

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

CLINT A. LORANCE,

Petitioner,

v.

Case No. 18-3297-JWL

COMMANDANT, United States Disciplinary  
Barracks, 1301 North Warehouse Road  
Fort Leavenworth, Kansas 66027,

Respondent.

**DECLARATION OF DANIEL GUSTAFSON**

1. My name is Daniel Gustafson, an American citizen residing in the state of North Carolina, now retired from the US Army after 36 years and seven months, mostly in the Infantry.

2. I entered the Army in July 1982 at Ft Leonard Wood, Missouri and earned a military occupational specialty (MOS) of 12B, Combat Engineer. I left Active Duty in May 1992 and served with the New York State National Guard. In October 1998, I returned to Active Duty and was reclassified as a 19K, Armor Crewman.

3. I completed Basic Airborne School, Air Assault School, Sapper Leader Course, Abrams Master Gunner Course, Master Fitness Course, and Jump Master School. He has attended and graduated all levels of the Non-Commissioned Officer Education Schools, (NCOES) to include The United States Army Sergeants Major Academy, Class #61. I hold an Associate Degree in Business Administrative Management from Excelsior College.

4. I have held numerous leadership positions which include: Tank Gunner, Tank Commander, Company Master Gunner, Battalion Operations NCO, Platoon Sergeant, First Sergeant, Battalion and Brigade Command Sergeant Major and the GS Sergeant Major for the United States Army Pacific (USARPAC).

5. My awards and decorations include the following: Legion of Merit, Bronze Star Medal (4th Award), Meritorious Service Medal (5th Award), Army Commendation Medal (4th Award), Army Achievement Medal (9th Award), Good Conduct Medal (8th Award), National Defense Service Medal (2nd Award), Armed Forces Expeditionary Medal, Afghan Campaign Medal, Iraqi Campaign Medal, Global War on Terrorism Service Medal, Humanitarian Service Medal, NCO Professional Development Ribbon (Numeral 4), Army Service Ribbon, Overseas Service Ribbon, NATO Medal (3rd Award), Combat Action Badge, Master Parachutist Badge, Air Assault Badge, Sapper Tab and the German Parachutist Badge. He is a member of the prestigious Sergeant Audie Murphy Club, a recipient of the Order of Saint George (Bronze Medallion) and

the Major General Aubrey "Red" Newman Leadership Award.

6. My deployments include Bosnia (Operation Joint Forge), IRAQ (Operation Iraqi Freedom II), Afghanistan (Operation Enduring Freedom VIII and XII) and IRAQ (Operation Inherent Resolve).

7. On July 2, 2012, the date of the Lorance motorcycle engagement, I was the Command Sergeant Major for the Battalion exercising higher command over Lorance's Platoon, 4<sup>th</sup> Squadron, 73<sup>rd</sup> Cavalry Regiment in the Zharay District, Kandahar Province, Afghanistan.

8. I personally knew many of the Soldiers in Lorance's Platoon.

9. I am personally aware that three other paratroopers had been wounded in action (WIA) on the very same patrol route in the weeks prior to Lorance being assigned to lead the Platoon.

10. I am personally aware of the serious nature of each paratrooper's combat wounds that occurred in the days leading up to Lorance's taking over the Platoon.

- a. **CORPORAL MATTHEW WALLEY** lost his right arm below the elbow, right leg below the knee, and incurred serious soft tissue damage to his left leg.
- b. **PRIVATE FIRST-CLASS MARK KERNER** was hit in the thighs and buttocks.
- c. **PRIVATE FIRST-CLASS SAMUEL HANES** was shot in the throat. The gunshot fractured vertebrae in his spine, broke his rib, and collapsed his lung. He was paralyzed from the waist down and later died from his wounds. He was paralyzed from the waist down and later died from his wounds.

