

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>United States of America</b>	)	
	)	
v.	)	<b>Criminal No. 14-107 (RCL)</b>
	)	
<b>Nicholas A. Slatten,</b>	)	
	)	
<b>Defendant.</b>	)	

**DEFENDANT’S SUPPLEMENTAL MEMORANDUM  
IN SUPPORT OF MOTION FOR A NEW TRIAL BASED  
ON NEWLY DISCOVERED EVIDENCE (ECF NO. 1320)**

The government has pursued Nick Slatten for twelve years, subjecting him to three indictments, three trials totaling more than thirty-five weeks, and three trips (and counting) to the D.C. Circuit Court of Appeals. *Only weeks ago, however, did the government first produce sworn statements from 2007 by two of its cooperating witnesses that directly contradict their 2018 trial testimony and further demolish the government’s case against Mr. Slatten.* The government’s latest unconstitutional violation of Mr. Slatten’s *Brady* rights requires (at a minimum) yet another new trial. *See Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *Napue v. Illinois*, 360 U.S. 264 (1959).

In its attempt to clear the high hurdle of proving first-degree murder in a war zone, the government argued repeatedly to the jury that Mr. Slatten was someone who provoked his teammates to fire their weapons when no threat was present. In support, they offered testimony from two witnesses, Matthew Murphy and Jeremy Ridgeway, concerning Mr. Slatten’s participation in a downed aircraft rescue team (DART) mission approximately one week before the Nisur Square incident. Based on their testimony, the government invoked the DART incident

to argue that “this man either takes unprovoked shots where *no threat is present*, or he urges other people to do that.” 12/11/18 AM Tr. 4183:2-5 (closing statement) (emphasis added). The government even urged the jury to blame Mr. Slatten for all the shootings committed by his teammates in Nisur Square, on the inflammatory theory that he intended to “start[] a massive shooting,” 11/5/18 AM Tr. 502:16-19 (opening statement), as it alleged he had done at the DART incident.

But what the government did not tell the jury, the Court, or Mr. Slatten was that these same two witnesses gave sworn statements the day after the DART incident in 2007 that irreconcilably conflict with their later trial testimony. For example, Mr. Murphy swore in 2007 that (1) the Army was engaged in a firefight before Mr. Slatten fired any shots, (2) the Army identified to the Blackwater participants the buildings that contained armed combatants, (3) Mr. Slatten fired only after seeing someone point a scoped rifle at the team, and (4) it was the Army who decided to call in airstrikes. *See* Ex. A (Murphy Statement). At trial in 2018, however, Mr. Murphy claimed that (1) no one fired before Mr. Slatten, (2) only Mr. Slatten identified hostile forces, (3) Mr. Slatten later told him he saw someone *without* a weapon, and (4) the Army airstrikes resulted from Mr. Slatten’s actions, not the Army’s. 11/7/18 PM Tr. 1000:6-1004:19.

Only in the past few weeks did the defense learn that the government failed to produce these contemporaneous sworn statements from Messrs. Murphy and Ridgeway. These sworn statements constitute powerful evidence establishing that the government’s most important witnesses falsely testified. Moreover, these statements—as well as the State Department presentation that the government has now conceded it possessed but did not produce to the defense—demonstrate that the government’s entire DART incident narrative was false and misleading. The government’s failure to disclose these sworn statements violated Mr. Slatten’s

constitutional rights under *Brady* and *Giglio*, his statutory rights under the Jencks Act, and multiple protections afforded him under the Federal Rules of Criminal Procedure. The government's presentation of a false narrative at trial violated due process. These violations require a new trial.

## **BACKGROUND**

### **A. The Government's Use of the DART Incident Against Mr. Slatten.**

Although Mr. Slatten's original motion for a new trial explains in detail how the DART incident evidence was critical to the government's case, *see* ECF No. 1320 at 2-7, the defense provides the following recap as background for this supplement. In its attempt to prove the necessary intent for a shooting that occurred in a war zone and to sell the jury on the implausible story that Mr. Slatten shot for no reason the driver of a white Kia (the first person shot during the incident), the government argued that Mr. Slatten had previously fired his weapon first in an attempt to start a firefight. In the government's own words, the evidence regarding the DART incident showed that Mr. Slatten "indiscriminate[ly]" shot his weapon "without regard for who might be struck by the rounds," which the government claimed was "powerful evidence" of Mr. Slatten's state of mind at the time of the charged incident. ECF No. 36 at 12; ECF No. 800 at 7. In particular, the government argued that its evidence would show that Mr. Slatten "fired at a person in the building, *who was not a threat*, for the express purpose of starting a firefight," which it claimed was "relevant and strong evidence of Defendant's state of mind and motive on September 16, 2007." ECF No. 800 at 7 (emphasis added).

