

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF KENTUCKY
3 PADUCAH DIVISION

3 UNITED STATES OF AMERICA,) Case No. 5:06-CR-19
4)
4 Plaintiff,)
5)
5 VS.)
6)
6 STEVEN D. GREEN,)
7) May 1, 2009
7 Defendant.) Paducah, Kentucky

8 *****
9 TRANSCRIPT OF TESTIMONY OF PAUL CORTEZ
10 FROM JURY TRIAL
11 BEFORE THOMAS B. RUSSELL
12 UNITED STATES DISTRICT CHIEF JUDGE
13 *****

11 APPEARANCES:

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21 [Defendant present.]

22
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25 Proceedings recorded by mechanical stenography,
transcript produced by computer.

1 APPEARANCES (Continued):

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1 (Begin proceedings in open court at 11:12 a.m.)

2 DIRECT EXAMINATION

3 BY MR. LESOUSKY:

4 Q. Mr. Cortez, would you take a moment and tell the
5 ladies and gentlemen of the jury here what your name is,
6 please?

7 A. Paul Cortez.

8 Q. All right. How old are you, Mr. Cortez?

9 A. Twenty-six, sir.

10 Q. Mr. Cortez, were you a member of the United
11 States Army?

12 A. Yes, sir.

13 Q. When did you first go in the Army?

14 A. In October of 2001, sir.

15 Q. Where is your hometown at?

16 MS. FORD: Was the witness sworn?

17 PAUL CORTEZ, GOVERNMENT WITNESS, SWORN

18 DIRECT EXAMINATION

19 BY MR. LESOUSKY:

20 Q. I'm sorry, Mr. Cortez. We need to go over that
21 again so the record's clear. I apologize. That was my
22 fault.

23 Again, for the record, so it's clear, what's your
24 name?

25 A. Paul Cortez.

1 Q. How old are you, Mr. Cortez?

2 A. Twenty-six, sir.

3 Q. And where is your hometown at?

4 A. In Barstow, California, sir.

5 Q. And when did you first go in the Army?

6 A. In October of 2001.

7 Q. All right. And were you -- and were you ever
8 deployed to Iraq?

9 A. Yes, sir.

10 Q. When was your first deployment to Iraq?

11 A. I left in July of '03.

12 Q. All right. Was that during the initial invasions
13 or shortly after that?

14 A. Yes, sir.

15 Q. What area of the country of Iraq did you serve
16 during your first tour of duty there?

17 A. When we first got there, we jumped around place
18 to place, but we were mostly in Balad, Iraq.

19 Q. All right. Can you tell us, what's the name of
20 the town, the area?

21 A. Balad.

22 Q. Whereabouts is that relative to Baghdad that
23 we're familiar with?

24 A. It's north.

25 Q. All right. And were you an infantryman during

1 that time?

2 A. Yes, sir.

3 Q. All right. And when did you finish your first
4 tour of Iraq?

5 A. In March of '04.

6 Q. During that tour of duty, were you a PFC, or were
7 you a specialist?

8 A. Specialist.

9 Q. All right. So you -- by the time you went -- you
10 see this chart we've shown. You were already an E-4 --

11 A. Yes, sir.

12 Q. -- is that right?

13 A. Yes, sir.

14 Q. Okay. So you were -- had already moved up a
15 couple ranks?

16 A. Yes, sir.

17 Q. All right. Now, did you have a second tour of
18 duty?

19 A. Yes, sir.

20 Q. And when did that start, roughly?

21 A. Around either the end of October or beginning of
22 September of '05.

23 Q. All right. And were you still a specialist rank
24 at that time?

25 A. Yes, sir.

1 Q. All right. And were you part of the Bravo
2 Company?

3 A. Yes, sir.

4 Q. And what platoon were you in?

5 A. 1st Platoon.

6 Q. All right. When you went over there, who was
7 your platoon sergeant?

8 A. Staff Sergeant Miller.

9 Q. All right. And what squad were you in?

10 A. 3rd Squad, sir.

11 Q. All right. Who was the sergeant of the 3rd Squad
12 at that time?

13 A. Staff Sergeant Lauzier.

14 Q. All right. And were you part of a fire team?

15 A. Yes, sir.

16 Q. What do I mean by a fire team?

17 A. We have two different teams, Alpha and Bravo.
18 And then like the Alpha Team leader would be in charge
19 of four or five guys when he does stuff, and then the
20 same with Bravo.

21 Q. You in the Alpha Team?

22 A. Yes, sir.

23 Q. All right. Who was your sergeant on your Alpha
24 Team?

25 A. I was -- when I first got there, it was Sergeant

1 Yribe.

2 Q. Sergeant --

3 A. Yribe.

4 Q. Yribe?

5 A. Yeah.

6 Q. Anthony Yribe?

7 A. Yes, sir.

8 Q. All right. And did that change at some point?

9 A. Yes, it did.

10 Q. All right. Now, we've talked before you come in
11 here quite a bit, so we don't have to go over it quite
12 as much as we did when you and I would meet.

13 When you served in Iraq on your second tour of
14 duty with Bravo and with the 1st Platoon of Bravo, did
15 you serve on that area running from the FOB Yusufiyah
16 down Route Sportster to the JS Bridge and Alamo?

17 A. Yes, sir.

18 Q. Did the -- and how many of the platoons were
19 working that particular part of that -- that particular
20 assignment?

21 A. There was three.

22 Q. Three platoons. Did you-all rotate those
23 assignments?

24 A. Yes.

25 Q. Did you serve in all of those places? That is,

1 the FOB, forward operating base, Yusufiyah, did you
2 serve there at times?

3 A. Yes, sir.

4 Q. Did you serve down at the JS Bridge?

5 A. Yes, sir.

6 Q. As part of that, did you serve at the Alamo?

7 A. Yes, sir.

8 Q. All right. Just briefly so we can refresh our
9 memories here, what do you do at the JS Bridge and
10 Alamo?

11 A. The JSB is, I guess, like an outpost or something
12 that guards the river and the bridge right there going
13 over the Euphrates River.

14 Q. All right. You-all keeping an eye out for any
15 bad guys that are coming over back and forth on the
16 bridge?

17 A. Yes, sir.

18 Q. You keep watching traffic?

19 A. Yes, sir.

20 Q. All right. And what are you doing at the Alamo?

21 A. There was another -- I guess like a manmade
22 bridge or Army -- they dropped a bridge right there over
23 the canal so that we can get back and forth to the FOB,
24 and we was guarding that bridge so whenever we drove
25 over it we wouldn't get blown up.

1 Q. All right. So you-all keeping an eye on that to
2 make sure none of the bad guys get around it?

3 A. Yes, sir.

4 Q. Did you work the traffic control points?

5 A. Yes, sir.

6 Q. All right. And would you rotate those?

7 A. Yes, sir.

8 Q. All right. How many men would -- soldiers would
9 man a traffic control point, or would it vary depending
10 on which one you were at?

11 A. Yeah, it depended on which one you were at, but
12 I'd say probably about seven or eight.

13 Q. All right. And how long would you normally work
14 at one of those traffic control points on a regular
15 rotation?

16 A. A few days.

17 Q. All right. And then, what, would you go to FOB
18 Yusufiyah or something else?

19 A. It depended on what the company commander wanted
20 to do.

21 Q. Would you actually -- would sometimes you serve
22 two or three days at one traffic control point and then
23 go to another one for two or three days?

24 A. Not in the same rotation.

25 Q. All right. So one rotation, you stayed at one?

1 A. (Moves head up and down.)

2 Q. Did you work Traffic Control Point 2?

3 A. Yes, sir.

4 Q. All right. And 1?

5 A. Yes, sir.

6 Q. 3?

7 A. Yes, sir.

8 Q. Pretty much all of them --

9 A. All of them.

10 Q. -- on one assignment on another?

11 A. (Moves head up and down.)

12 Q. And who was on your fire team -- your squad and
13 fire team at that point when you were working -- now
14 let's move in past when you first get there. Let's say
15 we're in December of 2005. What fire team are you on?
16 Alpha?

17 A. Yes, sir.

18 Q. And you're on the 3rd Squad?

19 A. Yes, sir.

20 Q. All right. And who is your sergeant there in
21 December of '05?

22 A. The team or in charge of the squad?

23 Q. In charge of the squad in the team. You've got
24 two of them, right?

25 A. At that time, the squad leader was Sergeant

1 Lauzier, and then I was the Alpha Team leader at that
2 time.

3 Q. All right. You were -- were you a promotable at
4 that point?

5 A. No.

6 Q. All right. But you were running the squad?

7 A. Just the team.

8 Q. Just the team?

9 A. Yeah.

10 Q. I'm using the wrong terms now. I'm getting ahead
11 of myself. You're running the team?

12 A. Yes, sir.

13 Q. And that's because you had been there for a
14 while?

15 A. Yes, sir.

16 Q. You were senior soldier in that operation there?

17 A. Yes, sir.

18 Q. And what did you have, three or four soldiers
19 that you supervised and kept track of?

20 A. Yes.

21 Q. All right. Now, we've heard about the deaths of
22 Sergeant Casica and Sergeant Nelson on December the 10th
23 of 2005. Did you know those two soldiers?

