

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT PADUCAH
(Filed Electronically)**

**CRIMINAL ACTION NO. 5:06CR-19-R
UNITED STATES OF AMERICA,**

PLAINTIFF,

vs.

STEVEN DALE GREEN,

DEFENDANT.

**MOTION FOR COURT TO ORDER UNITED STATES TO PROVIDE
TRANSPORTATION, SECURITY, ESCORT AND TRANSLATION
SERVICES FOR DEFENSE INVESTIGATION OF CRIME SCENE**

Comes the Defendant, Steven Dale Green, by counsel, and moves the Court to order the United States government to provide transportation, security, escort, and translation services for members of the defense team to visit and conduct an investigation at the crime scene in this case.

The charges in this case stem from incidents occurring in the Iraqi war zone, specifically events that occurred in Mahmudiyah, Iraq, on or about March 12, 2006. It is necessary for defense team members to visit the crime scene and the surrounding area before trial in order to provide an effective defense.

The Crime Scene and Surrounding Area

The area around Mahmudiyah, Iraq, in which the defendant and his unit were

stationed in 2005—2006 is commonly known as the “The Triangle of Death.” This area is routinely described as one of the most dangerous and deadly parts of the Iraqi war zone. In November, 2004, the *Washington Post* described the Triangle of Death as:

The land immediately south of Baghdad, shared uneasily between a Sunni minority and the Shiite majority, is among the most treacherous, a swath of territory where residents say insurgents have imposed draconian Islamic law, offered bounties for the killings of police, National Guardsmen, Shiite pilgrims and foreigners, and carried out summary executions in the street.

....

"It's an area with a real mix of bad guys -- thugs and criminals as well as terrorists," a senior officer at the U.S. military headquarters in Baghdad said. "The terrorists move in and out along . . . lines that stretch in all directions."

The land unfolds west from the Euphrates. At the top of the triangle is Mahmudiyah, a town of low-slung, ocher-colored buildings. To the west is Yusufiyah. At the southern end is Iskandariyah. In between is Latifiyah, acknowledged as the most dangerous of the towns. Men in checkered red head scarves or balaclavas, usually with AK-47 assault rifles, set up checkpoints daily, sometimes by blocking a street with a car, residents say. At one point, they blew up a bridge over a canal to divert traffic and make cars easier prey. Iraq's Forbidding 'Triangle of Death': South of Baghdad, a Brutal Sunni Insurgency Holds Sway, *Washington Post*, November 23, 2004.

The area is still extremely dangerous. In 2007 (after the defendant's Army service in the area), three U.S. soldiers were kidnaped in a raid in the Triangle of Death. Four other U.S. soldiers were also killed in the raid. In covering this story, CBS News described how the Triangle of Death was still one of the most dangerous war zones in Iraq.

Iraq's "Triangle of Death" is one of the last places on earth you want to be if you're an American in trouble. It's southwest of Baghdad, and much of it looks more like Vietnam than Iraq: It's a river area, lush and green with farm fields and palm trees.

But even by Iraq's horrific standards, it's an especially lethal area dominated by Sunni insurgents. Through their terror campaign of murder, rapes and kidnappings, they've cowed most residents. America has few friends there — and most of those we do have keep it quiet. Self-preservation is a powerful silencer.

Yet this is where a massive dragnet is now trying to find three missing U.S. soldiers. They were parked in a pair of Humvees, essentially an observation post looking for trouble. Then trouble found them.

In a pre-dawn raid, a group of insurgents ambushed them. Five soldiers in the Humvees were killed, four Americans and one Iraqi Army translator. By the time other U.S. soldiers arrived almost an hour after hearing the explosions — slowed by roadside bombs en route — the three remaining U.S. soldiers had vanished. There are signs at the scene that suggest they were dragged into cars and taken somewhere, but no one knows what kind of shape they were in, then or now — no one, except their attackers.

"Triangle Of Death" Is A U.S. Nightmare, *CBS Evening News*, transcript at <http://www.cbsnews.com/stories/2007/05/18/notebook/main2825784.shtml>.

Throughout the courts martial of the co-accused in this case, numerous witnesses similarly described the dangerous and deadly nature of the Triangle of Death. For example, Lt. Col. Thomas Kunk, who was in charge of the defendant's unit, testified that the "entire area was very dangerous." (Article 32 transcript of co-accused, pg. 192).

The Necessity of Visiting the Crime Scene and the Surrounding Area

Courts have held that if a defense team does not visit the crime scene and/or other

important places related to a case, such can be considered ineffective assistance of counsel. Effective representation hinges on adequate investigation and pre-trial preparation. See United States ex rel. Spencer v. Warden, Pontiac Correctional Center, 545 F.2d 21, 24-25 (7th Cir.1976). Investigation may help a defense team develop or even discover a defense, locate witnesses, or unveil impeachment evidence. Crisp v. Duckworth, 743 F.2d 580 C.A.Ind.(1984). As a general rule a defense attorney must investigate a case in order to provide minimally competent professional representation. See United States v. Tucker, 716 F.2d 576, 581-83 & nn. 16 & 18 (9th Cir.1983) (as corrected); Davis v. Alabama, 596 F.2d 1214, 1217 (5th Cir.1979), vacated as moot, 446 U.S. 903, 100 S.Ct. 1827, 64 L.Ed.2d 256 (1980); Morrow v. Parratt, 574 F.2d 411, 413 (8th Cir.1978); United States v. DeCoster, 487 F.2d 1197, 1204 (D.C.Cir.1973); United States ex rel. Cosey v. Wolff, 562 F.Supp. 140, 144 (N.D.Ill.1983), aff'd, 727 F.2d 656, 658 (7th Cir.1984).

