out of the House and Unloaded the 9mm.?

6. in total How many shots did you Hear Fired.

SFC STEVENS
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: (Yes) (No)

Objection by DC: (Yes) (N)

#5 clarification

APPELLATE EXHIBIT LXIII

RECOGNIZED R. ___

QUESTIONS(S) FROM COURT MEMBER

FOR: SSG Mills
(NAME OF WITNESS)

~~Was this PFC Stewart's first~~

Was PFC Stewart a regular driver for the PLT LDR? If so how often did he go on missions like the one 3 Jan?

How trained was Stewart in the squad SOPs and TTPs as far as controlling a detainee?

GEIGER, WILLIAM A
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: [signature] (Yes) (No)

Objection by DC: [signature] (Yes) (No)

APPE APPELLATE EXHIBIT LXIV

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: SSG Hillis
(NAME OF WITNESS)

Prior to the Mission did you converse with SSG Wurst? What did you discuss?
After the Mission did you talk to SSG Wurst about what happen? What was the conversation about?

Michael Williams
(PRINTED NAME OF COURT MEMBER)

M. S. Co
(SIGNATURE OF COURT MEMBER)

Objection by TC: [signature] (Yes) (No)

Objection by DC: [signature] (Yes) (No)

APPELLATE EXHIBIT LXV
AP RECOGNIZED R. ___

QUESTIONS(S) FROM COURT MEMBER

FOR: SSG Hilcs
(NAME OF WITNESS)

~~Were there any other weapons fired this night other than the 9mm?~~ WPS WPS WPS

1. Did any of your squad members leave the House compound to go to the c.p.?

2. time Line from Entry of the courtyard of the House to the shots being Fired?

3 At any time this night Did you Ever See the INF Platoon Leader in your area.

SFC STEVENS
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

APPELLATE EXHIBIT LXVI

APP RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: SSG Hillis
(NAME OF WITNESS)

① Did you see what the Iraqi male was wearing? If yes Please describe?

② Was he wearing any kind of jacket?

③ ~~Could you~~ Did you ever notice any change in the lighting from inside the house?

MAJ Owens
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: ____ (Yes) (No)

Objection by DC: ____ (Yes) (No)

APPE

APPELLATE EXHIBIT LXVII

RECOGNIZED R. ___

QUESTIONS(S) FROM COURT MEMBER

FOR: SSG Wills
(NAME OF WITNESS)

Of all the detainees detained that evening how many of those houses was SSG Wurst a participant of the assault team that captured a detainee?

GEIER, WILLIAM M
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: ___ (Yes) (No)

Objection by DC: ___ (Yes) (No)

APPELLATE EXHIBIT LXVIII

RECOGNIZED R. ___

QUESTIONS(S) FROM COURT MEMBER

FOR: SSG Hiles
(NAME OF WITNESS)

1. were your using night vision During this Mission & and at this House

SFC STEVENS
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

APPELLATE EXHIBIT LXIX

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: SSG Wendt
(NAME OF WITNESS)

1. Did the MORTAR Attack come From the Village Area? BASE OF the grids the Q37 Recorded.
2. Did PVT Stewart voice any concerns about the Mission, prior to departing the F.O.B.?
3. Did PFC Stewart know that you found a weapon during your search?
4. When was the 9MM unloaded and by whom? When you found the weapon did you clear it? Why NOT?

Michael E. Williams
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

APPELLATE EXHIBIT LXX

API RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: SSG Wirst
(NAME OF WITNESS)

Where was Stewart's weapon? How was it hanging/secured?

What was the lighting like inside the house?

Can you draw the lay out of the house where the window is, where the man is & where/which way Stewart moved?

GEIGER, WILLIAM A
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

APPELLATE EXHIBIT LXXII

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: SSG Wortz
(NAME OF WITNESS)

① Was the Iraqi Male able to understand any English?

② Was the Iraqi Male able to hear his name mentioned over the ICom?

③ Did you think that the Iraqi male felt like he was about to be detained after he heard the ICom transmission?

④ Why did you select Pannell for an example instead of Stewart?