24 A. Yes, sir.

25 Q. All right. How did you come to know them? Were

1 they in the 1st Platoon with you?

2 A. Yes, sir.

3 Q. Did you ever work under their supervision?

4 A. Not directly, no.

5 Q. All right. Were you at the Traffic Control Point
6 No. 2 when those two gentlemen were killed?

7 A. No, sir.

8 Q. All right. Did you work any detail there after
9 they were shot? Some people -- I think we heard Private
10 Green had assisted in transporting one of the injured
11 soldiers. Were you involved in any of that?

12 A. No. At that time, I was still on leave.

13 Q. Oh, okay. You were on R&R?

14 A. Yes, sir.

15 Q. All right. Were you over in the states at that
16 time?

17 A. Yes, sir.

18 Q. All right. Now, a couple days later, are you
19 still on -- throughout December on leave at that point?

20 A. Say it again.

21 Q. Were you on leave throughout December of '05?

22 A. I think I came back right before -- probably like
23 the last three or four days.

24 Q. All right. Were you over in Iraq at the time
25 that Lieutenant Britt and Specialist Lopez were killed

1 by an IED?

2 A. Yes, sir. Oh, no. I had just got back.

3 Q. All right. Did you know those two gentlemen?

4 A. Yes, sir.

5 Q. All right. Were they in the same platoon with
6 you?

7 A. Yes, sir.

8 Q. All right. But you were not -- you were not in
9 country at the time that they were killed?

10 A. I might have been in Iraq, but not at Yusufiyah
11 or Mahmoudiyah when they got killed.

12 Q. Not down there where it happened?

13 A. Yeah. I probably was in Kuwait or something.

14 Q. All right. Now, let's go forward to what we're
15 here concerned about, and that is March -- in March of
16 2005 -- 2006, excuse me. You're working in the 1st
17 Platoon. Where is your assignment at that point in
18 March of '06?

19 A. TCP 2.

20 Q. All right. Are you in charge of a fire team
21 there?

22 A. Yes, sir.

23 Q. And have you already received your promotable
24 status?

25 A. Yes, sir.

1 Q. You've already passed the test and been approved
2 to be a sergeant?

3 A. Yes, sir.

4 Q. Just waiting on the final paperwork --

5 A. Yes, sir.

6 Q. -- and the stripes to come in?

7 A. Yes, sir.

8 Q. All right. Who's on -- and in March, who --
9 March 1st, who's in that -- at the TCP 2 with you?

10 A. It was myself, Barker, Spielman, Scheller,
11 Howard, and Green.

12 Q. All right. Do you know when -- was Spielman
13 normally part of your team?

14 A. No.

15 Q. All right. When did he come, and why did he
16 come?

17 A. I don't remember.

18 Q. All right. What about Green? Was he normally
19 part of that?

20 A. No, sir.

21 Q. All right. Do you know when he came, if you
22 recall?

23 A. No, I don't remember.

24 Q. But he was definitely down there in March
25 sometime?

1 A. Yes, sir.

2 Q. Did they come from somewhere else, Green and
3 Spielman?

4 A. They both were in 1st Squad.

5 Q. All right. Where were they normally at?

6 A. It just depends on -- when we first went out --

7 MR. BOULDIN: Your Honor, may we approach?

8 THE COURT: You may.

9 MR. LESOUSKY: All right. I'll move on.

10 Q. Both Green and Spielman are with you in March
11 sometime of '06 at TCP 2; is that correct?

12 A. Yes, sir.

13 Q. All right. Now, and you don't -- you don't know
14 when they came?

15 A. No.

16 Q. All right. You just know they came from another
17 operation?

18 A. Yes, sir.

19 Q. All right. And let's move -- you're in charge,
20 right?

21 A. Yes.

22 Q. You've got, what, six men down there?

23 A. Probably, yeah.

24 Q. All right. Are you in charge of all those men?

25 A. Yes, sir.

1 Q. Let's go forward to March the 12th, the day of
2 the incident we're going to be talking about. In the
3 morning of March the 12th, is everything fairly normal,
4 what's going on there? Is anything unusual happening on
5 the morning of March 12th, 2006, before the incident?

6 A. Just IED sweeps or guard.

7 Q. All right. Did you-all do that?

8 A. Yes, sir.

9 Q. That happens every day?

10 A. Every day.

11 Q. All right. Do you direct who does the IED sweeps
12 and the guard?

13 A. I would make a list for the guard, and then same
14 thing or whoever was just up in the morning to do IED
15 sweeps would go.

16 Q. All right. And did there come a point in time
17 that morning that there was a card game?

18 A. That was towards like noon, towards early
19 afternoon.

20 Q. All right. That's fine. Are you in the card
21 game?

22 A. Yes, sir.

23 Q. Who else was in?

24 A. Myself, Spielman, Barker, Green, and Howard.

25 Q. All right. What kind of cards are you playing?

1 A. I think rummy is what we were playing.

2 Q. All right. Any money in it?

3 A. No, sir.

4 Q. All right. How long does the card game go on?

5 A. I don't remember.

6 Q. All right. Are you drinking?

7 A. Yes, sir.

8 Q. All right. What are you drinking?

9 A. We were drinking whiskey and gin with Rip-Its,
10 the energy drink.

11 Q. What's Rip-It?

12 A. It's an energy drink.

13 Q. All right. And you-all drinking that during the
14 card game?

15 A. Yes, sir.

16 Q. Anything unusual? Are you-all drinking over
17 there this whiskey and gin periodically?

18 A. We were drinking it a lot.

19 Q. All right. How often are you drinking over there
20 yourself?

21 A. Probably a couple times a week.

22 Q. All right. And are you getting drunk that day?

23 A. Yes, sir.

24 Q. All right. Are the others getting drunk?

25 A. As far as I know.

1 Q. All right. Do you know what's going on?

2 A. Yes.

3 Q. All right. Anything about the conversation that
4 was unusual at the card game?

5 A. Just normal conversation.

6 Q. All right. Just the usual stuff?

7 A. Uh-huh.

8 Q. All right. And after the card game broke up,
9 what happened?

10 A. I went outside to check on Scheller.

11 Q. Who is Scheller? Is he one of the men under your
12 control?

13 A. Yeah. He was on the truck.

14 Q. And what's he doing?

15 A. Guarding the road.

16 Q. All right. Is he out in the Humvee?

17 A. Yes, sir.

18 Q. And did you go out to the Humvee to check on him?

19 A. Yes.

20 Q. All right. And what happened after that? Did
21 you come back?

22 A. Yes, sir.

23 Q. All right. And what happened after that?

24 A. When I came back in, Barker and Green started --
25 were changing their clothes, so I changed mine, also.

1 Q. All right. What do you mean you changed your
2 clothes?

3 A. I put on these black silk weight pants and top.

4 Q. All right. What are you putting -- let me show
5 you these.

6 A. That's it.

7 Q. Is that what you put on?

8 A. Yes, sir.

9 Q. Did you have pants like this?

10 A. Yes, sir.

11 Q. Putting this on your face?

12 A. I don't -- I don't recall myself wearing that. I
13 don't really remember who all --

14 Q. Did you see anybody else wear it?

15 A. I don't remember.

16 Q. Okay. That's fine. Just what you remember. But
17 you are putting these on?

18 A. Yes, sir.

19 Q. What are these used for?

20 A. They're usually used for when it's cold, you wear
21 them so you don't get -- so you try not to be as cold as
22 you are.

23 Q. Is this what you had on like this? This is not
24 yours obviously, but did you have something like that on
25 before?

1 A. Yes, sir.

2 Q. And a shirt like this?

3 A. Yes, sir.

4 Q. All right. What are you changing from this into
5 this for? This ain't outerwear, is it?

6 A. No, sir.

7 Q. All right. Why after coming back from checking
8 on Scheller to see if he was all right out there at the
9 Humvee did you start changing into the black silk
10 weights?

11 A. Did you say why?

12 Q. Why?

13 A. From our conversation while we were playing
14 cards, I just -- I knew -- I knew what we were going to
15 do.

16 Q. What were you-all going to do?

17 A. Go to the house and have sex with that girl.

18 Q. All right. Where did you get that information
19 from?

20 A. While we were playing cards.

21 Q. All right. Who was talking about going down
22 there and having sex with a girl down there?

23 A. I think it all just -- wasn't really -- I don't
24 know how to say it. Like it wasn't -- it wasn't -- it
25 was normal for us to talk about, you know, having sex

1 with certain people, but I think when the conversation
2 turned more serious is when they knew what house and how
3 many people lived in the house.

