

# Pre-trial hearing at Bamberg opens for soldier who killed Afghan civilian

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BAMBERG, Germany — When a black car drove into his platoon's firefight with insurgents, and an unknown person stepped out, Sgt. 1st Class Walter Taylor had seconds to make a decision.

Army attorneys are arguing it was the wrong one.

Taylor, 31, is charged with negligent homicide and dereliction of duty after he allegedly shot and killed an Afghan doctor. The doctor, Aqilah Hikmat, and her family were traveling from a wedding party to Kabul when they inadvertently drove into the firefight, according to a 15-6 investigation, the administrative precursor to the criminal case against him.

An investigating officer in an Article 32 hearing, similar to a pre-trial hearing, that began Wednesday will determine if those charges should be forwarded to a full court-martial.

The case centers on the military's rules of engagement and their application in the heat of combat: Does the instinct to defend oneself trump the stated rule that a soldier must positively identify a target before shooting?

Citing investigations following the incident, Army counsel is arguing that Taylor, who lead a route-clearing platoon with the Bamberg-based 54th Engineer Battalion in central Afghanistan, failed to follow those rules when he shot Hikmat.

Taylor's lawyer said the rules of engagement fail to reflect a war in which it can be hard to distinguish between civilians and combatants, or passenger cars and vehicle-borne explosive devices.

"These charges present a threat to every U.S. servicemember who will face combat from today on," defense attorney James Culp said in a phone interview before the hearing.

Taylor suffered serious facial injuries days after the shooting when a rocket-propelled grenade struck his vehicle, he told the Los Angeles Times.

His unit, the 38th Route Clearance Platoon, 541st Sapper Co., was hit by bombs 16 times between January and October 2011, according to the Times article. In that time, 38 men were injured and two killed. Many soldiers had been hit multiple times.

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The 38th RCP was returning July 21 from a route-clearing patrol near the village of Shekhabad, Wardak province, when the unit's Buffalo mine clearing vehicle struck a hidden bomb, according to the 15-6 investigation and testimony Wednesday from soldiers involved in the fight. Platoon dismounts then took small arms fire from two white cars to the east.

The cars fled, and a black car entered the same area. Soldiers opened fire, bringing it to a halt, according to the 15-6. When minutes passed and no one emerged from the vehicle, Taylor and several other dismounted soldiers began to approach. They discovered a copper command wire — a common trigger for improvised explosive devices — that appeared to lead to the car but actually extended beyond it, according to testimony and the 15-6.

Hikmat was fatally shot moments after she emerged from the car, according to testimony and the 15-6. Her 18-year-old son and 16-year-old niece had been killed in the initial firing on the car, and her husband was injured.

Platoon members on Wednesday recalled the chaotic moments after the explosion, as soldiers talked over one another by radio and failed to identify themselves. When someone reported the black car was hostile, several of the soldiers had opened fire without knowing who had made the report.

Second Lt. Jeremiah Paterson, the platoon leader, testified he called for a cease-fire over the radio some 20 seconds later, questioning whether the car was part of the attack.

“If they were hostile and had come to a stop, there was no need to become over-aggressive, was my opinion,” he said. “And if they were not hostile ... I didn't see any need to engage them.”

Paterson then asked Taylor to check the car, he said, advising him to be careful. He feared a vehicle-borne explosive device, he said.

“When you say ‘take precautions’, does that mean shoot at anything that moves?” Army attorney Capt. Courtney Cohen asked.

Paterson replied that he trusted Taylor's instincts.

Culp focused on the platoon's previous encounters with violence. He noted the presence of the command wire, which squad leader Sgt. Nicholas Wilson said lead him to fear a secondary explosion. Wilson said that while he saw Hikmat emerge from the car and move toward the trunk, he initially held his fire.

“Would you have fired at the car if Sgt. Taylor didn't?” Culp asked Wilson on Wednesday.

“If I thought she was a threat, I would have,” Wilson replied.

“Did you think she was a threat?” Culp continued.

“I did at the time,” Wilson responded.

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The Article 32 hearing is expected to last several days, as government counsel and Taylor's lawyer work through the testimony of more than three dozen witnesses. Hikmat's husband is expected to testify Thursday.

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