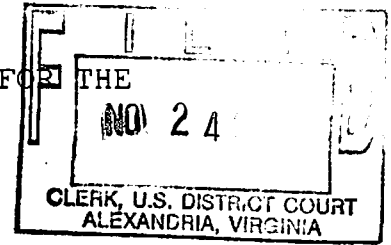


IN THE UNITED STATES DISTRICT COURT FOR
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



UNITED STATES OF AMERICA) Criminal Case 1:08mj989
)
 v.)
)
 DON MICHAEL AYALA)
)
 Defendant)

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT - AMENDED

I. Purpose of this Affidavit

1. This affidavit is provided to support of a complaint charging **DON MICHAEL AYALA** ("AYALA") with murder in the second degree, in violation of 18 U.S.C. §1111 and the Military Extraterritorial Jurisdiction Act, 18 U.S.C. §3261.

II. Your Affiant

2. Your affiant, Charles T. Rector, is a Special Agent with the United States Army Criminal Investigation Division (CID) and has been so employed for approximately 11 years. Your affiant is trained in law enforcement investigation techniques and has attended the following training courses: Apprentice Special Agents Course, and CID Warrant Officer Basic Course. Your affiant is currently the Special Agent in Charge of the Fort Myer, Virginia CID Office.

3. I have been informed that 18 U.S.C. §3261 states that whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, while employed by or accompanying the Armed Forces outside the United States, shall be punished as provided for that offense. I have also been informed that 18 U.S.C §1111, provides that whovever commits murder in the second degree in the special maritime and territorial jurisdiction of the United States shall be imprisoned for any term of years or for life.

4. The facts and information contained in this affidavit are based upon my personal knowledge, the investigation and observations of other officers and agents involved in this investigation, and statements of witnesses. All observations referenced herein that were not personally made by me were related to me by the persons who made such observations.

5. This affidavit contains information necessary to support the requested complaint. It is not intended to include each and every fact and matter observed by me or known to other officers and agents involved in this investigation.

III. Background

6. **AYALA** is a contracted civilian employee in support of the U.S. Armed Forces serving in Afghanistan. **AYALA** has a Letter of Authorization with a contract period start date of 1 September 2008, with Department of Defense contract number W91260-06-D-0005, via BAE Systems which is dated 25 September 2008, as a Human Terrain Team (HTT) member in Afghanistan, U.S. Army Central Command Area of Operations.

7. **AYALA** is issued and authorized a DOD Identification Card.

8. **AYALA** was in the U.S. Army for an unknown period of time. Prior to 2008, **AYALA** was employed in the Iraq Theater of Operations by an unknown company, where he provided personal security for the Iraqi Prime Minister. **AYALA** was also employed in the Afghanistan Theater of Operations by an unknown company prior to 2008, where he provided personal security for the Afghan President. **AYALA** was later hired by BAE Systems, and returned to Afghanistan. He was employed in the Regional Command (RC) - South Area of Operations (AO) and began working with a BAE Systems HTT in support of U.S. Armed Forces.

IV. Nature of the Offense

9. On 4 November 2008, **AYALA** went on a walking patrol from Forward Operating Base (FOB) Hutsal, Afghanistan, into

the adjacent village of Chehel Gazi, Afghanistan, approximately 80 kilometers west of Kandahar, Afghanistan. The patrol consisted of one platoon of U.S. Army infantry Soldiers of C Company, 2-2 Infantry Battalion, three HTT members (Ms. Paula Loyd, Mr. Clint Cooper, and Mr. Don Ayala), and three local national interpreters. While in the village, Ms. Loyd was attacked by Mr. Abdul Salam, an Afghan citizen from Kandahar, Afghanistan. Salam lit a container of flammable liquid and threw it on Loyd setting her on fire, causing second and third degree burns over about sixty percent of her body.

10. Salam immediately fled the scene and ran about 50 meters toward **AYALA**. **AYALA** drew his pistol but did not fire at Salam. **AYALA** instead extended his arm, causing Salam to run into his arm and fall to the ground. **AYALA** attempted to restrain Salam and was assisted by soldiers from the platoon who responded to the scene. Salam was restrained with plastic restraints (also called "flexcuffs" or "zipcuffs"), around his wrists, which were behind his back. At this point Salam became a detainee, by U.S. military definition. **AYALA** further restrained Salam by kneeling over Salam and using his body weight to hold Salam to the ground. **AYALA** also pointed his pistol at Salam's head. Salam continued to resist detention, but there were several Soldiers around him

and **AYALA** had Salam effectively immobilized. After about ten minutes, a soldier approached the location where **AYALA** had Salam detained and informed the personnel in the area that Loyd was burned badly. **AYALA** pushed his pistol against Salam's head and shot Salam, killing him instantly.

11. After shooting Salam, **AYALA** had his pistol and rifle confiscated by the platoon leader in charge of the patrol. **AYALA** willingly gave up his weapons and was returned to FOB Hutsal after the patrol consolidated. **AYALA'S** pistol was retained by members of the unit until return to FOB Hutsal. A representative from the unit's higher headquarters took custody of the pistol the same day and secured it at FOB Ramrod, Afghanistan, until CID agents arrived and collected the pistol as evidence. The pistol is pending laboratory examination for DNA evidence, ballistics, and functionality.

12. CID agents visited the scene of the shooting at Chehel Gazi village and located a bullet in the ground at the point indicated by 1LT Pathak as where Salam was shot.

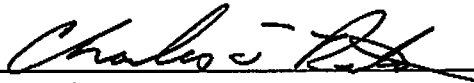
13. A number of soldiers and three interpreters from the patrol were interviewed and substantially verified the account of the incident. Witnesses confirmed Salam was the person who attacked Loyd by setting her on fire. SPC Djeens P. Brun, the platoon medic, saw Salam light a pitcher of

fuel and throw it on Loyd. Mr. Mohamed Rahimi, one of the interpreters, saw Salam run from the scene and get knocked to the ground by **AYALA**. Witnesses also confirmed Salam was detained and no longer a threat to U.S. forces when he was shot by **AYALA**. PFC Justin M. Gomez, a member of the patrol, helped **AYALA** subdue Salam until Salam was put in restraints. SGT Justin M. Chaney, a team leader, received a set of zipcuffs from **AYALA** and bound Salam's hands behind his back while PFC Gomez and **AYALA** held Salam down. Witnesses also confirmed **AYALA** shot Salam. SPC Justin L. Skotnicki, a team leader, saw **AYALA** shoot Salam in the side of the head. 1LT Matthew Pathak, the platoon leader, was about three steps away from **AYALA**, who was kneeling over Salam, when he heard the shot. When he turned around, **AYALA** was standing up and lowering his pistol to his side.


14. On 23 November 2008, **AYALA** was first brought into the Eastern District of Virginia in the custody of Deputy U.S. Marshals, having flown nonstop from Kuwait to Dulles International Airport, which is located in the Eastern District of Virginia.

15. Based on the foregoing, I submit that there is probable cause to believe that on 4 November 2008, **AYALA** committed murder in the second degree of Abdul Salam, in violation of 18 U.S.C. §1111, and that this Court has

jurisdiction while employed by or accompanying the Armed Forces outside the United States, pursuant to 18 U.S.C. §3261, et seq.


Charles T. Rector
Special Agent
U.S. Army CID

SWORN TO AND SUBSCRIBED BEFORE ME THIS 24th DAY OF NOVEMBER, 2008.

 /s/
Theresa Carroll Buchanan
United States Magistrate Judge
UNITED STATES MAGISTRATE JUDGE