The DART incident featured prominently in the government's case against Mr. Slatten at trial. Before the government even discussed Mr. Slatten's alleged role in the Nisur Square incident in its opening, it told the jury that Mr. Slatten brought "lethal force to bear when it was not authorized, when there was no provocation," and that he provoked his teammates to do the same

with “his words and his actions.” 11/5/18 AM Tr. 495:21-496:12 (opening statement). It then emphasized to the jury that it would be “*important* for you to understand” that prior conduct “when you assess this man’s conduct in Nisour Square on September 16th, 2007.” *Id.* at 497:10-14 (emphasis added).

Only two witnesses, Matthew Murphy and Jeremy Ridgeway, testified regarding the DART incident at trial. Mr. Murphy claimed that Mr. Slatten lied about seeing a man with a scoped weapon and that the only reason both Blackwater and the Army fired their weapons was because Mr. Slatten fired first. More specifically, he described Mr. Slatten firing once or twice at a building and then initially claiming that “he shot at a guy in a window with a rifle, raising up with a rifle.” 11/7/18 PM Tr. 999:11-21. Mr. Murphy said he did not hear any other gunshots before Mr. Slatten’s alleged shots. *Id.* at 1000:6-13. According to Mr. Murphy, “everybody” then fired at the building after Mr. Slatten’s shots. *Id.* at 1000:18-21. Then Mr. Slatten supposedly “directed the Army officer’s attention to the building where he said he had seen the person with the rifle,” and the Army officer then communicated with the helicopter overhead, which then launched a Hellfire missile into the building. *Id.* at 1001:14-1002:4.

Mr. Murphy further testified that when the DART participants returned to the Green Zone that same day, Mr. Slatten said that “[a] guy was raising up like he had something in his hands.” *Id.* at 1004:1-8. This supposedly gave Mr. Murphy “concern” because he would not have shot his weapon if Mr. Slatten had said only that the man was raising up “*[l]ike* he had a rifle in his hands.” *Id.* at 1003:22-1004:19 (emphasis added). Mr. Murphy emphasized that he believed Mr. Slatten was actually describing “a guy in a window *without a rifle.*” *Id.* (emphasis added) Mr. Murphy began speculating that no one would have shot in that situation before the prosecutor cut off his answer. *See id.*

Jeremy Ridgeway also testified about the incident. According to Mr. Ridgeway, Mr. Slatten

said that if he was the shooter that shot down the helicopter -- I think it was those words -- that he would have -- he would be from that building. I think he even pointed out the window, but I'm not 100 percent sure. And he said he's going to fire on the building, and when he does, that I should fire along with him.

11/27/18 PM Tr. 2645:4-9. He further testified that Mr. Slatten fired "[a]t some point," and that "he said after that he saw someone taking aim at us through the window." *Id.* at 2645:12-23. According to Mr. Ridgeway, the Blackwater team and the military fired at the building after Mr. Slatten, and the building was mostly destroyed by the barrage. *Id.* at 2645:15-2646:17. Mr. Ridgeway also testified that he was not aware that the Army was firing before the incident. 11/28/18 PM Tr. 2760:20-22.

The government returned to the incident in closing arguments. Again, before even discussing the events at Nisur Square, the government focused on the DART incident, claiming that it showed that "this man either takes unprovoked shots where no threat is present, or he urges other people to do that." 12/11/18 AM Tr. 4183:2-5. Discussing the "sequence of events" that day, the government sought to plant the idea that Mr. Slatten's actions even provoked the Army into shooting its weapons without justification:

And he takes a shot. And after he takes a shot, he says, "Yeah, I saw an insurgent with a weapon raised towards us." And what happens after that? Well, the Raven 23 members, on his word, take the shots, even the Army that's present **starts** taking shots.

Now, again, there's no evidence -- let me be clear. There's no evidence that there was any communication between what he said and what the Army did, but that's the sequence of events is, after Raven 23 starts firing, the Army **then** fires as well.

*Id.* at 4184:10-18 (emphases added).