11. I am personally aware of Lorance's professional reputation, loyal service, and stellar performance within our unit, especially his competence and reliability while working at the Brigade Tactical Operations Center (TOC), where I observed Lorance operate on a daily basis for months immediately prior to Colonel Brian Mennes' selecting Lorance to replace First Lieutenant Dominic Latino because Latino received severe wounds to his eyes, face, and abdomen from an Improvised Explosive Device (IED) detonated by the enemy which necessitated Latino being medically evacuated from the battlefield only days before Lorance ordered his paratroopers to engage the Taliban scouts on July 2, 2012.

12. Lorance is sharp, smart, and respected. The chain-of-command thought so highly of him that when Latino was wounded, there were a number of Lieutenants who could have been selected for this tough assignment that would absolutely result in gunfights occurring while on every patrol.

13. Lorange was so highly thought of that *he was awarded an Army Commendation Medal (ARCOM) by his field commanders for very the period of time that this shooting took place.* Attached you'll find a copy of the ARCOM, noting the timeframe from 1 March 2012 to 15 Sept 2012, awarded two months after the shooting, at a time when Clint was administratively reassigned as they put together murder charges against him. As can be seen, the Army Commendation Medal describes Clint's time in Afghanistan as being "Meritorious Service," which includes the very time in which he ordered his men to open fire on the three insurgents who sped towards his platoon on a motorcycle.

14. While serving at the Brigade TOC, Lorange observed the daily combat operations which occurred throughout the entire area of operations, to include those of the Platoon Colonel Bryan Mennes would eventually order Lorange to lead.

15. It was common knowledge held by Soldiers serving in Afghanistan that motorcycles operated by the Taliban posed a deadly threat to American personnel. The Taliban used them as Vehicle Borne Improvised Explosive Devices (VBIEDs) which they would drive up and explode, killing and injuring U.S. Servicemen; for scouting or probing American positions and reporting movements to other enemy combatants in preparation for ambushes and attacks; to execute "gun runs" or "drive-byes" quickly and unexpectedly engaging friendly forces with direct fire from automatic weapons; grenade tosses; or creating a diversion which would distract a friendly unit's attention away from an impending attack.

16. It was common knowledge that the Platoon Lorange was selected to lead was in active combat on every patrol. That is, each time the Platoon left its Strong Point, it received direct small arms fire and had to walk through minefields which the enemy would change the location of mines and bombs.

17. This particular deployment to Zharay, Afghanistan was an especially kinetic, deadly, and dangerous deployment for our unit. We were in the height of what is called the "fighting season" (summer months) and were directed to deny enemy sanctuary on their home turf, the birthplace of the Taliban, their ancestral home, and terrain they knew intimately well.

18. That our command chose Lorange to lead Latino's Platoon in what would be an assignment with guaranteed combat operations was a testament to their trust and confidence in Lorange.

19. As an Infantry Lieutenant, Lorange's solemn duties were to accomplish the mission and protect the lives of his Paratroopers in deadly circumstances.

20. On the morning of July 2, 2012, a new initiative was underway called "Afghans in the Lead," where Afghan National Army soldiers "took point" in Lorange's patrol.

21. I am familiar with the facts and circumstances of the patrol that gave rise to this case, not from the legal actions, but from what I personally observed before, during, and after the combat patrol.

22. I am 100% confident that Lorance's Platoon was being scouted for an impending attack or ambush during this combat patrol in a very hot combat zone.

23. I base this assessment on my first-hand understanding of the conditions on the ground, beginning with knowledge of the enemy's tactics, techniques, and procedures (TTPs), for example, their re-laying of mines to confuse and kill our paratroopers, probing with scouts on motorcycles while using ICOM radios to facilitate ambushes and attacks on our paratroopers, and maneuvering to gain tactical advantage to shoot and kill our Paratroopers.

24. I understand that the three Taliban scouts riding the motorcycle approached Lorance's Platoon from the Northeast, that several insurgents were using ICOM radios and maneuvering into fighting positions to the North, and that a motorcycle rider came down to the West who was stopped, detained, and was found to have HME on his hands.

