

COURT-MARTIAL RECORD

NAME BURKE, RICKY A.

SGT

SSN [REDACTED]

ACTIONS CODED:

INITIAL APR 20 2006

ACCA

FINAL APR 20 2006

COMPANION(S):

ASSIGNED TO:

PANEL

EXAM. DIV. ✓

ACCA CLERK OF COURT

RETURN THIS FILE TO:

OFFICE OF THE CLERK OF COURT

US ARMY JUDICIARY

901 NORTH STUART STREET, SUITE 1200

ARLINGTON, VA 22203-1837

ADMINISTRATIVE CHECK

VOL I

OF IV

VOL(S)

Malcolm A. Squires, Jr.
APR 20 2006
Examiner

G
MALCOLM A. SQUIRES, JR.
Clerk of Court's Office

ARMY

20051072

SUMMARIZED
RECORD OF TRIAL¹
(and accompanying papers)

BURKE, Ricky A.
(NAME: Last, First Middle Initial)

[REDACTED]
(Social Security Number)

Sergeant
(Rank)

B Btry, 1-623rd FA,
503rd MP Bn (Abn),
18th MP Bde
(unit/Command Name)

US Army
(Branch of Service)

Camp Victory, Baghdad, Iraq
(Station or Ship)

BY
GENERAL COURT-MARTIAL

CONVENED BY COMMANDING GENERAL
(Title of Convening Authority)

HQ, Multi-National Corps - Iraq
(Unit/Command of Convening Authority)

TRIED AT

LSA Anaconda, Balad, Iraq and
Camp Victory, Baghdad, Iraq
(Place or Places of Trial)

ON 26 June and 1-3 September 2005
(Date or Dates of Trial)

ACTION OF JUDGE ADVOCATE OR GENERAL COURT-MARTIAL CONVENING AUTHORITY (SPCM)/JAG(GCM)
(RCM 1111 and 1112, MCM, 1984)

UNIT/COMMAND NAME		LOCATION OF JUDGE ADVOCATE OR GENERAL COURT-MARTIAL CONVENING AUTHORITY	DATE RECORD RECEIVED
ACTION		DATE	REMARKS
FINAL DISPOSITION: Findings & sentence, as approved by convening authority, correct in law and fact; to file			COMPANION CASES: None.
OR Findings and sentence, as modified or corrected (see remarks), correct in law and fact; to file			
Acquittal or sentence set aside (see remarks); to file			
Copies of CMO disposed of in accordance with departmental regulations			
JUDGE ADVOCATE OR LAW SPECIALIST			
SIGNATURE		RANK	DATE SIGNED

PERMANENT

FILE
1779

CHRONOLOGY SHEET ¹

In the case of SGT Ricky A. Burke
(Rank and Name of Accused)

Date of alleged commission of earliest offense tried: 20 March, 2005
(Enter Date)

Date record forwarded to The Judge Advocate General: ² [Signature], [Blank]
(Enter Date)

STEPHAN EDUARD NOLTEN, CPT, Chief, Military Justice
(Signature and Rank of Staff Judge Advocate or Legal Officer)

1 In a case forwarded to The Judge Advocate General, the staff judge advocate or legal officer is responsible for completion of the Chronology Sheet. Trial counsel should report any authorized deductions and reasons for unusual delay in the trial of the case. 2 Or officer conducting review under Article 64(a) (MCM, 1984, RCM 1112). 3 In computing days between two dates, disregard first day and count last day. The actual number of days in each month will be counted. 4 Item 1 is not applicable when accused is not restrained, (see MCM, 1984, RCM 304) or when he/she is in confinement under a sentence or court-martial at time charges are preferred. Item 2 will be the zero date if Item 1 is not applicable. 5 May not be applicable to trial by special court-martial. 6 Only this item may be deducted. 7 If no further action is required, items 1 to 8 will be completed and chronology signed by such convening authority or his/her representative. 8 When further action is required under Article 64 or service directives.	ACTION		DATE 2005	CUMULATIVE ELAPSED DAYS ³
	1. Accused placed under restraint by military authority ⁴		-	-
	2. Charges preferred (date of affidavit)		23 Apr	0
	3. Article 32 investigation (date of report) ⁵		-	-
	4. Charges received by convening authority		6 Jun	44
	5. Charges referred for trial		6 Jun	44
	6. Sentence or acquittal		3 Sep	133
	Less days:			
	Accused sick, in hospital, or AWOL			
	Delay at request of defense			
	Total authorized deduction ⁶			
	7. Net elapsed days to sentence or acquittal			133
	8. Record received by convening authority		27 Oct	187
	Action ⁷			
	9. Record received by officer conducting review under Article 64(a)			
	Action ⁸			

REMARKS

PERMANENT
FILE

CORRECTED COPY

DEPARTMENT OF THE ARMY
Headquarters, Multi-National Corps - Iraq
Baghdad, Iraq
APO AE 09342-1400

GENERAL COURT-MARTIAL ORDER
NUMBER 4

27 October 2005

Sergeant Ricky A. Burke, U.S. Army, B Battery, 1-623rd Field Artillery, 503rd Military Police Battalion (Airborne), 18th Military Police Bridage, Multi-National Corps - Iraq, APO AE 09342, was arraigned at Camp Victory, Baghdad, Iraq, on the following offense at a general court-martial convened by Commander, Multi-National Corps - Iraq.

Charge. Article 80. Plea: Not Guilty. Finding: Not Guilty.

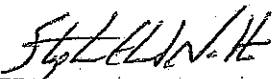
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The findings were announced on 3 September 2005. All rights, privileges, and property of which the accused may have been deprived of by virtue of these proceedings will be restored.

BY COMMAND OF LIEUTENANT GENERAL VINES:

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- 1-Accused
- 1-COL Reinert, MJ
- 1-CPT Shepherd, TC
- 1-CPT Krafchek, DC
- 1-Cdr, 503rd MP BN
- 1-Cdr, 18th MP BDE
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- 1-Cdr, FORSCOM, ATTN: FCJA-ML, Fort McPherson, GA 30330-6000
- 1-Record Set (Original)
- 1-OSJA Case File
- 10-Clerk of Court (JALS-CCR), Suite 1200, 901 North Stuart Street, Arlington, VA 22203-1837


STEPHAN EDUARD NOLTEN
CPT, JA
Chief, Military Justice

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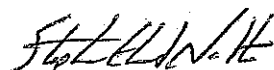
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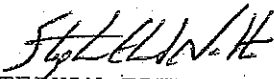
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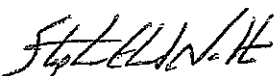
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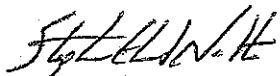
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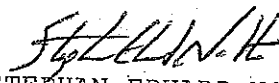
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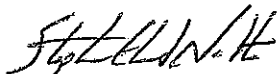
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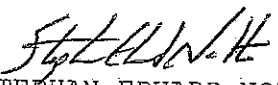
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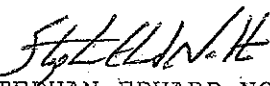
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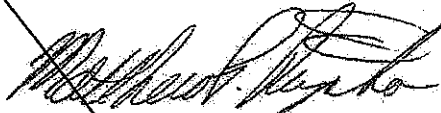
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MATTHEW P. RUZICKA
MAJ, JA
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ARTICLE 32
INVESTIGATION