The government relied on the incident in urging the jury to find that Mr. Slatten (supposedly) took the first shots on September 16 with malice aforethought. The government

argued that the evidence of Mr. Slatten’s supposed “in[t]ent to strike out first, even when there’s no threat,” proved the element of malice aforethought. *Id.* at 4233:13-20. It even went so far as to argue that “[a]gain, he is -- he has done this previously, and you have the evidence of that, right? And that can give you an inkling clinic [*sic*] in terms of his deliberateness and his intentions, the malice of forethought [*sic*].” *Id.* at 4234:1-4. That argument prompted a mistrial motion from the defense, *see id.* at 4242:5-10; in opposing the motion, the government argued that the comment referred to, among other things, Mr. Slatten’s firing at the DART incident, which it claimed “caused the Army to then bomb a building,” *id.* at 4242:11-21. Yet again, in rebuttal argument, the government argued that the jury could conclude that Mr. Slatten had the requisite state of mind because “[h]e had tried to instigate these deadly force incidents before.” 12/11/18 PM Tr. 4372:9-22.

**B. The Government’s Failure To Disclose Sworn Statements by Government Witnesses About the DART Incident.**

In response to Mr. Slatten’s original motion for new trial based on newly discovered evidence that highlighted the government’s failure to produce a critical State Department slide presentation about the DART incident,<sup>1</sup> *see* ECF No. 1320, the government reviewed an undisclosed number of documents at the U.S. Attorney’s Office (“USAO-DC”) and State Department, *see* ECF No. 1334 at 1-2. The government represented to this Court that it in fact had located the unproduced “slide presentation in the hard copy files of the Department of Justice filter team from 2009.” *Id.*<sup>2</sup> The government also noted that it had produced to the defense materials

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<sup>1</sup> That State Department presentation, which includes real-time accounts from Army participants in the DART event, documented that Army forces were taking incoming fire from insurgent threats before the Blackwater team arrived at the site. This directly conflicts with the government’s story that Mr. Slatten somehow started the firefight.

<sup>2</sup> Notably, the government has never claimed—either in Court filings or in a meet and confer with the defense—that this document was produced to the defense, as it should have been.

regarding the DART incident on November 12, 2019. *Id.* However, the government stunningly failed to disclose to the Court that its production included sworn statements by Messrs. Murphy and Ridgeway dated September 11, 2007 that it was producing for the very first time. In these statements, which the witnesses gave the day after the DART incident, both government witnesses swore to the accuracy of identical descriptions of what happened during the DART incident—descriptions that directly contradict their testimony from more than a decade later. *See* Ex. A (Murphy Statement); Ex. B (Ridgeway Statement).

For example, Mr. Murphy’s sworn statement contradicts his trial testimony on every single significant issue regarding the DART incident:

<u>Issue</u>	<u>2018 Murphy Trial Testimony</u>	<u>September 11, 2007 Murphy Sworn Statement</u>
Whether the Army or Mr. Slatten shot first.	<i>Q. Did anyone else with either Raven 23 or the Army fire prior to the defendant?</i> <i>A. No.</i> 11/7/18 PM Tr. 1000:11-13 (emphasis added).	“ <i>Shortly after arriving on location Army assets were observed in a firefight</i> around the buildings located over 1200 yards to the west of the crash site.” Ex. A at 2 (emphasis added).
Whether the Army or Mr. Slatten identified hostile forces.	<i>Q. Why did you think that there was supposed to be a deadly threat in that building?</i> <i>A. Because Slatten said there was.</i> 11/7/18 PM Tr. 1001:7-9 (emphasis added).	“An <i>Army Captain advised the DART element</i> that several armed subjects in civilian clothing were seen running toward the buildings located to the southwest. The Captain stated Army attack helicopters engaged the subjects, however, they believed several of the <i>armed subjects made it through to the buildings</i> located at the southwest.” Ex. A at 2 (emphases added).
Whether Mr. Slatten stated later on September 10, 2007 that the man in the window did	<i>Q. Why did it matter to you that he had said that versus what he had said previously on the scene about there being a man with a rifle in the window?</i>	“ <i>Slatten observed one of the men enter a building and appear in a window with what appeared to be a scoped rifle.</i> Slatten advised all of the team members of his

<u>Issue</u>	<u>2018 Murphy Trial Testimony</u>	<u>September 11, 2007 Murphy Sworn Statement</u>
not have a scoped weapon.	<p><i>A. Because there's a big difference between a guy in a window with a rifle overlooking you and a guy in a window without a rifle overlooking you.</i> 11/7/18 PM Tr. 1004:9-14 (emphasis added).</p>	<p>observations while closely watching the subject with the scoped rifle in the window. Slatten observed the subject present the scoped weapon pointing it in the direction of the team apparently about to fire.” Ex. A at 2 (emphasis added).</p>
Whether the Army or Mr. Slatten were responsible for airstrikes by Army attack helicopters.	<p><i>Q. Okay. What was the nature of the conversation?</i> <i>A. Nick directed the Army officer's attention to the building where he said he had seen the person with the rifle.</i> ... <i>Q. Did you see the helicopter do anything after you saw that communication?</i> <i>A. The helicopter fired a Hellfire missile into a building.</i> 11/7/18 PM Tr. 1001:18-1002:4 (emphases added).</p>	<p>“Additionally, the Army engaged the same targets with their Bradley 25mm main gun and .50 caliber machine guns. <i>A US Army Captain met with DART personnel and advised he was calling in an air strike.</i> A short time later, the Army attack helicopters attacked the enemy firing positions stopping the threat.” Ex. A at 2 (emphasis added).</p>