MAJ OWEN
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (N

APPELLATE EXHIBIT LXXII

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: SSG West
(NAME OF WITNESS)

on the list that you received from the company who there Pictures of the personnel to be taken in?

Was the Door closed if so Why?

Who close the Door?

DID you hit the Man?

What happen to the weapon that you found?

When you shot him there you in the house in regard to the Door?

RICHARD DWIGHT
(PRINTED NAME OF COURT MEMBER)

Dwight Richard
(SIGNATURE OF COURT MEMBER)

Objection by TC: ___ (Yes) (No)

Objection by DC: ___ (Yes) (No)

APPELLATE EXHIBIT LXXIII

RECOGNIZED R. ___

QUESTIONS(S) FROM COURT MEMBER

FOR: SSG Wrst
(NAME OF WITNESS)

1. where was PFC Stewarts weapon
How was it Hanging.
was He Holding it.

2. Was the weapon that was found
turned on

SFC Stevens
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

APPELLATE EXHIBIT LXXIV

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: SSG WERTZ
(NAME OF WITNESS)

① When did you first learn that this event was being investigated?

② Once you learned that a formal investigation was being conducted did you ~~re-count~~ ~~correct~~ make any attempts to correct ~~some~~ any of your prior statements?

MAJ OWEN
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

AP: APPELLATE EXHIBIT LXXV

RECOGNIZED R. ____

OFFICE OF THE CLERK OF COURT
US ARMY JUDICIARY
ARLINGTON, VIRGINIA 22203-1837

THE RECORD OF TRIAL HAS BEEN REVIEWED FOR RELEASE UNDER THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT. THE DOCUMENT[S] DESCRIBED AS FOLLOWS HAVE BEEN REMOVED FROM THIS COPY OF THE RECORD BECAUSE THE RELEASE WOULD BE IN VIOLATION OF THE DOD FREEDOM OF INFORMATION ACT PROGRAM, DOD 5400.7-R, EXEMPTION (b)(6) 5 U.S.C. 552(b)6):

Exhibit

Not Suitable for the Photocopier

QUESTIONS(S) FROM COURT MEMBER

FOR: SSG Werst
(NAME OF WITNESS)

1. At the time OF the mission were you carrying a 9mm.

2 was the 9mm you found the pistol you FIRed Into the couch.

3. was PFC Stewart facing you or the other Person.

SFC STEVE41
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: SMT (Yes) (No)

Objection by DC: (Yes) (No)

APPELLATE EXHIBIT LXXVII

RECOGNIZED R. ____

UNITED STATES)
)
v.)
) **FINDINGS WORKSHEET**
Werst, Shane Allen)
SSG, U.S. ARMY,)
Headquarters and Headquarters Company,)
Special Troops Battalion) 26 May 2005
Support Brigade, 4th Infantry Division)
(Mechanized),)
Fort Hood, Texas 76544)

[NOTE: After the court members have reached their findings, the President shall strike out all inapplicable language. After the Military Judge has reviewed the worksheet, the President will announce the findings by reading the remaining language. The President will not read the items in bold print.]

SSG Shane Allen Werst, this court-martial finds you:

I. Full Acquittal or Full Conviction

Of all Charges and Specifications: ~~(Not Guilty)~~ ~~(Guilty)~~

II. Mixed Findings

CHARGE I:

Of Charge I and its Specification: (Not Guilty) ~~(Guilty)~~

Or

By Exceptions and Substitutions

Of the Specification of Charge I: Guilty except for the [word(s)] [figure(s)] [word(s) and figure(s)] "_____,"
Substituting therefore the [word(s)] [figure(s)] [word(s) and figure(s)]
"_____."

Of the excepted [word(s)] [figure(s)] [word(s) and figure(s)]: Not Guilty
Of the substituted [word(s)] [figure(s)] [word(s) and figure(s)]: Guilty
Of Charge I: ~~Guilty~~

Or

APPELLATE EXHIBIT LXXVIII

RECOGNIZED R. ____

Lesser Included Offense for the Specification of Charge I

If you find the accused not guilty of Premeditated Murder but guilty of the lesser included offense of Unpremeditated Murder, read the following language:

Of the Specification of Charge I: Not Guilty, but Guilty of the lesser included offense of Unpremeditated Murder.