4 Q. I don't know who "they" is. You have to tell the
5 jury.

6 A. The four victims.

7 Q. Yeah, I know the victims. But who is "they"
8 talking more seriously about having sex?

9 A. Green and Barker.

10 Q. All right. They talking to you, too?

11 A. Myself and Spielman.

12 Q. All right. And who else -- anybody else talking
13 about it?

14 A. I don't remember.

15 Q. All right. But something was different than the
16 usual time?

17 A. Yes, sir.

18 Q. So you're saying there are times when you-all
19 would sit around and talk about girls and just regular
20 talk --

21 A. Yes, sir.

22 Q. -- without getting any details? This was
23 different?

24 A. Yes, sir.

25 Q. And what was different about it that morning or

1 afternoon when you were playing cards than before?

2 A. Just the fact that they knew where the house was,
3 how far it was --

4 MR. BOULDIN: Objection. He can't testify
5 what someone knew.

6 MR. LESOUSKY: Well, he can testify what he
7 heard.

8 THE COURT: I'll overrule the objection.

9 MR. LESOUSKY: Thank you, Judge.

10 Q. You can go ahead and continue, the judge is
11 saying.

12 A. I just knew the conversation was more serious
13 because Barker and Green knew where we were going and
14 how many people lived there and where the house was at.

15 Q. All right. And when you came back, did you
16 decide you were going to go, too?

17 A. Yes, sir.

18 Q. All right. Now, this wasn't a military mission,
19 was it?

20 A. No, sir.

21 Q. Had nothing to do with that?

22 A. Nope.

23 Q. Did you order these guys to go down there?

24 A. No, sir.

25 Q. You're in charge, aren't you?

1 A. Yes, sir.

2 Q. And if you order them to do something, they have
3 to follow that?

4 A. Yes, sir.

5 Q. This have anything to do with the military?

6 A. No, sir.

7 Q. Mission or anything?

8 A. No.

9 Q. This wasn't going after some bad guys, was it?

10 A. No.

11 Q. All right. So what did you do? Change your
12 clothes?

13 A. Yes, sir.

14 Q. Where did you-all change your clothes at?

15 A. I changed mine in the first room of the TCP.

16 Q. Is that the NCO room we heard about?

17 A. I guess you can call it that.

18 Q. All right. Was it -- that's -- if that's the
19 wrong term, you tell me. I just heard it earlier.

20 A. The only time we would call them NCO room is if
21 all the NCOs were the only ones that slept in there, so.

22 Q. You and I both talk pretty fast. Say that again.

23 A. I said the only time we would call it the NCO
24 room is when only NCOs stayed in there.

25 Q. All right. But there weren't just NCOs staying

1 in there, was there?

2 A. No, sir.

3 Q. Who was in the room with you staying there on a
4 regular basis, sleeping and whatever?

5 A. In the room?

6 Q. Uh-huh.

7 A. I know Barker was in there with me, and I think
8 Green might have been in there with me, too. I'm not
9 sure.

10 Q. All right. Did you have your gear in there?

11 A. Yes, sir.

12 Q. All right. Did Barker have his gear in there?

13 A. Yes, sir.

14 Q. And did that gear you had in there include these
15 silk weights we talked about?

16 A. Yes, sir.

17 Q. All right. Now, did you put anything on your
18 face?

19 A. I don't remember -- I think I wore a T-shirt like
20 to cover my face like that.

21 Q. All right. You mean like a cowboy mask or
22 partially pulled down -- I'm not following you.

23 A. Well, I pulled the T-shirt up to where the head
24 goes in and just have it covering my face like this.

25 Q. Like this?

1 A. Yes, sir.

2 Q. Like a cowboy mask?

3 A. Yes, sir.

4 Q. So that from your nose down is covered?

5 A. (Moves head up and down.)

6 Q. How did you fix the T-shirt that way, and how did
7 you keep it from falling down to your chest?

8 A. I just put it over my head.

9 Q. All right. And pulled it down just partially?

10 A. Yes, sir.

11 Q. Can you see?

12 A. Yes, sir.

13 Q. All right. And you said -- did anybody wear the
14 balaclava?

15 A. I don't remember.

16 Q. All right. You know what a balaclava is, don't
17 you?

18 A. Yes, sir.

19 Q. All right. Do you remember if -- for instance,
20 did Barker cover his face with anything?

21 A. I'm not sure.

22 Q. All right. What about Mr. Green?

23 A. I don't remember.

24 Q. All right. Do you remember whether they
25 disguised themselves at all, or were you the only one?

1 A. Me, Barker, and Spielman -- or no. Me, Barker,
2 and Green did. Spielman just wore his ACU pants and the
3 boots.

4 Q. So when you're saying you don't remember, you're
5 not saying you don't remember -- they did conceal the
6 face. You don't know how, don't remember how?

7 A. I don't remember if they did at all.

8 Q. All right. Okay. Let's go back again. You
9 concealed your face?

10 A. Yes.

11 Q. Do you remember whether anybody else that went
12 down there concealed their face?

13 A. I don't remember exactly.

14 Q. Okay. That's fine. If you don't remember,
15 that's the answer. All right. How long did it take you
16 to change your clothes?

17 A. A few minutes.

18 Q. All right. And what happens next?

19 A. We all grabbed our weapons and left the TCP
20 behind it between the wire and the wall.

21 Q. All right. Did you take a weapon?

22 A. Yes, sir.

23 Q. What did you take with you?

24 A. My M-4.

25 Q. All right. Let me just show you. This is just a

1 sample one. Okay? I'm just going to show it to you.

2 All right. Can you see that, what I'm holding
3 up?

4 A. Yes, sir.

5 Q. What is that?

6 A. An M-4.

7 Q. Does that look like the one you had?

8 A. No.

9 Q. All right. What, did you have equipment on it?

10 A. Yes, sir.

11 Q. All right. It's the same weapon, but you had
12 equipment on it?

13 A. Yes, sir.

14 Q. Tell the jury a little bit about the equipment.
15 We don't want to get bogged down too much. What are we
16 talking about when you say it had some equipment?

17 A. I had a grenade launcher, a 203 grenade launcher,
18 on mine.

19 Q. What, does that go up here somewhere?

20 A. It goes on the bottom where your hand is.

21 Q. Here?

22 A. Yes, sir.

23 Q. All right.

24 A. And then an ACOG, which is like kind of a sight
25 that we have.

1 Q. Like a scope?

2 A. Yeah, kind of.

3 Q. Up here?

4 A. Yes, sir. And I had a laser on mine.

5 Q. Laser?

6 A. (Moves head up and down.)

7 Q. Up here?

8 A. Where your hand's at.

9 Q. Right here?

10 A. Yeah.

11 Q. All right. But you took this weapon?

12 A. Yes, sir.

13 Q. All right. Just had more equipment for fighting

14 the bad guys?

15 A. Yes, sir.

16 Q. All right. Anybody else take any weapons?

17 A. All of us did.

18 Q. All right. Did Barker have a weapon?

19 A. Yes, sir.

20 Q. Same thing you had?

21 A. Yes, sir.

22 Q. All right. Where did he get his weapon from?

23 A. From Howard.

24 Q. All right. Why did he take Howard's, if you

25 know?

1 A. Because he didn't want to have to carry all the
2 extra stuff on his weapon, like the grenade launcher and
3 things like that.

4 Q. The stuff we just talked about?

5 A. Yes, sir.

6 Q. He had the same equipment?

7 A. Yes, sir.

8 Q. And, what, Howard had mostly what I just showed
9 you, a stripped-down version?

10 A. That and he probably had a scope on the top and
11 like a laser or something.

12 Q. It's not as heavy?

13 A. No.

14 Q. Yours is pretty heavy, I guess?

15 A. It's heavier.

16 Q. All right. What about Green? What's he have?

17 A. He took a shotgun.

18 Q. All right. You-all have a shotgun there at the
19 shop?

20 A. Yes.

21 Q. You-all use a shotgun at the TCP?

22 A. The only time we use them is to like shoot locks
23 off doors.

24 Q. Take them on patrol?

25 A. Yes, sir.

1 Q. This look like what he brought with him?

2 A. Yes, sir.

3 Q. All right. Is this where you put the shells?

4 A. Yes, sir.

5 Q. All right. All right. Now, you got your
6 weapons. Who's going down there? Who's going down
7 there? I need to get my microphone.

8 A. Who's going down where?

9 Q. Going to the house.

10 A. Myself, Barker, Spielman, and Green.

11 Q. All right. How did Spielman get involved in
12 this?

13 A. I think by the conversation we had at the card
14 game, and then right when we were getting ready to
15 leave, he said he was down to go.

