

Killing by Guardsman in Iraq Called Appropriate

July 22, 2006

By: Josh White

An investigating officer in Baghdad has recommended that commanders drop voluntary manslaughter and conspiracy charges against a Pennsylvania National Guard soldier after determining that he followed appropriate rules of engagement when he killed an Iraqi man in the insurgent stronghold of Ramadi in February.

Army Lt. Col. John W. McClory found that Spec. Nathan B. Lynn, 21, of South Williamsport, Pa., did nothing wrong in shooting Gani Ahmad Zaben in the post-curfew darkness outside a group of homes on Feb. 15. McClory ruled that Lynn thought the man was armed with an AK-47 and believed he was a threat.

Military officials allege that Lynn improperly fired on the man and then conspired with other members of his unit to plant a weapon in a pool of blood near the body to cover up the crime.

But evidence presented at an Article 32 hearing in Baghdad this week -- a hearing similar to a civilian grand jury -- convinced McClory that Lynn followed the rules of engagement, or ROE, when he "lawfully" killed Zaben in an area that had been the scene of frequent insurgent attacks. He also concluded that Lynn did not play a role in placing an AK-47 near the man's body.

"Although evidence in this case indicates that the victim was in fact unarmed, sufficient evidence was presented that SPC Lynn thought the man was armed, perceived hostile intent from the movement of the victim in an active area of combat operations, and acted within the ROE in engaging the target with deadly force," McClory wrote in his report to commanders on Thursday.

Lt. Gen. Peter Chiarelli, who commands Multinational Corps-Iraq, is expected to make a final decision in the case this weekend, and Lynn's military defense attorney said he has "high expectations" that Chiarelli will follow the recommendation.

The military ROE in Iraq are central to most homicide cases against U.S. troops and are at the heart of a major investigation into the killings of two dozen civilians in a group of homes in Haditha. Lawyers representing several Marines in that case -- which has so far yielded no charges -- have said they plan to argue that their clients were following the ROE when they thought they were under attack.

Yesterday, the Associated Press reported that four Army soldiers charged with killing three detainees they captured in raids near Samarra told investigators their ROE were to kill "all military-age males." They said commanders authorized the rules for a special mission and initially cleared them of wrongdoing, according to the AP.

Lynn said that in his case, he followed the rules when he shot a man he believed was a threat. "This is a war, and we were stationed in one of the worst places in Iraq," Lynn said in a telephone interview from Baghdad yesterday. "This fell within the guidelines of my ROE."

Capt. Ben Grimes, who presented the military's case, told McClory that he thinks a court-martial should at least hear the case, because there is evidence of a crime.

"Danger in and of itself does not mean soldiers have carte blanche to act in whatever way they want," Grimes said, according to an audio recording of the proceedings.

Lynn said he shot the man as he and another suspected insurgent moved stealthily toward his position. Another soldier in Lynn's unit, Sgt. Milton Ortiz Jr., allegedly conspired to place an AK-47 found near the scene next to the body. The investigating officer recommended that charges against Ortiz -- including the conspiracy count and unrelated charges of assault and uttering a threat -- go forward.

Capt. James Culp, Lynn's military defense attorney in Iraq, said yesterday that he hopes his client will be able to return to Pennsylvania in the next few days.

"It is very rare for an Article 32 investigating officer to recommend the dismissal of all charges against an accused," Culp said yesterday. "The charges against Specialist Lynn were very serious. The investigating officer's well-grounded recommendation in Specialist Lynn's case demonstrates the Uniform Code of Military Justice at its best."

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