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E	Delay Approval by LTG Vines
F	Article 32 Investigation Timeline
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H	Investigating Officer's Findings
I	Investigating Officer's Opening Remarks, Rights Advisory, and presentation of witnesses list to SGT Ricky A. Burke
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K	Investigating Officer's Hearing Notes
L	Governments Exhibits
M	Defense Exhibits
N	Investigating Officer's Emails
O	SGT Ricky A. Burke's Personal Qualification Record and Orders to Active Duty
P	Investigators Emails
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DEPARTMENT OF THE ARMY
HEADQUARTERS, MULTI-NATIONAL CORPS - IRAQ
BAGHDAD, IRAQ
APO AE 09342

REPLY TO
ATTENTION OF:

APR 23 2005

FICI-CG

MEMORANDUM FOR Major Carl Packer, Headquarters and Headquarters Company, 720th Military Police Battalion, 42d Military Police Brigade, Multi-National Corps - Iraq, Baghdad, Iraq APO AE 09342

SUBJECT: Appointment As Article 32 Investigating Officer

1. You are appointed to investigate the enclosed charges and specifications concerning Sergeant Ricky A. Burke, B Battery, 1-623d Field Artillery, 503d Military Police Battalion (Airborne), 18th Military Police Brigade, Camp Victory, Iraq APO AE 09342
2. You will conduct your investigation IAW Article 32, UCMJ and Rules for Courts-Martial 405. You will use DA Pam 27-17 (16 September 1990) as a procedural guide.
3. This duty takes priority over all other duties. You are prohibited from taking leave, pass, or going TDY without my personal approval.
4. CPT Matthew Shepherd, Headquarters, 18th Military Police Brigade, Staff Judge Advocate's Office, has been appointed as the government representative and is authorized to participate in this investigation. A defense counsel will be detailed for the accused by the Trial Defense Service (DNVT 302-531-6560). Each counsel plays an adversarial role in the proceedings. Avoid talking to the legal counsel, the accused's commanders, and any prospective witnesses about the merits of the case outside of formal sessions where all parties are present.
5. An Administrative Law Attorney from the Office of the Staff Judge Advocate, Multi-National Corps - Iraq will be your legal advisor for this investigation. You must immediately contact that office (DSN 318-822-2581) for legal advice within 24 hours upon notification of this duty.
6. You have fifteen days from receipt of this memorandum to submit your investigation report to me. Any request to delay this investigation by the attorneys must be in writing and must detail the basis for the request. I delegate to you the authority to grant reasonable requests by the attorneys to delay this investigation. However, any request which would delay this investigation more than seven (7) calendar days must be approved by me personally.

FICI-CG

SUBJECT: Appointment As Article 32 Investigating Officer

7. A report of your investigation will be submitted on DD Form 457 (Investigating Officer's Report) to reach this headquarters by the deadline in paragraph 6. Your report will contain a detailed date and time chronology of your actions in conducting this investigation.

Encl
Case File



JOHN R. VINES
Lieutenant General, USA
Commanding

CHARGE SHEET

I. PERSONAL DATA

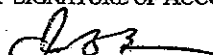
1. NAME OF ACCUSED (<i>Last, First, MI</i>) BURKE, Ricky A.			2. SSN		3. GRADE OR RANK SGT		4. PAY GRADE E-5	
5. UNIT OR ORGANIZATION B Battery, 1-623d Field Artillery 503d Military Police Battalion (Abn), 18 th Military Police Brigade, APO AE 09342						6. CURRENT SERVICE		
						a. INITIAL DATE 18 Sep 00		b. TERM 6 years
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED			9. DATE(S) IMPOSED		
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL	None			N/A		
\$1887.70	\$100.00	\$1977.10						

II. CHARGES AND SPECIFICATIONS

10. CHARGE THE VIOLATION OF THE UCMJ, ARTICLE 80.

THE SPECIFICATION: In that Sergeant Ricky Allen Burke, U.S. Army, did, at or near Salman Pak, Iraq, on or about 20 March 2005, attempt with premeditation to murder Hadi Saleh Khalid Al Ujuhishi by means of shooting him in the head with a firearm.

III. PREFERRAL

11a. NAME OF ACCUSER (<i>Last, First, MI</i>) BROWN, James B.		b. GRADE O-6		c. ORGANIZATION OF ACCUSER 18 th Military Police Brigade	
d. SIGNATURE OF ACCUSER 				e. DATE 23 April 2005	

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 23rd day of April, 2005, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

MATTHEW W. SHEPHERD

Typed Name of Officer

HHC, 18th Military Police Brigade

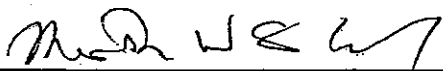
Organization of Officer

O-3

Grade

Art. 136(b)(1), UCMJ

*Official Capacity to Administer Oath
(See R.C.M. 307(b) - must be a commissioned officer)*



Signature

12.

On 23 April 2005, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

JAMES B. BROWN

Typed Name of Immediate Commander

18th Military Police Brigade

Organization of Immediate Commander

O-6

Grade



Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 1120 hours, 23 April, 2005 at Headquarters, 18th Military
Designation of Command or

Police Brigade, APO AE 09342

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE ¹

JAMES B. BROWN

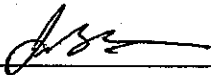
Typed Name of Officer

Commander

Official Capacity of Officer Signing

O-6

Grade



Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE (YYMMDD)

Referred for trial to the _____ court-martial convened by _____

_____, subject to the following instructions: ²

By

Of

Command or Order

Typed Name of Officer

Official Capacity of Officer Signing

Grade

Signature

15.

On _____, I (caused to be) served a copy hereof on (each of) the above named accused.

MATTHEW W. SHEPHERD

Typed Name of Trial Counsel

CPT, JA

Grade or Rank of Trial Counsel

Signature

FOOTNOTES: 1 — When an appropriate commander signs personally, inapplicable words are stricken.
 2 — See R.C.M. 601(e) concerning instructions. 1796 so state.



**DEPARTMENT OF THE ARMY
TASK FORCE 720TH MILITARY POLICE
CAMP RUSTAMIYAH, BAGHDAD, IRAQ
APO AE 09390-2402**

REPLY TO
ATTENTION OF:

S: 2 May 2005

AFVP-720-XO

29 April 2005

MEMORANDUM THRU CPT Christopher L. Krafchek, Defense Counsel

MEMORANDUM FOR SGT Ricky A. Burke, B Battery, 1-623 Field Artillery, 503rd
Military Police Battalion, 18th Military Police Brigade, APO AE 09342

SUBJECT: Article 32(b) Investigation

1. On 18 April 2005 through 19 April 2005, at 0900 hours, in the 42nd Military Police Brigade Conference Room, Building 65, Camp Victory, Baghdad, Iraq, I will conduct an investigation pursuant to Article 32(b), UCMJ, to investigate the facts and circumstances concerning a charge preferred against you by COL James B. Brown. The required uniform for the hearing will be DCU's. The charges against you are found on the DD Form 458 Charge Sheet that is included as an enclosure to this memorandum.