16 Q. All right. Did he change his clothes?

17 A. No, sir.

18 Q. Is he still wearing those Army pants I showed you
19 a minute ago --

20 A. No.

21 Q. -- the camouflage?

22 A. No.

23 Q. Well, what's he wearing?

24 A. He just wore his ACU bottoms with the brown
25 T-shirt.

1 Q. All right. Are those the ACUs I showed you a
2 minute ago?

3 A. Yes, sir.

4 Q. Not the silk weights, but this. See what
5 Ms. Ford is showing you? Is that what he had on?

6 A. Yes, sir.

7 Q. Exhibit -- thank you. That's Exhibit 22A. Is
8 that what it looks like?

9 A. Yes, sir.

10 Q. With the brown T-shirt, what I've already shown
11 you, and that's Exhibit 22B. This is what he has on?

12 A. Yes, sir.

13 Q. All right. He wearing any disguise over his
14 face, or do you recall?

15 A. Not that I remember.

16 Q. All right. What kind of firearm is he taking?
17 Is he taking one?

18 A. That M-14.

19 Q. All right. Let me show you here just so we're
20 all on the same page. This is the last time. You see
21 this firearm I'm holding?

22 A. Yes, sir.

23 Q. What is that?

24 A. M-14.

25 Q. Is that similar to what he took with him that

1 day?

2 A. Yes, sir.

3 Q. All right. That's a pretty heavy piece of
4 equipment, isn't it?

5 A. Yes, sir.

6 Q. All right. Did you know how to go to the house?

7 A. I knew how to get there. I mean, I've --

8 Q. How did you know how to get there?

9 A. I just followed them that day.

10 Q. That's what I was getting to. You're going right
11 where I'm going. Who's in the lead, if you remember?

12 A. I don't remember.

13 Q. Don't speculate.

14 A. I don't remember.

15 Q. You're not leading, are you?

16 A. No, sir.

17 Q. All right. And are you walking in single file,
18 or are you kind of walking, you know, with each other
19 walking down there?

20 A. We're kind of like -- like a little jog.

21 Q. All right. Are you one behind the other?

22 A. I don't remember.

23 Q. That's fine. So you're jogging down there?

24 A. Yes, sir.

25 Q. All right. And one of you is in the lead. You

1 just don't remember?

2 A. Yes, sir.

3 Q. All right. And you hadn't been to that house
4 before, had you?

5 A. No, sir.

6 Q. But at least one of the soldiers had been there?

7 A. Yes, sir.

8 MR. BOULDIN: Objection, hearsay.

9 Q. Well, did you find out from the conversation at
10 the card game whether any of the soldiers had been
11 there?

12 A. They talked about it, Barker and Green.

13 MR. BOULDIN: Objection. It's still
14 hearsay. Move to strike.

15 MR. LESOUSKY: It's not hearsay. That's
16 part of the conspiracy.

17 MS. FORD: That's part of the conspiracy.

18 THE COURT: I agree.

19 MR. LESOUSKY: All right.

20 THE COURT: Overruled.

21 BY MR. LESOUSKY:

22 Q. We're talking about the card game is where they
23 mentioned it?

24 A. Yes, sir.

25 Q. All right. Do you remember any conversation from

1 Barker or Green telling you-all how they were going to
2 go or they would lead you-all down there? If you don't,
3 just tell us.

4 A. No, I don't remember.

5 Q. All right. How long did it take to get down
6 there?

7 A. A couple minutes.

8 Q. All right. How far would you say it is?

9 A. About 200 meters, 300 meters, somewhere.

10 Q. A couple football fields length?

11 A. Yeah, probably.

12 Q. And did you have to get through any fencing or
13 anything?

14 A. The first fence they cut through with a Gerber.
15 I think it was Barker. I'm not really sure.

16 Q. All right. You didn't do any of the cutting?

17 A. No, sir.

18 Q. All right. And now when you're -- you got
19 through the fencing, and you get to the house. All
20 right. I want to show you some stuff just to kind of
21 put us where we are.

22 MR. LESOUSKY: Can we go to 6A, which has
23 already been admitted? Can you put 6A up for a moment?

24 Oh, Judge --

25 THE COURT: Oh, I'm sorry.

1 MR. LESOUSKY: -- I've got to toggle to --

2 THE COURT: I've got it.

3 Q. Okay. There's -- do you recognize that?

4 A. Yes, sir.

5 Q. You and I have gone over some of these
6 photographs a couple times, haven't we?

7 A. Yes, sir.

8 Q. Orient the jury. What are we looking at here?

9 A. That's like a little dirt path coming from the
10 way that we came up to the house.

11 Q. All right. Now, you can -- you can see what I'm
12 doing there?

13 A. Yes, sir.

14 Q. All right. You can do the same as I did. You
15 can take your finger and show us the path.

16 A. Just probably came right to those trees right
17 there.

18 Q. All right. Where is the TCP 2 relative to where
19 these areas are?

20 A. You want me to point it out on here?

21 Q. Yeah. You can point it out. You can draw a
22 little circle, whatever.

23 A. It's back over there.

24 Q. All right. You're coming down like this?

25 A. Down the dirt road?

1 Q. Or just down in this area? I probably didn't --

2 A. Yeah, just around the area. That's the empty
3 field we came through.

4 Q. All right. And where is the residence, the
5 Al-Janabi residence?

6 A. It's back over here.

7 Q. All right. Behind this shed?

8 A. Yes, sir.

9 Q. All right. Now I want to go to 9 -- let's go to
10 9C, if we could, for a moment. Do you recognize that?

11 A. Yes, sir.

12 Q. All right. Now, again, using your finger, just
13 kind of show us the path that you-all were taking.

14 A. And then we came like right through there like
15 that.

16 Q. All right. And where is the residence? Can you
17 see any part of that in the picture?

18 A. It's in the back.

19 Q. Is that it there?

20 A. Yes.

21 Q. The top part?

22 A. Yes, sir.

23 Q. All right. Let's go to 9D for a moment. Do you
24 recognize that?

25 A. Yes, sir.

1 Q. Is that the house that the Al-Janabis lived in?

2 A. Yes, sir.

3 Q. All right. Where did you-all -- draw us the line
4 and show us where you came through and around and
5 towards the entranceway to the residence. You can use
6 your finger.

7 A. I don't remember actually which way I came from,
8 but I just know I went through here --

9 Q. Only if you remember.

10 A. -- into the door.

11 Q. All right. The front door over there?

12 A. Yes, sir.

13 Q. Going in right in there?

14 A. Yes, sir.

15 Q. All right. Did you see any people, any civilians
16 outside when you came?

17 A. The father and the little -- the little girl was
18 outside.

19 Q. All right. And you're talking about the
20 six-year-old little girl?

21 A. Yes, sir.

22 Q. All right. Where were they standing when you
23 first saw them?

24 A. Right by the front door in front of their car.

25 Q. All right. Where was the car?

1 A. Right over that burn pit right there where the
2 ground is burnt.

3 Q. All right. You can mark that now. Right there
4 was the car?

5 A. Yes, sir.

6 Q. And I misunderstood you. Where was the little
7 girl and her father?

8 A. They were standing in the front of the car.

9 Q. Up in here?

10 A. Yeah.

11 Q. All right. That's when you first saw them?

12 A. Yes, sir.

13 Q. All right. What happened to those two folks?

14 A. Spielman had kind of like pushed the little girl,
15 like kind of taking her inside, and then Green had
16 grabbed the father.

17 Q. All right. What are you doing? Are you behind
18 those two or in front of them?

19 A. I'm behind them.

20 Q. All right. So you're back somewhere in here when
21 they're escorted in?

22 A. Yeah.

23 Q. All right. Now, let's go to 9E, if I could,
24 please. You recognize that entranceway?

25 A. Yes, sir.

1 Q. Did you enter the Al-Janabi house in that way?

2 A. Yes, sir.

3 Q. All right. And where is the other soldiers at?
4 Where's the family at? What's going on when you
5 entered?

6 A. By the time I got inside, Green had already had
7 all of them inside the room, was pushing the older
8 daughter out to me and Barker.

9 Q. All right. Now, let's -- when you're talking
10 about all of them, what are you talking about?

11 A. The mom, the dad, and the two girls.

12 Q. All right. And where were they?

13 A. They were in a room inside.

14 Q. All right. Are you talking about the bedroom?

15 A. Yes, sir.

16 Q. All right. And where were you at the first time
17 you saw the other -- all four of them? Were you past
18 this entranceway in here?

19 A. I was probably in the living room.

20 Q. All right. Over in here?

21 A. Yes, sir.

22 Q. All right. Where's the bedroom you're talking
23 about? You show us.

24 A. It's in this door, but then it's to the left.

25 Q. All right. You said they pushed the -- you're

1 talking about Abeer, the 14-year-old. They pushed them
2 out -- they pushed her out to you, Green did?