Mr. Ridgeway, the only other witness to testify about the DART incident, had less to say about it. As with Mr. Murphy, however, Mr. Ridgeway’s undisclosed sworn statement contradicted his testimony. At trial, he denied being “aware” that the “Army was firing before [his] Blackwater team was involved in the incident.” 11/28/18 AM Tr. 2760:20-22. However, he had previously sworn that “[s]hortly after arriving on location *Army assets were observed in a firefight* around the buildings located over 1200 yards to the west of the crash site.” Ex. B at 2 (emphasis added). He also testified that Mr. Slatten told him that “if he was the shooter that shot down the helicopter . . . he would be from that building . . . And he said he’s going to fire on the building, and when he does, that I should fire along with him.” 11/27/18 PM Tr. 2645:3-9. Mr.



Ridgeway's prior sworn statement contains numerous statements to the contrary. For example, he swore that it was "[a]n Army Captain [who] advised the DART element that several armed subjects in civilian clothing were seen running toward the buildings located to the southwest," not Mr. Slatten. Ex. B at 2. Moreover, Mr. Slatten did not guess as to which building might contain a threat; instead, according to Mr. Ridgeway's sworn statement, Mr. Slatten "observed one of the men enter a building and appear in a window with what appeared to be a scoped rifle." *Id.*

On November 15, 2019, defense counsel conferred with the government taint team regarding, among other things, the recent production of the Murphy and Ridgeway sworn statements. The defense represented to the government that it has no record of their production to the defense at any point in the last decade. The government refused to answer the question whether it had any evidence that the sworn statements were previously produced. The closest the government came to acknowledging its (obvious) failure occurred when it pointed out that the taint team had produced to the defense a statement by Mr. Slatten regarding the DART incident. The government in fact produced such a statement. This production, however, only raises further questions about why the government produced the *Kastigar*-protected statement by Mr. Slatten that could not be used at trial absent waiver but ***did not produce*** statements from government witnesses about the same incident.

## ARGUMENT

### I. **The Undisclosed Sworn Statements Are Material under *Brady* and *Giglio*, and the Government's Failure To Produce Them Requires a New Trial.**

The exculpatory and impeaching nature of these sworn statements is self-evident. They are undoubtedly material under *Brady* and *Giglio* for all the reasons set forth in the original motion. *See* ECF No. 1320 at 13-17. Moreover, the government's failure to produce these sworn

statements—and the resulting presentation of a misleading narrative to the jury—deprived Mr. Slatten of a fair trial. *See Kyles v. Whitley*, 514 U.S. 419, 454 (1995).

**A. The Sworn Statements Are Material under *Brady* and *Giglio*.**

As an initial matter, Mr. Murphy’s sworn statement makes clear that he lied under oath. The only question is whether he lied in 2007 or 2018. Such impeachment evidence—which covered every aspect of his DART incident testimony—is certainly material. Indeed, the D.C. Circuit has overturned a verdict based on a similar *Brady* violation, noting that “[i]n light of the axiomatic importance of truthful testimony for the integrity of judicial proceedings, undisclosed evidence of a witness’ prior perjury has a significant impact on the fairness of the trial.” *United States v. Cuffie*, 80 F.3d 514, 518 (D.C. Cir. 1996); *see also United States v. Smith*, 77 F.3d 511, 515 (D.C. Cir. 1996) (noting that “the test for materiality is *not* a sufficiency-of-the-evidence test” and asking instead “whether the undisclosed information could have substantially affected the efforts of defense counsel to impeach [a] witness, thereby calling into question the fairness of the ultimate verdict”). Mr. Murphy lied, either then or now, and the jury should have known about it.

The substance of the undisclosed sworn statements only heightens their materiality. As noted above, the government itself has stated that the DART incident was “important” to its case. 11/5/18 AM Tr. 497:10-14. The government’s failure to disclose these sworn statements allowed it to present a false narrative of this critical event to the jury. In fact, the undisclosed sworn statements contradict the government’s narrative on every meaningful point:

- The government argued that Mr. Slatten shot first and that the Army shot only after Mr. Slatten. *See* 12/11/18 AM Tr. 4183:2-5, 4184:10-18. But the sworn statements by its witnesses make clear that the Army was engaged in a firefight before Mr. Slatten shot.