It is axiomatic that one of the basic investigative procedures that parties in a criminal case employ is a visit to the crime scene. This normally starts with law enforcement visiting the scene, often right after or even sometimes during an alleged crime. Prosecutors also often visit the scene shortly after the alleged crime. Similarly, defense attorneys and defense investigators routinely visit the crime scene in preparing the defense case. Often the parties are looking for specific information. On other occasions, information and evidence does not reveal itself until the crime scene or other areas important to a case are inspected. The same holds true in this case.

The defense team needs to visit the crime scene and the surrounding area in this case

for both the guilt/innocent and penalty phase portions of the trial. For example, in order to insure effective representation of the defendant, the defense team needs to:

View and investigate the crime scene

View and investigate the surrounding area including Traffic Checkpoint Two ("TCP 2") where the defendant and the co-accused were stationed on March 12, 2006; the other TCP's; the Forward Operating Base ("FOB"); and similar points of interest in the area

View and investigate locations relevant to the incident and to other significant events, including: the deaths of 1st platoon members; and the scenes of IED explosions; the scenes related to the capture of insurgents etc.

Interview victims' family members (the prosecution has indicated it will likely be calling victim family members to testify at trial)

Interview neighbors of the victims

Interview to members of the Iraqi Army who:

Found the bodies of the deceased

Can attest to the conditions of the area between the Fall of 2005 until March, 2006

Can make observations concerning 1st platoon, specifically codefendants and client and their conduct, during the initial and follow up investigation

Can provide insight regarding the ethnic make-up of the area

Can speak with cultural insight regarding the situation between troops and Iraqis and the types of ethnic issues and cultural conflicts between American troops and Iraqis.

Interview locals concerning changes in relations between Iraqi people and U.S. troops since 2005 - 06; changes in levels of violence; current relations between Sunni/Shi'ite populations, etc.

Interview any military witnesses who may be currently stationed in Iraq

Interview the current chain of command concerning changes in troop levels, resources etc., in the area compared to 2005 - 06

Investigate other changes in the area such as the frequency of roadside bombs, small arms fire, casualties and significant injuries compared to 2005 - 06 ; similarly, investigate the current use of TCPs, examine their current purpose, and how they are staffed, compared to 2005 - 06¹

Interview combat stress personnel in the area about current protocol versus that of the protocol used by combat stress in the Fall of 2005 until the Spring of 2006

Document exact location of casualties and significant injuries within the defendant's unit during the 2005 - 06 campaign.

The Need for a United States Military Escort

As noted, the area in question is an active, deadly war zone. The United States government, via the military, has *unique* access and control of this area which encompasses the crime scene and other locations important to this case.

Of note is that the United States has had access to the crime scene and the surrounding area to investigate this case. Through discovery provided by the United States, as well as through viewing the courts-martial of the co-accused, the defense has discovered that members of the United States Army prosecution team were escorted to the crime scene

¹ Of note is that the "Triangle of Death" has seen a recent surge of troops into the area See, e.g., Odierno Ready For New Post-Surge Mission, *60 Minutes*, airing Sept. 28, 2008. According to General Ray Odierno, the current Commanding General, Multi-National Force - Iraq, some 30,000 additional troops have been stationed in the Triangle of Death after the time of the allegations in this case. Transcript at: <http://www.cbsnews.com/stories/2008/09/25/60minutes/main4478601.shtml>

and the surrounding area to conduct law enforcement's investigation of this case. Such investigation included visiting the home involved in this case; visiting TCP 2 and other Army outposts connected to the case; taking photographs and video of these structures and the surrounding area; interviewing witnesses; and collecting any physical available evidence.²

The defense thus respectfully requests that the Court order the United States government to provide a military escort for members of the defense team to visit the alleged crime scene and the surrounding area. While asking for a government escort of a defense team is extremely unusual, so is the necessity of civilian defense attorneys to have to visit a crime scene that is located in the midst of a violent war zone. The defense merely asks for similar access to this area as has been made available to the government, including the security measures afforded to the government's agents. Because of the unique nature of the case and the unique nature of the crime scene's location within a war zone, a military escort is required to assure the safety of the members of the defense team.³

² While it was the Army prosecutors that actually investigated the scene in this case instead of the civilian prosecutors, such a distinction is immaterial. As the Court knows, this case is truly unique in nature as the defendant is being prosecuted in a separate justice system from his co-accused for the exact same alleged criminal conduct. Additionally, the Army prosecutors and the civilian prosecutors have worked hand-in-hand with each other throughout this case. While working in separate justice systems, both prosecution teams nonetheless represent the "United States" in the parallel prosecutions of the same case. Of note is that the civilian prosecution team will utilize evidence at the defendant's trial gathered by the Army prosecution team during its investigation of the crime scene and surrounding area.

³ Of note, is that the defense has waited until it has conducted as much investigation as possible into the case before making this motion so that it could

To deny the defendant the same access to the crime scene and area as has been afforded to the government amounts to a denial of his due process rights guaranteed by the Fourteenth Amendment of the Constitution.

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visit the area just one time before trial without having to inconvenience the Court and the government with multiple requests of this nature. Additionally, there is classified evidence in this case that has yet to be declassified (although the United States believes it will soon be declassified). Defense counsel was hoping to have said evidence available to all members of the defense team before visiting Iraq so as to utilize such information during the investigation in and around the alleged crime scene. However, with the start of the trial three months away, the defense can wait no longer for the declassification of such evidence before making the instant motion.

CERTIFICATE

I hereby certify that on January 12, 2009, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following: Marisa J. Ford, Esq., Assistant United States Attorney; James R. Lesousky, Esq., Assistant United States Attorney; and Brian D. Skaret, Esq., Attorney at Law.

/s/ Scott T. Wendelsdorf