3 A. Yes, sir.

4 Q. All right. Where did you go with Abeer?

5 A. I took her kind of toward the back to this back
6 wall back here.

7 Q. All right. Is that the living room area?

8 A. Yes, sir.

9 Q. All right. Is anybody with you at this point, or
10 are you by yourself?

11 A. Me and Barker.

12 Q. All right. Is Barker with you? Both you
13 escorting this young girl?

14 A. Yes, sir.

15 Q. Towards the living room?

16 A. Yes, sir.

17 Q. All right. What is she doing at this point? She
18 saying anything or doing anything?

19 A. No. I think she was like -- kind of like
20 hyperventilating, like she was just breathing real hard,
21 kind of scared probably.

22 Q. All right. Now, what did you do after you got
23 her to that point?

24 A. I had threw her to the ground.

25 Q. All right. Did you move her to the ground?

1 A. Yes, sir.

2 Q. With your hands, or what -- did you kind of bring
3 her down like that? How did you get her to the ground?

4 A. By her hair.

5 Q. All right. You pulled the back of her hair?

6 A. Yes, sir.

7 Q. All right. Did she go to the ground?

8 A. Yes, sir.

9 Q. What did you do after that?

10 A. I tore off her little silk weight, like her --

11 Q. Uh-huh. You talking about her underwear?

12 A. Yes, sir.

13 Q. Is it like stockings?

14 A. Yes, sir.

15 Q. All right. Did you pull her dress up --

16 A. Yes.

17 Q. -- or down?

18 A. Up.

19 Q. Up. All right. Did you take her stockings off?

20 A. Yes, sir.

21 Q. What happened after that? Where is Barker at at
22 this point?

23 A. Holding her hands down.

24 Q. Where is her hands at?

25 A. Up above her head like that (indicating).

1 Q. Like that?

2 A. Yes, sir.

3 Q. And how is he holding her hands down?

4 A. I don't remember. I think he might have like
5 used his legs to help him. I'm not too sure.

6 Q. All right. Now, after you got her stockings off,
7 what did you do?

8 A. I was trying to rape her.

9 Q. All right. Did you get an erection?

10 A. No, sir.

11 Q. All right. Did you do -- but you were trying to
12 sexually assault her?

13 A. Yes, sir.

14 Q. What was she doing?

15 A. Screaming.

16 Q. All right. Crying?

17 A. I don't remember if she was crying.

18 Q. All right. How long are you trying to sexually
19 assault her?

20 A. A couple seconds.

21 Q. All right. Did you touch her private parts with
22 your hands?

23 A. No, sir.

24 Q. All right. What about your penis?

25 A. No, sir.

1 Q. All right. But you're down there sexually
2 assaulting her?

3 A. Trying to.

4 Q. Trying to. All right. Then what happened? Did
5 you give up after some time?

6 A. After a few seconds, I just kind of was -- I
7 didn't -- I couldn't -- I couldn't.

8 Q. Now, you're in there in the living room. Where
9 is Mr. Green at?

10 A. In the bedroom.

11 Q. All right. Who's in the bedroom with him?

12 A. Him, the parents, and the little, little girl.

13 Q. All right. You're not in there at this point?

14 A. No, sir.

15 Q. All right. Where is Mr. Spielman?

16 A. He -- I don't remember.

17 Q. All right. That's fine if you don't. That's the
18 best way to answer it. You're down here focused with
19 you and Barker on Abeer at that point?

20 A. Yes, sir.

21 Q. All right. And what happens after you? Did you
22 get up?

23 A. Me and Barker switched places.

24 Q. All right. In the interim, have you heard
25 anything? Has there been any sounds other than her

1 cries and crying?

2 A. The gunshots in the room.

3 Q. You hear gunshots?

4 A. Yes, sir.

5 Q. Are you trying to have sex with her when the
6 gunshots went off?

7 A. I don't remember.

8 Q. All right. Now, what did you do when the
9 gunshots went off?

10 A. I kind of got a little nervous. I ran to the
11 door. Spielman had already went to the door. I ran to
12 the door, too.

13 Q. What's Barker doing when you're running to the
14 door?

15 A. I don't remember if he was actually trying to
16 rape her or if he was holding her down, but he was -- he
17 was with her.

18 Q. All right. Well, I thought you were holding her
19 down so Barker could have sex. Did you do that?

20 A. Yeah, but you asked me when the shots went off.

21 Q. Okay.

22 A. Sometime between all that.

23 Q. All right. Did you -- was there a point in time
24 when you held her down so Barker could assault her?

25 A. Yes, sir.

1 Q. All right. Was that before or after the gunshots
2 or during?

3 A. I don't remember.

4 Q. Okay. That's the way to answer. But you did do
5 that?

6 A. Yes, sir.

7 Q. And did Barker do or look from your -- what you
8 saw, was he doing the same thing that you did?

9 A. Trying.

10 Q. All right. He get between her legs?

11 A. Yes, sir.

12 Q. All right. Did you see him thrusting?

13 A. No, sir.

14 Q. All right. But he was trying to sexually assault
15 her?

16 A. Yes, sir.

17 Q. You don't know what he did?

18 A. I don't.

19 Q. I understand. You're just holding her?

20 A. Yes, sir.

21 Q. How are you holding her?

22 A. Kind of sitting over the top of her.

23 Q. All right. You holding her hands down?

24 A. Yes, sir.

25 Q. You got her -- and you got her hands pinned like

1 this (indicating)?

2 A. Yes, sir.

3 Q. Her legs are apart?

4 A. Yes, sir.

5 Q. Barker's in the middle --

6 A. Yes, sir.

7 Q. -- between her legs?

8 A. (Moves head up and down.)

9 Q. All right. Is she still crying?

10 A. Yes.

11 Q. And the gunshots go off. Did you know Green was
12 going to kill this family?

13 A. I didn't know what was going to happen. I don't
14 think -- that wasn't the intention.

15 Q. All right. Well, what did you think was going to
16 happen to them?

17 A. I didn't think they were going to get killed.

18 Q. At some point in time while you were there, did
19 you know this family was going to get killed?

20 A. No, sir.

21 Q. All right. Did you think that you-all would just
22 walk away after you finished doing what you were doing
23 to Abeer?

24 A. No.

25 Q. You couldn't, could you?

1 A. Well, thinking about it now, no. But when it
2 happened, I don't think any of us thought -- stuff just
3 went crazy. I mean, nobody could control what happened
4 no more. It was just time -- I told everybody, "Let's
5 go." It went -- it went crazy, too crazy.

6 Q. Now, how long is Barker assaulting this girl?

7 A. A couple seconds.

8 Q. Seconds. Are you there when he gets up,
9 Mr. Barker gets up, from this assault? Are you still
10 holding her at the time?

11 A. I don't remember.

12 Q. All right. Do you remember what -- Green, did he
13 come out of the bedroom?

14 A. Yes, sir.

15 Q. What did he say when he came out of the bedroom?

16 A. He said that he killed them all and all of them
17 were dead.

18 Q. All right. Did he have a firearm with him?

19 A. Yes, sir.

20 Q. Did you see the firearm when he came out of the
21 bedroom?

22 A. I saw he had the shotgun and the AK.

23 Q. All right. He had an AK-47?

24 A. Yes, sir.

25 Q. Did he have that with him when he went down

1 there?

2 A. No.

3 Q. All right. That's not a regular Army issue?

4 A. Uh-uh.

5 Q. You've been on a lot of patrols in the years you
6 served over there in Iraq, haven't you?

7 A. Yes, sir.

8 Q. You've seen those, haven't you?

9 A. Yes, sir.

10 Q. What's the usual rule that Iraqi citizens can
11 have during the war when you were over there? Could
12 they have an AK?

13 A. They can have one AK and one magazine.

14 Q. All right. You seen a lot of those?

15 A. Yes, sir.

16 Q. All right. When they were talking, did they
17 mention anything about the presence of an AK-47 in the
18 Al-Janabi residence?

19 A. I don't remember.

20 Q. Okay. But you've seen a lot of AK-47s, haven't
21 you?

22 A. Yes, sir.

23 Q. You heard them fired before?

24 A. Yes.

25 Q. All right. Could you tell when you heard the

1 gunshots what kind of firearm that was that emitted the
2 gunshots?

3 A. I couldn't tell.

4 Q. Couldn't tell at all?

5 A. No.

6 Q. That's fine. Do you recognize the firearm I'm
7 holding up?

8 A. Yes, sir.

9 Q. All right. What is that?

10 A. An AK-47.

11 Q. All right. That look similar to the one that
12 Mr. Green carried out of the living room with him?

13 A. Yes, sir.

14 Q. Carried into the living room is what I meant.

15 A. Yes, sir.

16 Q. All right. Then what happened?

17 A. At that point, that's when -- I might -- I think
18 I was still holding her down, and then Green went to try
19 to rape her.