Of Charge I: ~~Guilty~~

Or

Of the Specification of Charge I: Guilty except for the [word(s)] [figure(s)] [word(s) and figure(s)] "_____,"
Substituting therefore the [word(s)] [figure(s)] [word(s) and figure(s)]
"_____."

Of the excepted [word(s)] [figure(s)] [word(s) and figure(s)]: Not Guilty
Of the substituted [word(s)] [figure(s)] [word(s) and figure(s)]: Guilty
Of Charge I: Not Guilty, but Guilty of the lesser included offense of unpremeditated murder.

And

CHARGE II:

Of Charge II and its Specification: ~~(Not Guilty)~~ (Guilty)

Or

By Exceptions and Substitutions

Of the Specification of Charge II: Guilty except for the [word(s)] [figure(s)] [word(s) and figure(s)] "_____,"
Substituting therefore the [word(s)] [figure(s)] [word(s) and figure(s)]
"_____."

Of the excepted [word(s)] [figure(s)] [word(s) and figure(s)]: Not Guilty
Of the substituted [word(s)] [figure(s)] [word(s) and figure(s)]: Guilty

Of Charge II: Guilty

(President's signature)

QUESTIONS(S) FROM COURT MEMBER

FOR: LT Mayler
(NAME OF WITNESS)

Who attended the out brief / back brief around lunch time on 3 JAN?

~~Was SSG Worst squad, habitually assigned to A/1-8 IN?~~ Did SSG Worst and SPC Plato only go on missions with A/1-8 IN? If so how many?

What type of squad was SSG Worst squad? Were they close knit or were there any members closer than others?

~~Do you recall SSG Hills talking to you about the~~

GEIGER, WILLIAM A
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

APPELLATE EXHIBIT LXXIX

APPE

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: PFC Stewart
(NAME OF WITNESS)

Do you recall SSG Wurst make a radio call to SGT Pisner before or after SSG Wurst asked you to stand Nasar up?

~~What type (ie size) of max light did you have / carry on the night of 3 JAN? Where did you carry / secure the flash light by when not in use?~~

Were you a driver in Iraq? If so for who? Did you take part in many raids before the night of 3 Jan?

GEIBER, WILLIAM A
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No

APPELLATE EXHIBIT LXXX
RECOGNIZED R. ___

QUESTIONS(S) FROM COURT MEMBER

FOR: SGT Pizner
(NAME OF WITNESS)

How did Stewart normally carry/secure his weapon?

Court Reporter Note:
MAJ Geiger
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

APPELLATE EXHIBIT LXXXI

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: SGT Hillis
(NAME OF WITNESS)

How did Stewart normally carry / secure his weapon?

Court Reporter Note

MAJ Geiger
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

A. APPELLATE EXHIBIT LXXXII

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: PFC Pennell
(NAME OF WITNESS)

How did Stewart normally carry/secure his weapon?

Court Reporter Note:
MAJ Geiger
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

APPELLATE EXHIBIT LXXXIII

APPELLATE RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: PFC Stewart
(NAME OF WITNESS)

How many house raids had you been on before the 2 Jan mission w/ SSG Wurst Squad.

GEHER, WILLIAM A
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

APPE APPELLATE EXHIBIT LXXXIV

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: PFC STEWART
(NAME OF WITNESS)

WHAT WAS THE SOP WHICH ON a good POINT IN CASE OF ~~ATTACK~~ AN ATTACK

RICHARD DWIGHT
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

API APPELLATE EXHIBIT LXXXV

RECOGNIZED R. ___

QUESTIONS(S) FROM COURT MEMBER

FOR: SPC PANNELL
(NAME OF WITNESS)