Ex. A at 2 (“Shortly after arriving on location Army assets were observed in a firefight around the buildings . . .”).

- The government expressly argued to the jury that “no threat [was] present” when Mr. Slatten allegedly shot his weapon at the building. 12/11/18 AM Tr. 4183:2-5. To the contrary, the Army told the Blackwater team that it had engaged hostile forces who then entered the building: “The [Army] Captain stated Army attack helicopters engaged the subjects, however, they believed several of the armed subjects made it through to the buildings located at the southwest.” Ex. A at 2.
- The government allowed Mr. Murphy to testify that Mr. Slatten had lied about seeing an armed person in the building. 11/7/18 PM Tr. 1003:25-1004:8. This is contradicted by his own sworn statement. Ex. A at 2 (“Slatten observed one of the men enter a building and appear in a window with what appeared to be a scoped rifle. Slatten advised all of the team members of his observations while closely watching the subject with the scoped rifle in the window.”).
- Finally, the government implied that Mr. Slatten provoked the Army to shoot, as part of its effort to convince the jury that Mr. Slatten intended to provoke his teammates to shoot their weapons in Nisur Square. 12/11/18 AM Tr. 4184:10-18. The sworn statements show, however, that the Army had already been engaged in a firefight that included helicopters before anyone from Blackwater fired a shot. Ex. A at 2 (“The [Army] Captain stated Army attack helicopters engaged the subjects, however, they believed several of the armed subjects made it through to the buildings located at the southwest.”). And it was the Army that informed Blackwater that it was calling in

airstrikes, not the other way around. *Id.* at 2 (“A US Army Captain met with DART personnel and advised he was calling in an air strike.”).

The government claimed in its opening that the DART incident was “important” to the jury’s understanding of what happened in Nisur Square and, consistent with this introduction, told the jury about the DART incident in opening, closing, and even in its rebuttal argument. *See, e.g.*, 11/5/18 AM Tr. 497:10-14; *id.* at 495:21-496:12; 12/11/18 AM Tr. 4183:2-5; 12/11/18 PM Tr. 4372:9-22. The government cannot now credibly argue (against itself) that its withholding of exculpatory witness statements about this incident, and resulting false narrative, did not matter.

Moreover, although the suppression of Messrs. Murphy’s and Ridgeway’s sworn statements alone meets the *Brady* materiality threshold and requires a new trial, the government’s suppression of the State Department slide presentation amplified the prejudice to Mr. Slatten. *See* ECF No. 1320. Where the government suppresses multiple pieces of favorable evidence, courts must consider their cumulative materiality and may not assess each piece in isolation. *See Kyles*, 514 U.S. at 436 (materiality of withheld evidence must be “considered collectively, not item by item”); *see also Dennis v. Sec’y, Pa. Dep’t of Corrs.*, 834 F.3d 263, 312 (3d Cir. 2016) (“The importance of cumulative prejudice cannot be overstated, as it stems from the inherent power held by the prosecution, which motivated *Brady*.”). Considered together, the government’s DART-mission-related *Brady* violations had a compounding prejudicial effect; armed with the sworn statements, the defense could have attacked the credibility of two key government witnesses on a ground not otherwise available, and, armed with the slide presentation, the defense could have demonstrated that the narrative the government presented at trial through these witnesses was not only inconsistent with their prior statements, but was entirely false. As a result, the evidence submitted to the jury on the critical question of intent would have been materially different from

the false narrative it actually considered, and the government's case—which hinged on Matthew Murphy's testimony—would have been fatally undermined.

**B. The Government's Presentation of a False Narrative at Trial Regarding the DART Incident Also Mandates a New Trial.**

Not only did the government's actions run afoul of *Brady* and *Giglio*, its presentation of this false and misleading narrative to the jury at trial violated its obligations under *Napue v. Illinois*, 360 U.S. 264, 269 (1959). *See also* ECF No. 1320 at 14-15, 17; *United States v. Agurs*, 427 U.S. 97, 103 (1976) (the government cannot present evidence at trial it “knew, or should have known,” was misleading); *United States v. Vozzella*, 124 F.3d 389, 392-93 (2d Cir. 1997) (reversing conviction where the government presented evidence that “conveyed a message so misleading as to amount to falsity”); *Graves v. Dretke*, 442 F.3d 334, 344 (5th Cir. 2006) (“Because the state suppressed two statements of Carter, its most important witness[,] that were inconsistent with Carter's trial testimony, and then presented false, misleading testimony at trial that was inconsistent with the suppressed facts, we have no trouble concluding that the suppressed statements are material [under *Brady* and *Giglio*].”). The government either knew or should have known that the narrative of the DART mission that it gave the jury was false and that Messrs. Murphy's and Ridgeway's testimony was false. For this reason as well, the jury's verdict based on the government's false narrative cannot stand.