2. You have the right to be present during the entire investigation. Additionally, you have the right to be represented at all times during the investigation by legally qualified counsel. Counsel may be a civilian lawyer of your choice, provided at no expense to the United States; a qualified military lawyer of your selection, if reasonably available; or a qualified military counsel detailed by the Trial Defense Service. There is no cost to you have the right to waive representation by counsel. Send your decision to me by 2 May 2005.

3. The names of the witnesses known to me, who will be asked to testify at the hearing are:

a. Special Agent Thomas Robinson, 48th Military Police Detachment (CID), Camp Victory, Iraq APO AE 09342, DSN: 318-822-2835

b. SSG Timothy Nein, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342, VIOP: 302-242-4828

c. SGT Dustin Morris, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342, VIOP: 302-242-4828

AFVP-720-XO

SUBJECT: Article 32(b) Investigation

d. SPC Jesse Ordunez, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342, VIOP: 302-242-4828

e. SPC Jason Mike, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342, VIOP: 302-242-4828

f. SGT Aaron L. Rust, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342, VIOP: 302-242-4828

g. SGT Leigh Ann Hester, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342, VIOP: 302-242-4828

h. Special Agent Faith Hudson, 48th Military Police Detachment (CID), Camp Victory, Iraq APO AE 09342, DSN: 318-822-2835

i. SGT Matthew Simpson, B Btry, 1/623 Field Artillery, 503rd Military Police Battalion


j. SFC Rickie D. Hammons, B Btry, 1/623 Field Artillery, 503rd Military Police Battalion

k. SPC Kirby Lee Gregory, B Btry, 1/623 Field Artillery, 503rd Military Police Battalion

l. CPT Todd M. Lindner, B Btry, 1/623 Field Artillery, 503rd Military Police Battalion

4. As investigating officer, I will try to arrange for the appearance of any witnesses that you want to testify at the hearing. Send names and addresses of such witnesses to me by 2 May 2005. If, at a later time, you identify additional witnesses, inform me of their names and addresses.

5. You may contact me in writing to: MAJ Carl J. Packer, Headquarters and Headquarters Detachment, 720th Military Police Battalion, APO AE 09390, DNVN: 580-8322, or at carl.packer@id3.army.mil. You may also contact SSG Lorenzo, 18th Military Police Brigade, Camp Victory, Iraq, APO AE 09342, DNVN: 242-0109.


CARL J. PACKER
MAJ, MP
Executive Officer



DEPARTMENT OF THE ARMY
HEADQUARTERS, 18TH MILITARY POLICE BRIGADE
CAMP VICTORY, IRAQ
APO AE 09342

REPLY TO
ATTENTION OF:

AETV-MP-JA

CSP
Concur

27 April 2005

MEMORANDUM THRU MAJ Carl Packer, Headquarters, 720th Military Police Battalion,
Article 32(b) Investigating Officer

FOR Commanding General, Multi-National Corps-Iraq, Camp Victory, Iraq, APO AE 09342

SUBJECT: Request for Delay and Hearing Date -- United States v. SGT Ricky A. Burke, B
Battery, 1-623 Field Artillery, 503d Military Police Battalion (ABN), 18th Military Police
Brigade, APO AE 09342

1. The Government requests a delay in the Article 32 proceedings until at least 18 May 2005 and that the hearing in the case be scheduled for 18 May 2005. The reason for this request is that SSG Timothy Nein and SGT Leigh Ann Hester, two witnesses in the case, will be on R&R leave from 26 April 2005 until approximately 14 or 15 May 2005. Defense counsel will require at least one day on which to interview the witnesses after their return from leave in order to prepare for the hearing. The undersigned has another trial scheduled for 17 May 2005 and will be unavailable on that day.
2. SSG Nein and SGT Hester are key eye witnesses to the alleged Attempted Murder. It is important that they be able to testify in person, instead of telephonically, so that the investigating officer can assess their credibility and so that defense counsel can conduct full and complete cross examinations. Neither side will be prejudiced by a delay in the hearing until 18 May 2005. The Government has discussed the proposed date with defense counsel and there is no objection from the defense. The Government is not in danger of exceeding the 120 day speedy trial provisions of R.C.M. 707. The Government does not anticipate the need for any further delays and has confirmed that its other anticipated witnesses will be available on 18 May 2005.
3. Because this request exceeds the scope of the Article 32 Investigating Officer's authority to grant delays and is later than the deadline for the Article 32 Investigating Officer to submit his report, the request must be approved by the Commanding General, Multi-National Corps-Iraq, the appointing authority.
3. POC for this memorandum is the undersigned at VOIP 302-242-0109.

//original signed//

MATTHEW W. SHEPHERD
CPT, JA
Trial Counsel


FICI-CG

APR 30 2005

MEMORANDUM FOR Major Carl Packer, Headquarters, 720th Military Police Battalion, 18th Military Police Brigade, Baghdad, Iraq APO AE 09342

SUBJECT: Request for Delay in Article 32 Investigation

I have reviewed the Government's request for delay in the Article 32 Investigation of United States v. SGT Burke. I approve the request for delay until 18 May 2005. Your report is due to me no later than ten days after you complete the investigative hearing.