20 Q. What did he do with the AK-47?

21 A. Set it on the floor.

22 Q. All right. Beside you-all?

23 A. I don't remember.

24 Q. Okay. Are you holding her while Green was
25 sexually assaulting her or trying to?

1 A. When he -- I first held her, and then when he got
2 between her legs, I think that was when I let her go.

3 Q. All right.

4 A. And then --

5 Q. Was she still crying?

6 A. Yes, sir.

7 Q. And screaming?

8 A. Yes, sir.

9 Q. All right. And what did Green say when he came
10 out of the bedroom?

11 A. He said that he killed them all and all of them
12 were dead.

13 Q. All right. And you just a moment before that
14 heard a bunch of gunshots?

15 A. Yes, sir.

16 Q. How many?

17 A. I'm not -- I don't remember.

18 Q. More than one?

19 A. Yes, sir.

20 Q. All right. As many as three or four?

21 A. I don't know.

22 Q. All right. Did you go check and see the family
23 members?

24 A. No.

25 Q. Did you ever -- you didn't look inside that

1 bedroom at all then, did you?

2 A. I did when I came back.

3 Q. We're going to talk about that, but I'm talking
4 about just that moment.

5 A. No, sir.

6 Q. All right. So Green, is he -- from just what you
7 recall, is he by himself when he's sexually assaulting
8 this girl?

9 A. Right at first --

10 Q. Uh-huh.

11 A. -- I had held her down so he can get in between
12 her legs, and then that's when I think I let her go.

13 Q. All right. He got between her legs, right?

14 A. Yes, sir.

15 Q. Did he take his pants down?

16 A. I don't remember.

17 Q. Okay. Did you see him thrusting? You know what
18 I mean by that? Did it look like he was having sex with
19 her?

20 A. I don't remember.

21 Q. Okay. That's fine. Just what you recall. Then
22 what happens? Does he get up?

23 A. I had got up, and Barker was in the kitchen.

24 Q. All right.

25 A. And then he came back out. And at that time, I

1 was trying to tell everybody let's go, we need to get
2 out of here.

3 Q. All right. What's Green doing?

4 A. He got up and put a pillow over her head.

5 Q. All right. Where did the pillow come from?

6 A. I don't remember. It was -- I guess it was right
7 there in the living room.

8 Q. Is she face up still at this time?

9 A. Face up?

10 Q. I mean looking up straight at him at the time?

11 A. Yes, sir.

12 Q. Does he put the pillow over her face?

13 A. Yes, sir.

14 Q. All right. Then what happened?

15 A. He shot her three times.

16 Q. All right. With what weapon?

17 A. The AK.

18 Q. All right. Did he shoot her in the face through
19 the pillow? Did he shoot her into her head through the
20 pillow?

21 A. Yeah.

22 Q. All right. Then what happened?

23 A. We were getting ready to leave, and then Barker
24 had thrown some kerosene on her.

25 Q. All right. What are we doing -- what's -- who

1 said something about bringing kerosene and putting it on
2 her?

3 A. Nobody.

4 Q. Nobody said a word?

5 A. No, sir.

6 Q. All right. What was the purpose of pouring
7 kerosene on this girl?

8 A. Now I know what the purpose was.

9 Q. I don't want you to speculate about now. What
10 did you think was going on back then, why they were
11 putting kerosene on this young girl?

12 A. I would think to get rid of anything, any
13 evidence or something like that.

14 Q. What happened after you poured the kerosene on
15 her?

16 A. Spielman handed his lighter to either Barker or
17 Green. I don't remember which one.

18 Q. Did you set her afire?

19 A. No, sir.

20 Q. Who set her afire?

21 A. I don't remember.

22 Q. That's fine. Wasn't Spielman?

23 A. No, sir.

24 Q. Wasn't you?

25 A. No, sir.

1 Q. So it had to be Barker or Green. You just don't
2 know which?

3 A. One of the two.

4 Q. Did you see her light up, her body aflame?

5 A. No, sir.

6 Q. Well, how close were you when you saw them pour
7 kerosene?

8 A. I was right in the middle of this door right
9 here --

10 Q. All right.

11 A. -- getting ready to go out the front door.

12 Q. Did you see them light her?

13 A. No, sir.

14 Q. All right. And let's go to seven -- excuse me,
15 9F. Is that near where Abeer was sexually assaulted and
16 shot and set afire?

17 A. Yes, sir.

18 Q. All right. Now, after she's set afire, what
19 happened after that?

20 A. We left.

21 Q. All right. Is anybody saying anything or let's
22 get out of here or --

23 A. I think I was telling them all let's go --

24 Q. All right.

25 A. -- we need to get out of here, and then we just

1 left.

2 Q. Did Green say anything?

3 A. He said that he had pulled the hose off the
4 propane bottle.

5 Q. All right. In the kitchen?

6 A. Yes, sir.

7 Q. All right. So what's he saying?

8 A. Like I said, I know now. But back then --

9 Q. Not now.

10 A. Back then, I didn't think about it.

11 Q. All right. Well, when he said, "I pulled it
12 off," is he -- what's he meaning by that?

13 A. Trying to get the propane in the air maybe to
14 light on fire.

15 Q. All right. What's that going to cause?

16 A. Probably either an explosion or some type of
17 fire.

18 Q. All right. Did he say that, "I let the propane
19 tank open, and it's going to blow"?

20 MR. BOULDIN: Objection to leading, Your
21 Honor.

22 MR. LESOUSKY: I'm sorry.

23 THE COURT: Sustained.

24 MR. LESOUSKY: I agree.

25 Q. I can't lead you. I'm sorry. You tell us what

1 you remember. If you don't remember, that's fine.

2 A. I don't remember.

3 Q. That's good. Did you-all leave there after he
4 said that?

5 A. Yes, sir.

6 Q. And you're hustling back up?

7 A. Yes, sir.

8 Q. That same kind of jog?

9 A. Probably -- yeah, probably the same.

10 Q. All right. Are you going back the same way?

11 A. Yes, sir.

12 Q. No change?

13 A. No changes.

14 Q. Same single-file formation back, or is --

15 A. I don't remember who --

16 Q. All right. And did it take the same amount of
17 time, a few minutes, to get back after you finished?

18 A. Yes, sir.

19 Q. All right. What happens -- do you get back to
20 the TCP?

21 A. When we get back -- when we got back, we had all
22 took off our black clothes --

23 Q. All right.

24 A. -- washed our hands, you know, tried to pour
25 water on us, clean off our body.

1 Q. All right. What are you cleaning your body off
2 for?

3 A. If we had any blood or anything like that on us.

4 Q. Did you have any on you?

5 A. I don't remember.

6 Q. All right. Who's all cleaning themselves?

7 A. Me -- me, Green -- I don't feel comfortable
8 saying all four of us, but I don't remember.

9 Q. Just what you remember. Did you clean yourself?

10 A. Yes, sir.

11 Q. Did you see anybody else among the four men
12 cleaning themselves after you got back?

13 A. Somebody, but I don't recall who it was.

14 Q. That's the answer then. All right. Was it
15 with -- you-all have water bottles there?

16 A. Yes.

17 Q. All right. Are they canteens that we see, or is
18 it actually a water bottle like we would buy at Taylor
19 Drugs or something?

20 A. It was a water bottle.

21 Q. All right. And you're just pouring it on you?

22 A. (Moves head up and down.)

23 Q. You don't -- do you have soap, too?

24 A. Nope.

25 Q. All right. And what are you doing with the

1 clothes?

2 A. We had gave our clothes to Howard, and he threw
3 them in the burn pit.

4 Q. Talking about Bryan Howard?

5 A. Yes, sir.

6 Q. That's one of the soldiers there?

7 A. Yes, sir.

8 Q. We haven't talked much about Bryan Howard. Let's
9 go back a second. Did he have -- did you have him do
10 something else for you that afternoon while this was
11 going on?

12 A. I had gave him the ICOM --

13 Q. All right.

14 A. -- the radio, and --

15 Q. When did you give Mr. Bryan Howard the radio?

16 A. Before we left.

17 Q. All right. Now, what is an ICOM?

18 A. It's like a walkie-talkie-type radio.

19 Q. Has it got more than one channel?

20 A. Yes, sir.

21 Q. All right. How many channels does it have?

22 A. Like 15.

23 Q. All right. Do you take one with you when you go
24 on patrol?

25 A. Yes, sir.

1 Q. When other soldiers go out on patrol and you're
2 back at the TCP, do you keep an ICOM with you?

3 A. Yes, sir.

4 Q. All right. Is that a communication device?

5 A. Yes, sir.

6 Q. All right. And you talk to people on it?

7 A. Yes, sir.

8 Q. All right. And did you have an ICOM when you
9 went down there?

10 A. Yes, sir.

11 Q. All right. And did you-all have it turned to a
12 certain channel, or did you tell him to go to a channel?

13 A. I don't remember. I told him to go to a
14 different channel so nobody else hopefully would hear --

15 Q. All right.

16 A. -- what we were talking about.

17 Q. All right. What was he -- what was he supposed
18 to call you on?

19 A. In case any convoys came through or any Iraqis
20 came through the checkpoint.

21 Q. All right. And so did you keep yours open on a
22 channel in case they called you?

23 A. Yes, sir.

24 Q. All right. And now -- and did you ever get any
25 calls from him?

1 A. Not that I remember.

2 Q. All right. And now you -- the second job, did he
3 give you the ICOM back after you got back to the TCP?

4 A. No, because that ICOM stayed inside so if the
5 person on the truck needed something, we can come out
6 there so he don't have to get down or yell or nothing
7 like that.