**II. The Government's Failure To Disclose the Sworn Statements Violated the Jencks Act and Rule 26.2.**

Mr. Slatten is also entitled to a new trial under the Jencks Act (18 U.S.C. § 3500) and its corresponding Federal Rule of Criminal Procedure 26.2, both of which require the production of all prior statements by government witnesses. There is no dispute that these statements, both of which were signed by the witnesses under oath, constitute witness statements that should have

been produced. Thus, the only question is whether the government's failure to produce sworn statements that directly contradict the only two witnesses who testified about an "important" issue at trial is harmless. It is not. *See, e.g., Williams v. United States*, 338 F.2d 286, 289-90 (D.C. Cir. 1964).

**III. The Sworn Statements Would Warrant a New Trial Even They Were Not *Brady/Giglio* Material.**

Finally, even if the Court somehow concluded that the government was not required to produce these exculpatory statements under *Brady* and *Giglio*, they would nonetheless warrant a new trial for the reasons set forth in the defense's original motion. *See* ECF No. 1320 at 18-20.

**CONCLUSION**

Enough is enough. Mr. Slatten's service to this country has been repaid with more than a decade of flawed legal proceedings caused by repeated government transgressions. Only weeks ago did Mr. Slatten learn that the government had once again flouted the protections afforded him by the Constitution. He has served more than five years in a prison for a shooting that he did not commit, based on false testimony and argument, all in violation of the Due Process Clause. For the foregoing reasons and those set forth in Mr. Slatten's motion for a new trial based on newly discovered evidence, the Court should grant Mr. Slatten a new trial under Rule 33(a), *Brady*, *Giglio*, *Napue*, and the Jencks Act.

Respectfully submitted,

December 2, 2019

/s/ Simon Latcovich

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 2, 2019, a copy of this filing was delivered via ECF on all counsel of record.

/s/ Simon Latcovich  
Simon Latcovich



# **EXHIBIT A**

CRD0032r

Date 10 Sep 2007	Time Approx. 2030 hours
Location WPPS Camp Baghdad, Iraq	

I, Matthew Murphy, hereby make the following statement at the request of \_\_\_\_\_, who has been identified to me as a Special Agent of the

U.S. Department of State, Diplomatic Security Service. I understand that this statement is made in furtherance of an official administrative inquiry regarding potential misconduct or improper performance of official duties and that disciplinary action, including dismissal from the Department's Worldwide Personnel Protective Services contract, may be undertaken if I refuse to provide this statement or fail to do so fully and truthfully. I further understand that neither my statements nor any information or evidence gained by reason of my statements can be used against me in a criminal proceeding, except that if I knowingly and willfully provide false statements or information, I may be criminally prosecuted for that action under 18 United States Code, Section 1001. I agree that the statements I furnish and any information or evidence resulting there from may be used in the course of disciplinary proceedings, which could result in disciplinary action, including dismissal.

#### Incident

I, Matthew Murphy, was assigned as a Protective Security Specialist during the below incident. I swear that the below summary is a true and accurate representation of the events as they occurred.

The following after action report reflects, in summary, Team 23's activities during a small arms engagement with hostile forces at the crash site of a RSO aircraft at grid 38SMB593720. This incident occurred on 10 September 2007 at approximately 1538 hours. The Team 23 personnel involved in this incident include the following: David Bynum (Team Leader/Medic), Nicholas Slatten (DDM), Tommy Vargas, Adam Frost, Freddie Ortiz, Jeremy Ridgeway, Evan Liberty, Matthew Murphy, Jeremy Kruger, Dean Wagler, Joe Baggott and Paul Slough.

On 10 September 2007 at approximately 1500 hours, Team 23 received word an RSO air asset had crashed, and an element of Team 23 would be performing a Downed Aircraft Recovery Team (DART) mission. DART team leader David Bynum conducted a pre-mission brief at the LZ Washington hanger/staging area. The mission brief included rules of engagement, firearms policy, escalation of force, and actions on contact in the event the team was attacked. The briefing also included threat intelligence, from the Red Detail imbedded intelligence analyst, to include sniper activity, recent small arms attacks and explosive attacks throughout the area of operation.