JOHN R. VINES
Lieutenant General, USA
Commanding

UNITED STATES V. SGT RICKEY A. BURKE
ARTICLE 32(b)
CHRONOLOGICAL TIMELINE

DATE	WHO	ORGANIZATION	REMARKS
25-Apr-05	CPT Shepherd	18th MP Bde SJA	CPT Shepherd notified me that I was appointed by LTC Vines as an Article 32 officer into charges made against SGT Ricky Burke, B Battery, 1-623 FA, 503rd MP BN, 18th MP Bde, that he attempted pre meditated murder. Co-ordinated to have the 32 packet transported to 42nd MP Bde SJA for pickup by me on 26 April 2005
25-Apr-05	CPT Shepherd	18th MP Bde SJA	Received, via email, appointment orders
25-Apr-05	LTC McHugh	18th ABN CORPS SJA	Contacted LTC McHugh for an appointment to be briefed on Article 32 officer duties. Co-ordinated for 26 Apr 05
26-Apr-05	CPT Pawloski	42nd MP Bde SJA	Picked up Article 32 Packet
26-Apr-05	LTC McHugh	18th ABN CORPS SJA	Received overview on Article 32 duties
27-Apr-05	CPT Shepherd	18th MP Bde SJA	Submitted witness list and request delay due to key witness SSG Nein and SGT Hester being on EML for 18 May 2005
27-Apr-05	LTC McHugh	18th ABN CORPS SJA	Find out who defense counsel is and asked about continuance policy. Trial Counsel must submit request for delay through the appointing authority.
27-Apr-05	CPT Shepherd	18th MP Bde SJA	Sent email to Trial Counsel to advise them to submit request for delay through the appointing authority
27-Apr-05	CPT Shepherd	18th MP Bde SJA	Received confirmation of email and his intent to resubmit request of delay through appointing authority
27-Apr-05	CPT Shepherd	18th MP Bde SJA	Received request for delay from Trial Counsel for LTC Vines, via email, to forward for approval through me
27-Apr-05	LTC King	Chief of Justice, 18th ABN CORPS	Sent Trial Counsel request for delay through LTC King for forwarding to LTG Vines
27-Apr-05	CPT Shepherd	18th MP Bde SJA	Sent verification of forward to Trial Counsel
28-Apr-05	LTC King	Chief of Justice, 18th ABN CORPS	Contacted LTC King via email, on status of request for Delay. LTC Vines stated that request will more than likely go to LTG Vines for review on 30 April 2005. He additionally wrote that the delay should not be an issue to proceed with the 18th date.
28-Apr-05	LTC King	Chief of Justice, 18th ABN CORPS	Contacted LTC King, via email, about decision on the request for delay submitted by Trial Counsel. Still no decision, but LTC Kind advises delay should not be an issue.
29-Apr-05	CPT Shepherd	18th MP Bde SJA	Notification of Article 32 hearing, place, date and time sent through email
29-Apr-05	CPT Krafchek	Defense Counsel	Notification of Article 32 hearing, place, date and time sent through email
29-Apr-05	CPT Shepherd	18th MP Bde SJA	Received confirmation of receipt of Article 32 Notification
29-Apr-05	CPT Krafchek	Defense Counsel	Received confirmation of receipt of Article 32 Notification
3-May-05	SFC Gray	18th MP Bde Legal NCO	Received, via email, confirmation letter from LTC Vines for extension of Article 32 hearing to 18 May
3-May-05	CPT Shepherd	18th MP Bde SJA	Notified Trial Counsel, via email of approved extension for Article 32 hearing
3-May-05	CPT Krafchek	Defense Counsel	Notified Defense Counsel, via email of approved extension for Article 32 hearing
3-May-05	CPT Shepherd	18th MP Bde SJA	Sent email requesting pre-hearing meeting
3-May-05	CPT Krafchek	Defense Counsel	Sent email requesting pre-hearing meeting
3-May-05	CPT Krafchek	Defense Counsel	Received, via email, requesting pre-hearing be set for 16 May 05


UNITED STATES V. SGT RICKEY A. BURKE
ARTICLE 32(b)
CHRONOLOGICAL TIMELINE

DATE	WHO	ORGANIZATION	REMARKS
3-May-05	CPT Krafchek	Defense Counsel	Sent, via email, confirmation of prehearing scheduled for 16 May 05
3-May-05	CPT Shepherd	18th MP Bde SJA	Sent, via email, confirmation of prehearing scheduled for 16 May 05
6-May-05	CPT Shepherd	18th MP Bde SJA	Received, via email, Pre-hearing conference is good for the 16th of May
7-May-05	CPT Krafchek	Defense Counsel	Received, via email, request for discovery
8-May-05	LTC McHugh	18th ABN CORPS SJA	Sent, via email, question on discovery request process
8-May-05	LTC McHugh	18th ABN CORPS SJA	Received, via email, response to discovery process question
9-May-05	LTC McHugh	18th ABN CORPS SJA	Called about Article 32 Witness report for defense
10-May-05	CPT Krafchek	Defense Counsel	SGT Allas sent, via email, scheduling of pre-hearing conferences
10-May-05	CPT Shepherd	18th MP Bde SJA	SGT Allas sent, via email, scheduling of pre-hearing conferences
10-May-05	CPT Shepherd	18th MP Bde SJA	Confirmed, via email, the pre-hearing meeting
10-May-05	CPT Shepherd	18th MP Bde SJA	Received, via email, request to hold off on final witness list until both trial and defense counsel meet on 11 May 05.
10-May-05	CPT Shepherd	18th MP Bde SJA	Sent, via email, advising trial and defense counsel that I would wait until tomorrow at 1700 hours until I finalized the witness list
10-May-05	CPT Shepherd	18th MP Bde SJA	Received, via email, confirmation of his receipt of my previous email
11-May-05	CPT Shepherd	18th MP Bde SJA	Government response via email Defense Counsel's Witness List. No Objections.
14-May-05	CPT Krafchek	Defense Counsel	SGT Allas sent via email to both Government and Defense counsels the witness list
14-May-05	CPT Shepherd	18th MP Bde SJA	
15-May-05	CPT Krafchek	Defense Counsel	MAJ Packer received via email confirmation of receipt of witness list
15-May-05	CPT Shepherd	18th MP Bde SJA	MAJ Packer received via email confirmation of receipt of witness list
16-May-05	CPT Krafchek	Defense Counsel	Conducted a pre-hearing session with both Government and Defense at the 42nd MP BDE Baghdad IZ. Denied the Defense request for a verbatim transcript. Receive information that SSG Preston King could be unavailable for telephonic testimony due to EML. Established with both counsels the witness order list. Defense submitted a change of name for the doctor who examined the victim. I set the time for the hearing to begin. 0900 start time with a 0800 link-up IOT ensure technical support is available for video and voice recording of the hearing. I also had SGT Allas type up the witness list
16-May-05	CPT Shepherd	18th MP Bde SJA	
17-May-05	CPT Krafchek	Defense Counsel	Request for starting the hearing at 1300 instead of the agreed on time of 0900; did not receive the email until 20 May 2005 due email not available from the location where I was staying at CP Victory. Not an impact to the Hearing. On the Day of the hearing, I adjusted witnesses to accommodate availability

UNITED STATES V. SGT RICKEY A. BURKE
ARTICLE 32(b)
CHRONOLOGICAL TIMELINE

DATE	WHO	ORGANIZATION	REMARKS
17-May-05	CPT Shepherd	18th MP Bde SJA	Rebuttal to Defense's request for starting the hearing at 1300 instead of the agreed on time of 0900; did not receive the email until 20 May 2005 due email not available from the location where I was staying at CP Victory. Not an impact to the Hearing. On the Day of the hearing, I adjusted witnesses to accomodate availability
18-May-05	Major Packer	AR 32 IO	Conducted and completed Article 32 Hearing in the case of the US Government v. SGT Burke
23-May-05	CPT Shepherd	18th MP Bde SJA	Received via email the summarized transcripts from the AR 32 Hearing. Summary was missing data and I sent a note to CPT Shepherd to have SSG Lorenzo make the corrections
	CPT Shepherd	18th MP Bde SJA	Received via email the corrected Summary of the AR 32 Hearing
	SSG Lorenzo	18th MP Bde SJA, NCO	Received via email the DD Form 457 with two continuation sheets.
27-May-05	Major Packer	AR 32 IO	Completed investigation and forwarded it to LTC