WAS THERE A SOP WHILE PERFORMING YOUR DUTIES ON OR AT A Guard Post AT THE FOB

Richard D Davis
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

APPELLATE EXHIBIT LXXXVI

RECOGNIZED R. ____

QUESTIONS(S) FROM COURT MEMBER

FOR: SFC Calco
(NAME OF WITNESS)

WAS THERE AN SOP WHILE PREFORMING YOU DUTIES AT A GUARD POST IN CASE OF AN ATTACK

Richard
(PRINTED NAME OF COURT MEMBER)

(SIGNATURE OF COURT MEMBER)

Objection by TC: _____ (Yes) (No)

Objection by DC: _____ (Yes) (No)

APPELLATE EXHIBIT LXXXVII

RECOGNIZED R. ____

In the specification of Charge I, the accused is charged with the offense of premeditated murder in violation of Article 118 of the Uniform Code of Military Justice. In order to find the accused guilty of this offense, you must be convinced by legal and competent evidence beyond reasonable doubt:

(1) That Naser Ismail is dead;

(2) That his death resulted from the act of the accused by shooting him with a rifle at or near Balad, Iraq on or about 3 January 2004;

(3) That the killing of Naser Ismail by the accused was unlawful; and

(4) That, at the time of the killing, the accused had a premeditated design to kill Naser Ismail.

The killing of a human being is unlawful when done without legal justification or excuse. "Premeditated design to kill" means the formation of a specific intent to kill and consideration of the act intended to bring about death. The "premeditated design to kill" does not have to exist for any measurable or particular length of time. The only requirement is that it must precede the killing.

The court is further advised that the offense of unpremeditated murder is a lesser included offense of the offense set forth in the specification of Charge 1. When you vote, if you find the accused not guilty of the offense charged, that is premeditated murder, then you should consider the lesser included offense of unpremeditated murder, also in violation of Article 118, UCMJ. In order to find the accused guilty of this lesser offense, you must be convinced by legal and competent evidence beyond reasonable doubt:

(1) That Naser Ismail is dead;

(2) That his death resulted from the act of the accused by shooting him with a rifle at or near Balad, Iraq on or about 3 January 2004;

(3) That the killing of Naser Ismail by the accused was unlawful; and

(4) That, at the time of the killing, the accused had the intent to kill or inflict great bodily harm upon Naser Ismail.

The intent to kill or inflict great bodily harm may be proved by circumstantial evidence, that is, by facts or circumstances from which you may reasonably infer the existence of such an intent. Thus, it may be inferred that a person intends the natural and probable results of an act he purposely does. Therefore, if a person does an intentional act which is likely to result in death or great bodily harm, it may be inferred that he intended to inflict death or great bodily harm. The drawing of this inference is not required.

"Great bodily harm" means serious bodily injury. "Great bodily harm" does not mean minor injuries, such as a black eye or bloody nose, but does mean fractured or dislocated

APPELLATE EXHIBIT LXXXVIII (88)

RECOGNIZED R. ____

bones, deep cuts, torn parts of the body, serious damage to internal organs, and other serious bodily injuries.

The evidence has raised the issue of defense of another in relation to the offense of unpremeditated murder and the lesser included offense of unpremeditated murder.

Defense of another is a complete defense to the offenses of premeditated murder and the lesser included offense of unpremeditated murder.

A person may use force in defense of another only if that other person could have lawfully used such force in defense of himself under the same circumstances. Therefore, if PFC Stewart was also an aggressor, intentionally provoked an attack, or a mutual combatant then the accused could not lawfully use force in his behalf regardless of the accused's understanding of the situation.

For defense of another to exist, the accused must have had a reasonable belief that death or grievous bodily harm was about to be inflicted on the person defended, and, the accused must have actually believed that the force he used was necessary to protect that person. In other words, defense of another has two parts. First, the accused must have had a reasonable belief that death or grievous bodily harm was about to be inflicted on PFC Stewart. The test here is whether, under the same facts and circumstances, a reasonably prudent person, faced with the same situation, would have believed that death or grievous bodily harm was about to be inflicted. Second, the accused must have actually believed that the amount of force he used was necessary to protect against death or grievous bodily harm. To determine the accused's actual belief as to the amount of force necessary, you must view the situation through the eyes of the accused. In addition to what was known to the accused at the time, you should consider all the applicable evidence presented in determining his actual belief as to the amount of force necessary to protect PFC Stewart.