All of the aforementioned DART team members were flown to the crash site on two 412 medium lift helicopters. Once at the site, the team formed a 360 degree outer perimeter around the crashed aircraft to allow mechanics and air personnel to sanitize the downed aircraft. Also located at the site were several US Army personnel in HMMWV's, a Bradley Armored Fighting Vehicle, and Army

Attack Helicopters circling above assisting with site security. Army personnel advised the team to watch for suspicious activity occurring in the tree line located on the southwest side of the site.


Two clusters of buildings were observed in the immediate vicinity of the crash site. The first set was approximately 550 yards to the southwest of the site and the second was over 1200 yards to the west from the site. A tree line separated the two clusters of buildings. Shortly after arriving on location Army assets were observed in a firefight around the buildings located over 1200 yards to the west of the crash site. An Army Captain advised the DART element that several armed subjects in civilian clothing were seen running toward the buildings located to the southwest. The Captain stated Army attack helicopters engaged the subjects, however, they believed several of the armed subjects made it through to the buildings located at the southwest.

After several minutes on the ground, DDM Nicholas Slatten observed, through his scoped SR-25 rifle, several armed men in civilian clothing enter the buildings located toward the southwest. Slatten observed one of the men enter a building and appear in a window with what appeared to be a scoped rifle. Slatten advised all of the team members of his observations while closely watching the subject with the scoped rifle in the window. Slatten observed the subject present the scoped weapon pointing it in the direction of the team apparently about to fire. Fearing for the lives of himself and his team, Slatten fired his Department of State SR-25 rifle at the suspect at which time the hostile suspect dropped out of site and did not appear again.

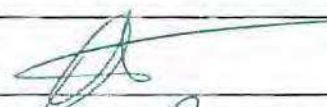
Almost simultaneously, the team began receiving small arms fire from windows and rooftops of the buildings to the southwest, at ground level in a grassy area, and from the tree line. All DART personnel repositioned in a line on the southwest except for PSS Kruger who remained to cover the rear with an Army HMMWV and a MRAB Mine sweeping vehicle. Additionally, the little birds and medium lifts were landed a distance away to the northeast. DART and Army personnel continued to receive small arms fire from the above mentioned locations. Fearing for their lives and the lives of the team, all team members except Krueger returned accurate fire at visible threats using their Department of State issued M240 Machine guns, M249 machine guns and SR-25 scoped rifle. Additionally, the Army engaged the same targets with their Bradley 25mm main gun and .50 caliber machine guns. A US Army Captain met with DART personnel and advised he was calling in an air strike. A short time later, the Army attack helicopters attacked the enemy firing positions stopping the threat.


Team Leader Bynum accounted for all DART members and no injuries were reported. Upon sanitizing the aircraft, the air mechanics and crew members were returned to LZ Washington via 412 medium lift helicopters. Approximately ten (10) minutes later, the 412 medium lift helicopters returned to the crash site and picked up the entire DART element returning to LZ Washington. All team members and equipment were accounted for. No injuries or damage were reported. All Command members were later apprised of the complete details of the incident.///END///

I hereby swear or affirm that the information contained in this statement is the truth to the best of my knowledge.

Signed	
Printed	Matthew Murphy
Address	WPPS Camp Baghdad, Iraq

Subscribed and sworn to before me on this 11<sup>th</sup> day of September, 2007.

Signed	
Printed	David A. Motley
SPECIAL AGENT, UNITED STATES DEPARTMENT OF STATE, DIPLOMATIC SECURITY SERVICE	

Witness Signature	
Printed	Maria A. Reina ARSU
Address	AmbEmb Baghdad

# **EXHIBIT B**

CRD0032k

Date 10 Sep 2007	Time Approx. 2030 hours
Location WPPS Camp Baghdad, Iraq	

I, Jeremy Ridgeway, hereby make the following statement at the request of \_\_\_\_\_, who has been identified to me as a Special Agent of the

U.S. Department of State, Diplomatic Security Service. I understand that this statement is made in furtherance of an official administrative inquiry regarding potential misconduct or improper performance of official duties and that disciplinary action, including dismissal from the Department's Worldwide Personnel Protective Services contract, may be undertaken if I refuse to provide this statement or fail to do so fully and truthfully. I further understand that neither my statements nor any information or evidence gained by reason of my statements can be used against me in a criminal proceeding, except that if I knowingly and willfully provide false statements or information, I may be criminally prosecuted for that action under 18 United States Code, Section 1001. I agree that the statements I furnish and any information or evidence resulting there from may be used in the course of disciplinary proceedings, which could result in disciplinary action, including dismissal.

#### Incident

I, Jeremy Ridgeway, was assigned as a Protective Security Specialist during the below incident. I swear that the below summary is a true and accurate representation of the events as they occurred.