INVESTIGATING OFFICER'S REPORT <i>(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)</i>				
1a. FROM: (Name of Investigating Officer - Last, First, MI) PACKER, Carl	b. GRADE 04	c. ORGANIZATION HHD, 720th MP Bn, 42d MP Bde	d. DATE OF REPORT 20 May 05	
2a. TO: (Name of Officer who directed the investigation - Last, First, MI) VINES, John	b. TITLE Commanding General	c. ORGANIZATION Multi National Corps-Iraq		
3a. NAME OF ACCUSED (Last, First, MI) BURKE, Ricky A.	b. GRADE E5	c. SSN	d. ORGANIZATION B Btry, 1-623d FA	e. DATE OF CHARGES 20050423
(Check appropriate answer)				
4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)				YES NO X
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)				X
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d) (2), 502(d)				X
7a. NAME OF DEFENSE COUNSEL (Last, First, MI) KRAFCHER, Christopher	b. GRADE O3	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any) BROWN, William	b. GRADE O3	
c. ORGANIZATION (If appropriate) Trial Defense Service, Anaconda Field Office		c. ORGANIZATION (If appropriate) Trial Defense Service, Anaconda Field Office		
d. ADDRESS (If appropriate)		d. ADDRESS (If appropriate)		
9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)				
a. PLACE Camp Victory Court House, Iraq		b. DATE 18 May 2005		
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.				
c. SIGNATURE OF ACCUSED				
10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer)				YES NO
a. THE CHARGE(S) UNDER INVESTIGATION				X
b. THE IDENTITY OF THE ACCUSER				X
c. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31				X
d. THE PURPOSE OF THE INVESTIGATION				X
e. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE				X
f. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT				X
g. THE RIGHT TO CROSS-EXAMINE WITNESSES				X
h. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED				X
i. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION				X
j. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING				X
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE (If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)				X
b. STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL				
NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c"). Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."				

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)				
NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
SEE CONTINUATION SHEET #1			X	
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.				
13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.				
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)			
SEE CONTINUATION SHEET #2			X	
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			X	
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(h))				X
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)				X
16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL			X	
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM			X	
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED			X	
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d) (1).)			X	
20. I RECOMMEND:				
a. TRIAL BY <input type="checkbox"/> SUMMARY <input type="checkbox"/> SPECIAL <input checked="" type="checkbox"/> GENERAL COURT-MARTIAL				
b. <input type="checkbox"/> OTHER (Specify in Item 21 below)				
21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)				
Item 1. The Government submitted a Request for Delay on 29 April 2005 due to availability of witnesses. Government requested the hearing date change to 18 May 2005.				
Item 2. Delay was approved by the convening authority, LTG Vines, on 30 April 2005 for a hearing date of 18 May 2005.				
Item 3. There were no grounds to believe that the accused was not mentally responsible for the alleged offense or not competent to participate in his defense.				
Item 4. Defense counsel did not request objections to be noted in this report.				
22a. TYPED NAME OF INVESTIGATING OFFICER		b. GRADE	c. ORGANIZATION	
Carl J. Packer		O4	HHD, 720th Military Police Battalion	
d. SIGNATURE OF INVESTIGATING OFFICER			e. DATE	
			20 May 05	

CONTINUATION SHEET #1, DD Form 457, SGT Ricky A. Burke, B Battery, 1-623d Field Artillery, 503d Military Police Battalion, 18th Military Police Brigade, APO AE 09342

Item 12a Continued:

The following witnesses testified Under oath:

1. CPT Todd M. Linder, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342
2. SSG Timothy Nein, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342;
VOIP: 302-242-4828
3. SGT Dustin Morris, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342;
VOIP: 302-242-4828
4. SPC Jesse Ordunez, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342;
VIOP: 302-242-4828
5. SGT Aaron L. Rust, 617th Military Police Company, Camp Victory Iraq, APO AE 09342;
VIOP: 302-242-4828
6. SGT Leigh Ann Hester, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342; VIOP: 302-242-4828
7. SPC Ashley Pullen, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342
8. LTC Todd Abel, 332d EMDG, Balad, Iraq, APO AE 09391
9. SPC Jason Mike, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342;
VIOP: 302-242-4828
10. Special Agent Thomas Robinson, 48th Military Police Detachment (CID), Camp Victory, Iraq, APO AE 09342; DSN: 318-822-2835
11. SGT Matthew Simpson, B Battery, 1-623d Field Artillery, LSA Anaconda, Balad, Iraq, APO AE 09391
12. SGT James Baker, B Battery, 1-623d Field Artillery, LSA Anaconda, Balad, Iraq, APO AE 09391
13. SPC Kirby Lee Gregory, B Battery, 1-623d Field Artillery, LSA Anaconda, Balad, Iraq, APO AE 09391
14. SFC Ricky Hammons, B Battery, 1-623d Field Artillery, LSA Anaconda, Balad, Iraq, APO AE 09391

CONTINUATION SHEET #2, DD Form 457, SGT Ricky A. Burke, B Battery, 1-623d Field Artillery, 503d Military Police Battalion, 18th Military Police Brigade, APO AE 09342

Item 13a Continued:

The following statements, documents, or matters were considered; the accused was permitted to examine each:

Government Exhibits

Numbers 1 to 12 – Photographs

Number 13 – Detainee Picture at Start Point

Number 14 – Statement of SPC Jesse Ordunez

Number 15 – Detainee Picture at Abu Ghraib

Number 16 – DA Form 4137 (Shell Casing)

Number 17 – DA Form 4137 (M4 Rifle)

Number 18 – US CID Laboratory Report

Number 19 – Rights Waiver (SGT Ricky A. Burke)

Defense Exhibits

Letters A to F – Photographs

Letter G – Medical Report, Patient #823

Letter H – SGT Burke's Sworn Statement, 9 April 2005

Letter I – ROE Card CFLCC

Letter J – Rules of Force Card CFLCC

Letter K – 332 AFTH Transfer Summary

Letters L to T – Detainee Photographs

Letters U to AA – Statements from soldiers in the 617th Military Police Company



DEPARTMENT OF THE ARMY
TASK FORCE 720TH MILITARY POLICE
CAMP RUSTAMIYAH, BAGHDAD, IRAQ
APO AE 09390-2402

REPLY TO
ATTENTION OF:


AFVP-720-XO

20 May 2005

MEMORANDUM FOR Commander, Multi-National Corps Iraq

SUBJECT: Article 32 Investigating Officers Findings in the United States v SGT Ricky A. Burke

1. Based on the evidence and testimony presented to me at the Article 32 Hearing conducted on 18 May 2005 at Camp Victory Iraq, I find there are reasonable grounds to believe that Sergeant Ricky A. Burke did shoot a non threatening enemy combatant with an M4 rifle on or about 20 March 2005 in Salman Pak, Iraq.
2. It was reasonably demonstrated to me during the hearing through both testimony and the evidence presented that SGT Burke possessed the means (an M4 rifle), the motive (witness statements to the effect that SGT Burke was attempting to determine what the criteria was to kill enemy combatant prisoner and get payback), and the opportunity (guarding the enemy combatant alone) to commit the offense alleged by the Government. Based on all the testimony and evidence I reviewed, it is my opinion that SGT Burke shot a non threatening enemy combatant and that in the case of United States v. Sergeant Ricky A. Burke should go forward to a General Court Marshal.
3. One issue that was highlighted during the hearing was the testifying Soldiers general lack of understanding, knowledge, and training on treatment of enemy prisoners, Rules of Engagement (ROE), and Use of Force. Although, most Soldiers testified that they received some prisoner handling training prior to deployment in either a classroom briefing setting or a classroom briefing followed by hands on training, the majority of the Soldiers who testified seem to be uncomfortable on how they were to search and then secure enemy prisoners. Additionally, the Soldiers understanding of the ROE and Use of Force varied from the 617th Military Police Company to B Battery 1-623 Field Artillery. I do not believe any one soldier could articulate the same understanding of the ROE and use of force guidance. I recommend that additionally training be conducted for both units on prisoner handling, ROE, and use of force. I believe this additional training would benefit both organizations by helping to reduce the confusion on policies pertaining to prisoner handling, ROE, and use of force thereby assisting Soldiers to be more effective in the performance of their duties.
4. POC is the undersigned/cjp/ DNV 580-8321.