8 Q. All right. And what was -- what was Bryan
9 Howard, I mean, supposed to do with the clothes you gave
10 him?

11 A. Burn them.

12 Q. All right. Is there a burn pit?

13 A. Yes, sir.

14 Q. How many are there at the TCP 2?

15 A. There's one in front and then one in back.

16 Q. All right. Where were these burned at, if you
17 know?

18 A. I don't -- I think -- I don't remember.

19 Q. All right. That's the best -- all right. But
20 they were burned?

21 A. Yes, sir.

22 Q. All right. Now, did you give him your silk
23 weights?

24 A. Yes, sir.

25 Q. Did you see anybody else give Bryan Howard the

1 silk weights, or were they put in a pile?

2 A. I don't remember.

3 Q. All right. Do you know anybody else other than
4 yourself that gave him clothing that afternoon, if you
5 remember?

6 A. I just know I gave him mine.

7 Q. All right.

8 A. I don't ...

9 Q. Now, later on that afternoon, did you go down a
10 second time?

11 A. Yes, sir.

12 Q. Or evening?

13 A. Yes, sir.

14 Q. What caused you to go down there for a second
15 trip?

16 A. I don't -- I don't remember who it was that went
17 to the house, but somebody went to the house, and then
18 they went down to TCP 1 and told Sergeant Fenlason or
19 somebody down there. And then Yribe and Tucker came up
20 to TCP 2, and then me and Spielman went with him to
21 check the house out.

22 Q. All right. Did you go with him?

23 A. Yes, sir.

24 Q. All right. Private Spielman go with him?

25 A. Yes, sir.

1 Q. All right. And, what, did you-all walk down
2 there?

3 A. Yes.

4 Q. Did you-all take the same path or a little
5 different one?

6 A. Different one.

7 Q. All right. And did you go back into the house
8 then?

9 A. Yes.

10 Q. All right. And did you see the bodies?

11 A. Yes, sir.

12 Q. All right. And you could smell it, couldn't you?

13 A. Yes, sir.

14 Q. What did it smell like?

15 A. I would assume her body. I mean, that's the
16 first time I'd really smelt it, so.

17 Q. Was it a bad smell?

18 A. Yes, sir.

19 Q. Did you get sick at times?

20 A. Yes, sir.

21 Q. Because of that?

22 A. Yes, sir.

23 Q. Did you go in the bedroom?

24 A. Briefly.

25 Q. All right. Did you get sick when you went in

1 there?

2 A. Yes, sir.

3 Q. Pretty horrible, wasn't it?

4 A. (Moves head up and down.)

5 Q. All right. When you were in the bedroom, was
6 there an occasion when a shotgun shell was located, a
7 spent round?

8 A. Yes, sir.

9 Q. All right. Tell us about that.

10 A. Yribe was going through the room taking pictures.

11 Q. What were you doing? Assisting him?

12 A. I was -- I think I was by the door just watching
13 him, and then he lifted up the bed, and there was a
14 shotgun shell on the -- or the empty casing for a
15 shotgun on the floor.

16 Q. Go ahead. Continue on.

17 A. And I had picked it up.

18 Q. What did you pick it up for?

19 A. Because I knew that if they found it, they
20 would -- they'd probably suspect that it was an American
21 soldier that did it, so I took it.

22 Q. Why is that? Why would they suspect an American
23 soldier did this crime by you seeing a shotgun shell?

24 A. Because I don't ever really recall out of all the
25 times I'd been there that they carry shotguns, but I

1 know I've seen a couple shotgun shells before.

2 Q. What color was this shell?

3 A. Green.

4 Q. All right. Do you know whether -- any American
5 soldiers who purchased green Iraqi shotgun shells?

6 A. Not from firsthand knowledge. I just know
7 that --

8 Q. Only firsthand knowledge.

9 A. Yeah. I don't know.

10 Q. We don't want you to testify about what others
11 may have told you.

12 A. Okay.

13 Q. But you suspect because you never saw Iraqis
14 using shotguns?

15 A. Well, I remember Green saying something about he
16 couldn't find his -- the shell.

17 Q. All right. Green told you he lost the spent
18 shell?

19 MR. BOULDIN: Objection to leading.

20 MR. LESOUSKY: I'm sorry.

21 Q. Go ahead. I'm not supposed to lead you. That's
22 against the rules. You tell us what you remember.

23 A. I remember him saying that he couldn't find the
24 shell. So when I went back the second time, I was in
25 the room. When Yribe pointed it out to me, I picked it

1 up and put it in my pocket.

2 Q. What did you do with that shell?

3 A. I took it back to the TCP and burned it.

4 Q. All right. Did you burn it yourself?

5 A. No. Oh, yeah. I threw it in the burn pit
6 myself, yeah.

7 Q. Which burn pit did you put it in?

8 A. The one in the front.

9 Q. All right. And was it -- was stuff burning in
10 there already?

11 A. Yes.

12 Q. What was burning in the burn pit?

13 A. The one in the front?

14 Q. Yes, the one in the front where you put the
15 shotgun shell. Did you notice anything burning?

16 A. Not at that time I didn't.

17 Q. All right. Did you notice anything that had
18 burned that day that you recognized in the first pit out
19 front? Did you see any clothes?

20 A. Did you say clothes?

21 Q. Any burnt clothes?

22 A. No.

23 Q. Nothing like that?

24 A. No.

25 Q. All right. But you did put it in. Was there a

1 fire already going, or did you just have to start one to
2 burn that shell?

3 A. I don't -- I think once I threw it in there, I
4 just left it there, sitting there, to kind of -- I knew
5 that we would throw our trash in there later and light
6 it on fire. So I didn't really --

7 Q. You didn't burn it up then?

8 A. I didn't burn it right away.

9 Q. All right. And you haven't seen it since?

10 A. No, sir.

11 Q. Did you tell anyone that you burned the shell? I
12 mean burned the shotgun shell you saw at the house.

13 A. Yribe.

14 Q. All right. Did you tell him that?

15 A. Yes, sir.

16 Q. When did you tell Mr. Yribe -- it was Sergeant
17 Yribe then, wasn't it?

18 A. Yes, sir.

19 Q. When did you tell Sergeant Yribe that you
20 destroyed the shotgun shell, if you recall?

21 A. I don't -- I don't remember.

22 Q. All right. Now, after you came back, did you
23 take any -- did you have to go on leave for a few days
24 or anything?

25 A. I went to combat stress.

1 Q. All right. How long are you at combat stress?

2 A. A couple days.

3 Q. All right.

4 THE COURT: Let's approach the bench a
5 second, please.

6 (Bench conference on the record outside the hearing
7 of the jury.)

8 THE COURT: How much longer do you think
9 you'll be?

10 MR. LESOUSKY: Ten minutes.

11 THE COURT: Ten minutes. We'll finish --

12 MR. LESOUSKY: I think.

13 MR. BOULDIN: If you're 15 minutes, we can
14 finish before lunch, too.

15 THE COURT: All right.

16 (End of bench conference.)

17 BY MR. LESOUSKY:

18 Q. I can't remember my question now. Let me just
19 move on. I can't remember what my question was now.
20 I've been asking too many of them.

21 Let me go back to -- you got rid of the shell,
22 and you went to combat stress. That's where I was. How
23 long were you at combat stress?

24 A. A couple days.

25 Q. All right. Was that because of all this we've

1 been talking about here the last hour?

2 A. Yes, sir.

3 Q. It basically wore you down --

4 A. Yes, sir.

5 Q. -- mentally? And did you talk with anyone --
6 other than any of the men who were with you, did you
7 talk to anybody about what happened down there?

8 A. Not that I remember, no.

9 Q. All right. Yourself, Mr. Barker, Mr. Green,
10 Mr. Spielman, and Mr. Howard, did you-all ever get
11 together, you know, in that day or within the day or two
12 thereafter and talk about we need to keep quiet?