The following after action report reflects, in summary, Team 23's activities during a small arms engagement with hostile forces at the crash site of a RSO aircraft at grid 38SMB593720. This incident occurred on 10 September 2007 at approximately 1538 hours. The Team 23 personnel involved in this incident include the following: David Bynum (Team Leader/Medic), Nicholas Slatten (DDM), Tommy Vargas, Adam Frost, Freddie Ortiz, Jeremy Ridgeway, Evan Liberty, Mathew Murphy, Jeremy Kruger, Dean Wagler, Joe Baggott and Paul Slough.

On 10 September 2007 at approximately 1500 hours, Team 23 received word an RSO air asset had crashed, and an element of Team 23 would be performing a Downed Aircraft Recovery Team (DART) mission. DART team leader David Bynum conducted a pre-mission brief at the LZ Washington hanger/staging area. The mission brief included rules of engagement, firearms policy, escalation of force, and actions on contact in the event the team was attacked. The briefing also included threat intelligence, from the Red Detail imbedded intelligence analyst, to include sniper activity, recent small arms attacks and explosive attacks throughout the area of operation.

All of the aforementioned DART team members were flown to the crash site on two 412 medium lift helicopters. Once at the site, the team formed a 360 degree outer perimeter around the crashed aircraft to allow mechanics and air personnel to sanitize the downed aircraft. Also located at the site were several US Army personnel in HMMWV's, a Bradley Armored Fighting Vehicle, and Army



Attack Helicopters circling above assisting with site security. Army personnel advised the team to watch for suspicious activity occurring in the tree line located on the southwest side of the site.


Two clusters of buildings were observed in the immediate vicinity of the crash site. The first set was approximately 550 yards to the southwest of the site and the second was over 1200 yards to the west from the site. A tree line separated the two clusters of buildings. Shortly after arriving on location Army assets were observed in a firefight around the buildings located over 1200 yards to the west of the crash site. An Army Captain advised the DART element that several armed subjects in civilian clothing were seen running toward the buildings located to the southwest. The Captain stated Army attack helicopters engaged the subjects, however, they believed several of the armed subjects made it through to the buildings located at the southwest.

After several minutes on the ground, DDM Nicholas Slatten observed, through his scoped SR-25 rifle, several armed men in civilian clothing enter the buildings located toward the southwest. Slatten observed one of the men enter a building and appear in a window with what appeared to be a scoped rifle. Slatten advised all of the team members of his observations while closely watching the subject with the scoped rifle in the window. Slatten observed the subject present the scoped weapon pointing it in the direction of the team apparently about to fire. Fearing for the lives of himself and his team, Slatten fired his Department of State SR-25 rifle at the suspect at which time the hostile suspect dropped out of site and did not appear again.


Almost simultaneously, the team began receiving small arms fire from windows and rooftops of the buildings to the southwest, at ground level in a grassy area, and from the tree line. All DART personnel repositioned in a line on the southwest except for PSS Kruger who remained to cover the rear with an Army HMMWV and a MRAB Mine sweeping vehicle. Additionally, the little birds and medium lifts were landed a distance away to the northeast. DART and Army personnel continued to receive small arms fire from the above mentioned locations. Fearing for their lives and the lives of the team, all team members except Krueger returned accurate fire at visible threats using their Department of State issued M240 Machine guns, M249 machine guns and SR-25 scoped rifle. Additionally, the Army engaged the same targets with their Bradley 25mm main gun and .50 caliber machine guns. A US Army Captain met with DART personnel and advised he was calling in an air strike. A short time later, the Army attack helicopters attacked the enemy firing positions stopping the threat.


Team Leader Bynum accounted for all DART members and no injuries were reported. Upon sanitizing the aircraft, the air mechanics and crew members were returned to LZ Washington via 412 medium lift helicopters. Approximately ten (10) minutes later, the 412 medium lift helicopters returned to the crash site and picked up the entire DART element returning to LZ Washington. All team members and equipment were accounted for. No injuries or damage were reported. All Command members were later apprised of the complete details of the incident.///END///

I hereby swear or affirm that the information contained in this statement is the truth to the best of my knowledge.

Signed	
Printed	Jeremy Ridgeway
Address	WPPS Camp Baghdad, Iraq

Subscribed and sworn to before me on this 11<sup>th</sup> day of September, 2007.

Signed	
Printed	David A. Motley
SPECIAL AGENT, UNITED STATES DEPARTMENT OF STATE, DIPLOMATIC SECURITY SERVICE	

Witness Signature	
Printed	Marie A Retz ARSU
Address	Am Emb Baghdad