CARL J. PACKER
MAJ, MP
Executive Officer

IO: (~~Said to accused, counsel~~): This is a formal investigation into a certain charge against SGT Ricky A. Burke ordered pursuant to Article 32(b), UCMJ, by LTG John R. Vines. On 28 April 2005, I informed you of your right to be represented by civilian counsel at no expense to the United States, military counsel of your own selection if reasonably available, or military counsel detailed by the Trial Defense Services. You informed me that you desired to be represented by CPT Christopher Krafchek of detailed military counsel.

Let the record show that CPT Christopher Krafchek is here present with you.

IO: I want to remind you that my sole function as the Article 32 investigating officer in this case is to determine the truth of the matters stated in the charge. I shall also consider the form of the charge and make a recommendation concerning the disposition of the charge that has been preferred against you. I will now read to you the charge, which I have been directed to investigate.

(~~At this time defense counsel may waive the reading of the charge~~)

IO: It is as follows:

Charge (I): Violation of the Uniform Code of Military Justice, Article 80.

Specification (1): In that Sergeant Ricky Allen Burke, U.S. Army, did, at or near Salman Pak, Iraq, on or about 20 March 2005, attempt with premeditation to murder Hadi Saleh Khalid Al Ujuhishi by means of shooting him in the head with a firearm.

I will now show you the charge and specification.

(~~Hand the charge sheet to defense counsel and accused~~)

I advise you that you do not have to make any statement regarding the offense of which you are accused and that any statement you do make may be used as evidence against you in a trial by court-martial. You have the right to remain silent concerning the offense with which you are charged. You may, however, make a statement sworn or un-sworn and present anything you may desire, either in defense, extenuation, or mitigation. If you do make a statement, whatever you say will be considered and weighed as evidence by me just like the testimony of other witnesses.

You have previously been given a copy of the investigation file that has been compiled in your case. It contains the CID case file. It is my intention to call as witnesses in this investigation:

a. CPT Todd M. Lindner, B Btry, 1/623 Field Artillery, 503rd Military Police Battalion

✓ b. SSG Timothy Nein, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342, VIOP: 302-242-4828

✓ c. SGT Dustin Morris, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342, VIOP: 302-242-4828

✓ d. SPC Jesse Ordunez, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342, VIOP: 302-242-4828

✓ e. SPC Jason Mike, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342, VIOP: 302-242-4828

✓ f. SGT Aaron L. Rust, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342, VIOP: 302-242-4828

✓ g. SGT Leigh Ann Hester, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342, VIOP: 302-242-4828

✓ h. SPC Ashley Pullen, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342, VIOP: 302-242-4828

✓ i. LTC Todd Abel, Staff Neuro-Surgeon, 336nd EMGD, Balad, Iraq

✓ j. SGT Matthew Simpson, B Btry, 1/623 Field Artillery, 503rd Military Police Battalion

~~✓ k. SFC Rickie D. Hammons, B Btry, 1/623 Field Artillery, 503rd Military Police Battalion~~

✓ ~~kl~~ SPC Kirby Lee Gregory, B Btry, 1/623 Field Artillery, 503rd Military Police Battalion

✓ ~~m~~ SGT James Baker, B Btry, 1/623rd FA, LSA Anaconda, Balad, Iraq APO AE 09391

n. SPC William Young, B Btry, 1/623rd FA, LSA Anaconda, Balad, Iraq APO AE 09391

o. SPC Richard Saylor, B Btry, 1/623rd FA, LSA Anaconda, Balad, Iraq APO AE 09391

✓ ~~op~~ SPC Patrick Malone, B Btry, 1/623rd FA, LSA Anaconda, Balad, Iraq APO AE 09391

q. SSG David King, B Btry, 1/623rd FA, LSA Anaconda, Balad, Iraq APO AE 09391 with drawn

✓r. Special Agent Thomas Robinson, 48th Military Police Detachment (CID), Camp Victory, Iraq APO AE 09342, DSN 318-822-2835

After these witnesses have testified in response to my questions, you or your counsel will have the right to cross-examine them. You also have the right to call available witnesses for my examination and to produce other evidence in your behalf. I have arranged for the appearance of those witnesses previously requested by you. If you desire additional witnesses, I will help to arrange for their appearance or for the production of any available evidence relating to your case. (I do not intend to call as a witness _____, because it has been determined that _____ I therefore intend to consider the sworn statement of the witness in my recommendations as it is contained in the file.)

IO: Before proceeding further I now ask you whether you have any questions concerning your right to remain silent, concerning the offense of which you are accused, your right to make a statement either sworn or un-sworn, the use that can be made of any statement you may make, your right to cross-examine witnesses against you, or your right to present anything you may desire in your own behalf and have me examine available witnesses requested by you either in defense, mitigation, or extenuation.

COUNSEL/ACCUSED: Yes or No

At this point, answer any questions that the accused may have with respect to rights or as to procedural or other matters concerning the investigation. You should not proceed further until convinced that the accused understands these rights. If the accused is represented by counsel, however, the latter will generally indicate that he or she has explained these matters to the accused and that they are understood.

IO: (To accused/counsel): Do you want me to call any witnesses to testify in your defense or to testify in mitigation or extenuation on your behalf?

COUNSEL/ACCUSED: Yes or No

IO: (To accused/counsel): Do you want me to call any other witness(es) in this case for cross-examination? If so, provide name(s) and organization(s) or address(es). If you are aware of any military records that you want me to consider and that you have been unable to obtain, provide a list of these documents.

COUNSEL/ACCUSED: Yes or No

THE ACTUAL HEARING WILL START NOW WITH OPENING COMMENTS FROM BOTH TRIAL COUNSEL AND DEFENSE COUNSEL.

Whenever you recess, you will state that the hearing is now in recess and will reconvene at _____ hours.

When you reconvene, you will state that the hearing is now reconvened at _____ hours, with all members who were present before the recess are again present.

At the conclusion of the hearing, (After closing arguments from both Trial and Defense Counsel), you will state that the Article 32 hearing is now closed at _____ hours, _____ date.

SUMMARY OF PROCEEDINGS

An Article 32(b) Investigation was ordered by LTG John R. Vines in the case of U.S. v. SGT Ricky A. Burke on 23 April 2005. LTG Vines appointed MAJ Carl Packer as Investigating Officer.