13 A. No.

14 Q. Anything like that happen?

15 A. I think it was just knowledge of just don't say
16 nothing.

17 Q. All right.

18 A. I think it was just -- that's what it was.

19 Q. That was a given?

20 A. Uh-huh.

21 Q. Is that what you're saying?

22 A. Yes, sir.

23 Q. All right. Now let's move forward. About a
24 month, maybe two months go by, and were you called by
25 Lieutenant Colonel Kunk when he was doing his command

1 inquiry?

2 A. Yes, sir.

3 Q. Were you interviewed by Lieutenant Colonel Kunk?

4 A. Yes, sir.

5 Q. Did he ask you a lot of the same questions I've
6 been asking you this afternoon about what happened down
7 there?

8 A. No.

9 Q. Well, he probably didn't ask you the same, but he
10 was asking you if you knew anything about that -- what
11 happened to that house, didn't he?

12 A. Yes, sir.

13 Q. Did you lie to him?

14 A. Yes, sir.

15 Q. Did you tell him you didn't know anything about
16 it?

17 A. Yes, sir.

18 Q. Was that part of your-all, you know, we're going
19 to keep this quiet?

20 A. That was -- I know that I was -- what I was going
21 to do at least at that point.

22 Q. All right. Later on, a few days later, did
23 somebody with the Criminal Investigation Division?

24 A. Yeah, they came down.

25 Q. All right. Did you lie to them to start with?

1 A. Yes, sir.

2 Q. All right. Did you eventually start telling them
3 what happened?

4 A. Yes, sir.

5 Q. And they asked you a lot of the same questions
6 like I'm asking you?

7 A. Yes, sir.

8 Q. You tell them a lot of what you just told me?

9 MR. BOULDIN: Objection, Your Honor. He can
10 lead him to what he told them. He can ask him what he
11 told them.

12 MR. LESOUSKY: All right. It would be a
13 long story, but, I mean, that's what I was trying to cut
14 to.

15 Q. Did you tell them the truth about what happened?

16 A. No, sir.

17 Q. All right. Did you eventually tell the CID
18 agents what happened?

19 A. Not everything.

20 Q. All right. Have you told everything to the jury
21 as best you can recall it this afternoon?

22 A. Yes, sir.

23 Q. Were you eventually -- you were charged, weren't
24 you?

25 A. Yes, sir.

1 Q. You pled guilty to certain charges; is that
2 right?

3 A. Yes, sir.

4 Q. Rape?

5 A. Yes, sir.

6 Q. Plead guilty to that?

7 A. Yes, sir.

8 Q. Felony murder --

9 A. Yeah.

10 Q. -- that means people being murdered in the middle
11 of a crime, like the rape. Did you plead guilty to
12 that?

13 A. Yes, sir.

14 Q. And other charges?

15 A. Yes, sir.

16 Q. Covering up and things of that sort?

17 A. Yes, sir.

18 Q. You actually went to trial on the charges, didn't
19 you?

20 A. Yes, sir.

21 Q. What was those you went to trial on?

22 A. Say it again, sir.

23 Q. What did you go to trial on?

24 A. What did I go to trial on?

25 Q. Yeah. What charges did you go, if you know?

1 A. I had premeditated murder.

2 Q. All right. Did you go to trial on that?

3 A. Yes, sir.

4 Q. What happened?

5 A. They found me not guilty of the premeditated
6 murder.

7 Q. All right. But you did plead guilty to charges?

8 A. Yes, sir.

9 Q. And in your plea agreement, did you agree to
10 cooperate in the prosecution of the others that were
11 involved in this crime?

12 A. Yes, sir.

13 Q. Have you done that? Have you been doing that?
14 Have you testified in other trials?

15 A. Yes.

16 Q. All right. Did you do that because you were --
17 that was part of your --

18 MR. BOULDIN: Objection.

19 Q. Why did you do that? Why did you testify in
20 these trials?

21 MR. LESOUSKY: I'm sorry. I keep leading.
22 I apologize.

23 A. That was part of my agreement, and I'm -- I was
24 hoping maybe I can get a good recommendation from
25 somebody to get clemency.

1 Q. And that's why you're testifying here?

2 MR. BOULDIN: Objection.

3 MR. LESOUSKY: I'm sorry.

4 Q. Why are you testifying here today?

5 MR. LESOUSKY: Thank you.

6 A. It was part of my agreement, but -- I guess the
7 same thing. I'm hoping I can get some letter or
8 something, but ...

9 Q. What was your sentence that you received from the
10 military court after all this was said and done?

11 A. Life without parole.

12 Q. All right. Then what happened? Did it get
13 reduced further?

14 A. Yes, sir.

15 Q. What are you currently serving?

16 A. A 100-year sentence.

17 Q. All right. And what first opportunity do you
18 have to see the parole board in the military?

19 A. July of 2016.

20 Q. All right. How many years would have gone by
21 then from the incident?

22 A. Ten.

23 Q. All right. Do you know if you're going to get
24 parole?

25 A. I have no clue.

1 Q. What do you expect from myself and Marisa Ford --
2 you know Marisa Ford here, my co-counsel -- and Brian
3 Skaret? What do you expect from prosecutors like me, or
4 do you expect anything?

5 A. I don't think I expect it. I think I just hope.

6 Q. Hope for what? Just tell the jury in your own
7 words.

8 A. That my sentence could get reduced.

9 Q. All right. What effect would reducing it do?

10 A. Because I think when you go in front of the
11 parole board with a 50-year sentence or a 60-year
12 sentence opposed to a 100-year sentence, your chance
13 probably would be a little better, plus the fact that I
14 cooperated with everybody in my agreement.

15 Q. Now, what -- I've got to rephrase this so I don't
16 lead. Let's talk -- there are other conditions. I just
17 want to talk about the requirement you have for
18 testimony under your plea agreement. Are you and I on
19 the same page? I just want to talk about -- when I ask
20 you a question about your testimonial responsibility
21 under the plea agreement. Are you -- are we talking
22 with one another? Do you understand that we're just
23 going to talk about that?

24 What is your responsibility when you testify in
25 any court proceeding under your plea agreement?

1 A. To give them the truth.

2 Q. All right. And have you done that?

3 A. Yes, sir.

4 Q. The one thing I -- when you-all got back, there's
5 an AK-47. Was that brought to the TCP 2?

6 A. Yes, sir.

7 Q. All right. What happened to that AK-47?

8 A. I told Spielman to throw it in the canal.

9 Q. All right. Did you hand it to him?

10 A. No.

11 Q. All right. Was it sitting in the TCP 2?

12 A. I don't remember.

13 Q. All right. Did you see him throw it away?

14 A. No.

15 MR. LESOUSKY: All right. Now I'm going to
16 check with my colleagues for a moment. Okay? Just bear
17 with me a second. Make sure I didn't overlook anything
18 important.

19 All right. Mr. Bouldin's got some
20 questions -- I'm sorry. Mr. Wolff's got some questions.
21 Extend that --

22 MS. FORD: Judge, may we approach for a
23 moment?

24 THE COURT: You may.

25 (Bench conference on the record outside the hearing

1 of the jury.)

2 MS. FORD: When we were last up here, I
3 think Mr. Bouldin and Mr. Wolff said they'd be very
4 brief. If the question on cross-exam is going to be
5 would this have happened if Cortez --

6 MR. WOLFF: No, not even close.

7 MS. FORD: Okay. I just want to make sure.

8 MR. WOLFF: I learned last time.

9 (End of bench conference.)

10 CROSS-EXAMINATION

11 BY MR. WOLFF:

12 Q. Mr. Cortez, I just have a couple of questions for
13 you. Let's just -- let's clarify something here. You
14 were the senior ranking individual at TCP 2 that day,
15 right?

16 A. Yes, sir.

17 Q. And as you sit here today in this courtroom, you
18 will be eligible for parole in seven years from today,
19 right?

20 A. It will be a total of ten. I've already served
21 almost three.

22 Q. Exactly. Since you're sitting here today three
23 years into it, you will be eligible for parole in seven
24 years?

25 A. Yes, sir.

1 Q. 2016?

2 A. Yes, sir.

3 Q. And you're hoping that the government will write
4 a letter for you, right?

5 A. I can hope.

6 Q. And you're hoping to take that letter with you to
7 the parole board, right?

8 A. Yes, sir.

9 Q. And you're hoping to get that parole, aren't you?

10 A. Yes, sir.

11 Q. And if you don't get it at 2016, you're going to
12 go back every year thereafter, aren't you?

13 A. Yes, sir.

14 MR. WOLFF: Good luck to you.

15 MR. LESOUSKY: I have no follow-up, Judge.

16 (Proceedings concluded at 12:17 p.m.)

17

18 C E R T I F I C A T E

19 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
20 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED
21 MATTER.

22

23 s/Terri L. Turner
24 Registered Professional Reporter
Official Court Reporter

August 26, 2009
Date

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I N D E X

WITNESSES:

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