The burden is on the prosecution to establish the guilt of the accused. Unless you are satisfied beyond a reasonable doubt that the accused did not act in defense of another, you must acquit the accused of the offense of premeditated murder and the lesser included offense of unpremeditated murder.

The evidence has raised the issue of self-defense in relation to the offense of premeditated murderand the lesser included offense of unpremeditated murder.

Self-defense is a complete defense to the offenses of premeditated murder and unpremeditated murder.

For self-defense to exist, the accused must have had a reasonable apprehension that death or grievous bodily harm was about to be inflicted on himself and he must have actually believed that the force he used was necessary to prevent death or grievous bodily harm.

In other words, self-defense has two parts. First, the accused must have had a reasonable belief that death or grievous bodily harm was about to be inflicted on himself. The test here is whether, under the same facts and circumstances present in this case, an ordinary

prudent adult person faced with the same situation would have believed that there were grounds to fear immediate death or serious bodily harm. Second, the accused must have actually believed that the amount of force he used was required to protect against death or serious bodily harm. To determine the accused's actual belief as to the amount of force which was necessary, you must look at the situation through the eyes of the accused. In addition to what was known to the accused at the time, you should consider all the applicable evidence presented in determining his actual belief as to the amount of force necessary to protect PFC Stewart.

The burden is on the prosecution to establish the guilt of the accused. Unless you are satisfied beyond a reasonable doubt that the accused did not act in defense of another, you must acquit the accused of the offense of premeditated murder and the lesser included offense of unpremeditated murder.

The prosecution's burden of proof to establish the guilt of the accused not only applies to the elements of the offense of premeditated murder and the lesser included offense of unpremeditated murder, but also to the issue of self-defense. In order to find the accused guilty you must be convinced beyond a reasonable doubt that the accused did not act in self-defense.

The accused, under pressure of a fast moving situation or immediate attack, is not required to pause at his peril to evaluate the degree of danger or the amount of force necessary to protect himself or another soldier. In deciding the issue of self defense and defense of another, you must give careful consideration to the violence and rapidity, if any, involved in the incident.

In the specification of Charge II, the accused is charged with the offense of obstructing justice in violation of Article 134 of the Uniform Code of Military Justice. In order to find the accused guilty of this offense, you must be convinced by legal and competent evidence beyond reasonable doubt:

(1) That at or near Balad, Iraq, on or about 3 January 2004, the accused wrongfully did a certain act, that is, directed PFC Nathan Stewart and SPC Charles Pannell to alter their statements regarding the murder of Naser Ismail;

(2) That the accused did so in the case of himself against whom the accused had reason to believe there were or would be criminal proceedings pending;

(3) That the act was done with the intent to impede the due administration of justice;

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces; and

(5) The accused had reason to believe that PFC Nathan Stewart and SPC Charles Pannell would be called upon to provide evidence as a witness.

Conduct prejudicial to good order and discipline is conduct which causes a reasonably direct and obvious injury to good order and discipline. Service discrediting conduct is conduct which tends to harm the reputation of the service or lower it in public esteem.

"Wrongfully" means without legal justification or excuse.

One can obstruct justice in relation to a criminal proceeding involving himself.

While the prosecution is required to prove beyond a reasonable doubt the accused had the specific intent to impede the due administration of justice, there need not be an actual obstruction of justice.

"Criminal proceedings" includes such things as criminal investigations conducted by police or command authorities, Article 15 nonjudicial punishment proceedings, Article 32 investigations, and courts-martial.

Criminal proceedings do not include administrative proceedings or inspections.

It is not necessary that charges be pending or even that an investigation be underway. The government must, however, prove beyond a reasonable doubt that the accused had reason to believe there were or would be criminal proceedings against himself or that some law enforcement official of the military would be investigating the accused's actions.