MAJ Packer notified SGT Burke about the Article 32(b) Investigation on 29 April 2005.

The hearing was held at the Camp Victory court-house on 18 May 2005.

PERSONS PRESENT:

MAJ Carl Packer, 720th Military Police Battalion, Investigating Officer
CPT Matthew W. Shepherd, 18th Military Police Brigade, Trial Counsel
CPT Stephan E. Nolten, XVIII Airborne Corps, Assistant Trial Counsel
CPT Christopher L. Krafchek, Trial Defense Service, Defense Counsel
CPT William E. Brown, Trial Defense Service, Assistant Defense Counsel
SGT Ricky A. Burke, B Battery, 1-623d Field Artillery, Accused
SSG Emmanuel D. Lorenzo, HHC, 18th MP Bde, Recorder

PERSONS ABSENT:

None.

SGT Ricky A. Burke appeared before the Article 32(b) Investigation with his defense counsels CPT Christopher L. Krafchek and CPT William E. Brown.

OPENING STATEMENTS BY INVESTIGATING OFFICER

This is a formal investigation on certain charges against SGT Ricky A. Burke under Article 32(b), UCMJ ordered by LTG Vines. Let the record show that CPT Christopher Krafchek is here representing SGT Burke. My sole function in this investigation is to determine the truth in the matter stated in the charges and make recommendations in the disposition of the charges.

I will now read to you the charge. Violation of the UCMJ, Article 80. The specification: In that Sergeant Ricky Allen Burke, U.S. Army, did, at or near Salman Pak, Iraq; on or about 20 March, attempt with premeditation to murder Hadi Saleh Khalid Al Ujuhishi by means of shooting him in the head with a firearm.

MAJ Packer informed SGT Burke about his rights and mentioned the witnesses that he will call. SGT Burke stated that he does not want to call any other witnesses.

The following witnesses called by the Investigating Officer were sworn and testified in substance as follows:

CPT Todd M. Linder, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342

CPT Shepherd submitted photos that were marked Prosecution Exhibits 1 to 12 as evidence.

QUESTIONS BY INVESTIGATING OFFICER

I arrived after the ambush at approximately 1210 and my initial position was to the south. When I got there they were not in contact anymore so I left one team to set up a cordon then I linked up to the ambush sight. In general, things have calmed down and they were initiating MEDAVAC and preparing the LZ. Everybody else was pulling security. There were still three enemy casualties when I arrived.

I am not really familiar with SGT Burke. Most of the casualties have been MEDAVACed and one detainee was left and he is not the one in question.

DIRECT-EXAMINATION

The initial patrol was made up SSG Nein, who is the squad leader, SGT Hester, SPC Cooper the gunner, SGT Morris, and SPC Ordunez. On the trail truck is Mack, Haynes, Rivera, and the medic. Three soldiers were wounded, it was Mack, Haynes, and Rivera. The soldiers were MEDAVACed. CPT Linder pointed to the diagram where the soldiers were MEDAVACed.

The group that I had stayed to do MSR security. We clear the grounds of IEDs and we maintain control of the AO. Anybody in the convoy from B/623d will have contact with us. I am not aware of prior animosity in B/623d. I knew two days prior to that there was a B/206 engineer that died in an ambush. We conducted an AAR after this incident. We collect the statements for documentation for Purple Hearts. I did not have any knowledge of any incident prior to the writing of those statements. Those statements pertain to the actions from combat.

I became aware of the allegations on the 23d of March. I heard that a soldier from 623d shot one of the wounded Iraqis and I asked SSG Nein about it and he told me what he knew. I asked SSG Nein if he saw the soldier pull the trigger and he said "no". All he knows is he heard a shot go off. CPT Linder said that a soldier from his unit wrote a statement about a soldier shooting one of the insurgents. I also told CPT Linder what I knew. I did not bring it out right away and I also do not want to bring discredit to what happened.

I reported the incident to LTC Stevenson, the Battalion Commander.

CROSS-EXAMINATION

SSG Nein heard the statement a soldier made that a wounded insurgent was shot while he was walking away and he turned around. It looked to me as if it is just a "he said she said" statement. SSG Nein is in the law enforcement in a National Guard unit. All I have was one soldier's word of what he heard, not what he saw.

Since 617th is a unit outside my brigade, it is possible that they are operating with a different ROE.

**SSG Timothy Nein, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342;
VOIP: 302-242-4828**

QUESTIONS BY INVESTIGATING OFFICER

We are in the outermost position where element 14A is. There was no more firing at that time. When we were by the canal, to the best of my knowledge, it was only me and SGT Hester who were there. I was approximately at ASR Detroit, by the intersection of the two canals.

I linked up with SGT Burke at this area (pointing to the location in the diagram). Nobody else was with me at this point and I never knew SGT Burke at that time. We proceeded to the trench line of the canal until we located one AIF. The AIF was lying down, still alive and conscious. I could not tell if he had any wounds at that time. At that time SGT Burke told me that he would like to shoot the AIF. I said no and that we could be able get some information from him. The AIF started to sit up using his right hand to push himself up. At that point, I still had to check on other AIFs and weapons.

SGT Burke said that we just can not leave the insurgent here and I agreed. I told him just to pull security. I did a visual inspection of the area and did not observe any weapons in that area. Walking about 50 meters away, I looked back and saw SGT Burke holding his M9 pistol. I asked SGT Burke if he was ok and he said "yes". I kept on walking away until I heard a gun shot. I was not worried about the insurgent that time if he was dead or alive. I was worried about the welfare of the whole element.

DIRECT-EXAMINATION

The insurgent was in the trench. I did not see any AK 47s in the opposite slope where the insurgent was. The closest AK 47 was about 5 to 10 feet down the trench line. I heard SGT Burke say "its payback time." I believe he said it twice. My initial response to him was "no." The soldier who fired the shot was still at the south side of the trench when I looked back.

CROSS-EXAMINATION

SGT Burke said that he was getting ready to help conduct security. I believe that SGT Burke did not comply with the ROE at that time. The closest weapon was about 5 to 10 feet down the trench line. I do not recall seeing anybody else in the area when I heard the shot. I was about 50 meters away from the 623d soldier (SGT Burke). I saw the insurgent fall back on his side after the shot.

One insurgent surrendered to me and I engaged about 7 more. There was no more shooting going on when I called the cease fire. I did not notice a name on SGT Burke's Kevlar. If I had flexi-cuffs with me, I would have placed them on the insurgent. I only heard one shot that time and it was coming from an M9. SGT Hester also came down to the canal.

The insurgents were well prepared to fight that day. They were heavily armed.

REDIRECT-EXAMINATION

CPT Shepherd submitted photo of the insurgent as Prosecution Exhibit #13. SSG Nein identified the photo.

**SGT Dustin Morris, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342;
VOIP: 302-242-4828**

QUESTIONS BY INVESTIGATING OFFICER

SGT Morris identified his location based on the diagram on the screen. He also pointed to the area where he saw SGT Burke fire a shot from his 9mm pistol.