25. These facts indicate a coordinated probe and scouting envelopment of the Platoon which conveys hostility toward our forces.

26. Three fighting-aged males riding on a single motorcycle driving at an excessive rate of speed towards the Platoon's exposed route of march in a minefield satisfied the rules of engagement at the time to use deadly force to protect the Platoon.

27. As a professional career Soldier with multiple combat tours, to include first-hand combat experience on this very battlefield, I would have fired my rifle and ordered my subordinates to fire to stop the three riders and their motorcycle (which could very well have been packed with bombs and explosives).

28. Skelton would not have fired his rifle unless, like he stated, he perceived a deadly threat.

29. Lorance was doing his job and if anyone else found themselves in the same situation they would have done the same thing.

30. The Chain of Command failed this young man. They used him as the scape goat at a time in Afghanistan when the Commanding General in country was looking to hold someone accountable because of other Civilian Casualties (CIVCAS) that had occurred in other locations prior to this.

31. Clearly the Division Commander, the Brigade Commander and the Squadron Commander aren't going to take the responsibility.

32. Why wasn't the Troop Commander, Lorance's direct supervisor, held accountable?

33. Why wasn't he more involved with the new Platoon Leader in a sector that was very kinetic and a platoon that had suffered casualties leading up to this day?

34. As Soldiers we know we must follow orders, but we also know that if the order is illegal and/or immoral, that we will not execute that order. There was obviously a threat posed that day. The Platoon was under observation, enemy chatter, local Afghans approaching on motorcycles at a high rate of speed.

35. Lorance has served time in prison and lost his military career for doing his job - protecting his Soldiers in combat. A decision had to be made in a split-second. If the result was switched and one of our young American warriors lost his life, well that would have been a horrible burden that Lorance would have to live with.

36. He made the right choice. He was wrongfully punished and those senior leaders go about their business, go home to families, and continue their careers.

37. As a career Soldier with substantial time in the 82<sup>nd</sup> Airborne Division, I know that if the jury knew that Lorance's order killed terrorist bombmakers, that would have been viewed as exonerating, justified a verdict of not-guilty, and eliminated any possibility of punishment.

38. Personally knowing many of the Platoon's Soldiers, and based on my 31 years of serving with and leading Soldiers, I am totally confident that had each of the witnesses against Lorance learned that fingerprints and DNA proved they were terrorist bombmakers, their testimony would have been more favorable to Lorance and less favorable to the prosecution.

39. After the motorcycle engagement, the questions I asked to the Battalion Commander and the Brigade Commander, but the questions I posed was "so we've got a Lieutenant, a Platoon leader that's being brought in and investigated and brought up for court martial, but the troop commander stays in position?" The Chain-of-Command didn't like it, and I, and I hammered on the desk a couple times, said "is Captain Swanson gonna get relieved?"

40. Neither the Captain, the Major, the Lieutenant Colonel, the Colonel, nor the Major General had a negative consequence for this alleged CIVCAS incident.

41. By design, they distanced themselves from Lorance, cut him loose, turned their backs, and started the narrative that he was "off the rails," bloodthirsty, and a "bad apple" bend on indiscriminate murder, in order to protect their careers.

42. None of Lorance's defense attorneys contacted me prior to Lorance's Court-Martial. I would have cooperated fully and testified at trial as I have in this affidavit.

43. I am also aware of the non-capital offenses of which Lorance was convicted. In my 31 years of experience, many in combat, I believe that those Charges never would have been brought if the CIVCAS issue did not arise. Many times, during this particular deployment, false reports were made of a Platoon having conducted a patrol, but none was conducted for fear of

being killed so close to rotation out of the Afghanistan. Soldiers regularly use foul and threatening language with local nationals, especially if they are moving protective equipment like concertina wire. Often times, harassing fire is employed to draw an enemy response.

44. I was there. This was my unit. I walked that village. I know Lorange is NOT a rouge officer on a mission to kill.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on MAY 13, 2019.

  
DANIEL GUSTAFSON