I searched the AIF thoroughly and did not find anything. The insurgent was not violent and very complacent. I searched him for about 5 minutes. I did not place flexi-cuffs on him. I also did a visual search of the area (showing it on the diagram). The AIF who was shot was in the last MEDAVAC. I was about 10 feet away from the victim when I heard a shot. I saw SGT Burke standing with his M4. I heard another shot about 8 to 10 minutes after the first shot.

DIRECT-EXAMINATION

I heard that the day before a soldier in SGT Burke's unit was killed.

I was in the MSR side when I was walking toward the insurgent. I did not see any weapons when I was walking toward the AIF. I didn't believe that the AIF was a threat to me, he was hurt. I searched him after the first shot was fired. There were no weapons within reach at that time. If there were weapons, I would've known and confiscated them.

I did not see the 623d soldier dispose of any AIF weapon. I went with the insurgent to LSA Anaconda via MEDAVAC. I noticed the features of the victim change when I saw him in the helicopter, particularly the swelling of the head.

A bullet casing was found in the area during investigation.

CPT Shepherd showed SGT Morris Prosecution Exhibit #13 for Identification.

I do not remember any American soldiers engaging with M16/M4s during the course of this engagement at the MSR site. As soon as SSG Nein and I got near the canal, I called for air support and SSG Nein called cease fire. As I went down the canal, that was the first time I heard an M4 go off at all. The second shot also sounded like an M4.

CPT Brown showed a photo to SGT Morris and he identified it as the AIF member. The wounds in the picture matched with the wounds I saw when I did a search. The wounds were not life threatening at that time.

CROSS-EXAMINATION

At this time, SGT Morris demonstrated how he searched the AIF using CPT Brown as an example. It took 2 minutes for him to do the search. CPT Shepherd had it noted that the conditions during the actual search were different like: SGT Morris was wearing full battle rattle, it was in a trench line, and on a slope.

I did not see SGT Burke shoot the insurgent.

SGT Morris described SGT Burke's position when he saw him after he heard a shot.

SPC Ordunez walked away with SGT Burke. I did not hear SPC Ordunez say anything to SGT Burke. I do not know if they had a conversation.

The insurgent did not have an ammo vest at that time.

SGT Morris described the scene where his group was located using the diagram on the screen.

I went back to the ambush site with CID and found a casing from an M4.

SPC Ordunez was standing right there when the second shot occurred.

Recess: 1104 hours

Reconvene: 1114 hours

SPC Jesse Ordunez, 617th Military Police Company, Camp Victory, Iraq, APO AE 09342;
VIOP: 302-242-4828

QUESTIONS BY INVESTIGATING OFFICER

Using the diagram on the screen, SPC Ordunez pointed to his location at the battle field after the cease fire was called. He identified the sector he was covering. I was a little bit shocked because of what just happened. The soldiers were well organized during that time.

I did not hear any shot fired right after the cease fire was called but I heard shots later on coming from the canal. I do not know exactly how many shots I heard at that time. I did not see any AIF moving around at that time. I saw SSG Nein at the trench line, there was somebody else with him. I helped with the evacuation of AIF Casualties later. I flew with the second flight going to Anaconda.

DIRECT-EXAMINATION

SPC Ordunez left the turret and proceeded to a location he is identifying from the diagram on the screen. When I left my truck, I proceeded to SGT Rivera's truck. At that time I took some flexi-cuffs to SGT Ware who was at the orchard. I came back and walked over the north-west side of the canal. I joined up with SGT Morris and the 623d soldier.

I witnessed the 623d soldier shoot the wounded AIF. I was on this side of the canal (pointing to the diagram). SGT Morris was ahead of me. The 623d Soldier asked me "What do you do when they are still alive?" I responded you shoot them if they are hostile. Very shortly after that I heard a shot from an M4. I was approximately 5 to ten meters away from the 623d soldier and insurgent when I heard the shot. The 623d soldier had an M4 in his right hand. The 623d soldier did not say anything about the insurgent having a weapon or about to have a weapon. The AIF was lying on the bank of the canal when I heard the shot. I did not see any weapons close by the AIF. I did not think he was a threat and he was also injured.

CPT Nolten showed SPC Ordunez Prosecution Exhibit #13 for Identification.

CROSS-EXAMINATION

I have a full view of my sector from the turret and I saw a soldier holding his M9 pointing his pistol toward an AIF. I do not remember which hand was holding the pistol and I did not see any other weapon. I then went to the orchard and walked up toward the canal where I saw SGT Morris and SGT Burke. It took me maybe 20 minutes to get to those soldiers. When I saw the insurgent that SGT Burke shot, I walked out to SGT Morris.

SGT Burke was standing next to the insurgent before he shot him. I heard one shot for sure and I believe I heard two, they were both from the M4. The shots sounded like they both came from the M4. I do not know the time between the two shots. I told you last night that the shots were "pop-pop." SGT Burke asked me what I would do if they were still moving and I said that I would shoot them if they were still hostile. It was a matter of seconds after SGT Burke asked me

that question then I saw him shoot. I only remember seeing him shoot once. I saw the shoulder area of the body jerk after the shot. I believe that I saw SGT Burke's rank on his vest. I was at the other side of the canal and SGT Burke was directly across from me. SGT Morris was 15 to 20 meters from me. I did not see SGT Morris do a pat down search. I had full view of SGT Morris and SGT Burke all the time.

I saw the photo that CPT Noltan just showed me, I do not know where I saw it before. I talked to SGT Nein and SGT Hester before about what's going on. I did not see SGT Nein in the area when I saw the shot. I was not charged with any offenses.

I engaged with the insurgents during the time of the incident. I do not know the exact number of insurgents I engaged. I think of this incident everyday but it does not affect my job. I have a decent memory of the incident.

RE-DIRECT EXAMINATION

CPT Noltan asked SPC Ordunez if he has a photographic memory and he responded yes and he figure stuff all the time. I walked the trench toward SGT Rivera and later on I was with SGT Morris, the 623d soldier, and the wounded AIF insurgent. I do not know how close SGT Morris and the 623d soldier were to the insurgent, 40 to 50 meters, maybe.

RE-CROSS EXAMINATION

I was a little amazed at what just happened. I haven't been to Mental Health. I talked to the Chaplain after the incident.

QUESTIONS BY INVESTIGATING OFFICER

I met with SGT Burke and SGT Morris before they got to the insurgent. I did not see SGT Morris search the insurgent. I saw SGT Burke shoot the insurgent.

RE-DIRECT EXAMINATION

At this point CPT Noltan showed SPC Ordunez Prosecution Exhibit #14 for recollection purposes.

This was the statement I gave at the CID office. The 623d soldier asked me what to do if the insurgent was still moving. I wrote this statement to CID. When the 623d soldier asked me the question, he was already in the canal. I think he's referring to any of them in the area.

RE-CROSS EXAMINATION

CPT Krafchek asked SPC Ordunez "In your testimony, you said that you were moving with SGT Morris and SGT Burke when you came upon the insurgent then he shot him. Is that correct? Yes, sir. We walked for about 50 meters.