

The second session of the Article 32 Investigation conducted by LTC Moseley reference charges against SSG Kenneth Hodges convened at 1305 hours, 9 April 1970, Building 41, Fort McPherson, Georgia 30330. Present for this session were:

- a. Govts Representative - CPT Robert Demetz
- b. Defense Counsel - CPT Robert K. Raulerson
- c. Accused - SSG Kenneth Hodges
- d. Clerical Assistant - SP4 Gary E. France

The Article 32 Investigating Officer opened the session by reminding the accused of his rights under Article 31, UCMJ.

Then, along with the Government's Representative and the Defense Counsel, they reviewed the minutes of the last session of 31 March 1970. The Government's Representative brought up the aspect of civilian counsel to represent the accused. The Defense Counsel stated that no civilian counsel has yet been obtained, and the accused agreed to proceed without the aid of civilian counsel. The Government's Representative asked of the Defense Counsel if all motions made at the previous session had been attended to, and the Defense Counsel was satisfied that they had. In addition, the Defense Counsel wishes to call the two Trevinos, Roy and Fernando, which he will confirm with the Investigating Officer in the immediate future.

Specialist 4 Leonard Gonzalez was then called as the first witness, was sworn, and testified in substance as follows. In the questions posed by the Government's Representative, the witness stated that he knew the accused, SSG Hodges, from the 2d Platoon of C/1/20 as a squad leader during the operation into the Pinkville area. He saw the accused at My Lai (5) and

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was with him when he left the hamlet of My Lai (4). The witness saw SSG Hodges at My Lai (5) from a distance of approximately ten feet coming out of a hootch while pulling his pants up over his waist. Also both Trevinos were in the hootch. He did not see the Vietnamese girl in or near this hootch, but did see a girl in this vicinity upon returning from a search through the village. From her appearance, this girl had obviously been involved in sexual intercourse, clothed only in pajama tops and nude from the waist down. Moreover, the witness stated that he didn't know how near to the aforementioned hootch he had seen this girl, who was walking with an American soldier. In the Defense Counsel's questions, the fact arose that from the time the witness saw the accused leaving the hootch until they returned together to join the rest of the company, over two hours of time had elapsed. The witness didn't see the accused anymore in Vietnam because he was wounded and evacuated shortly thereafter. He did, however, classify the accused as a good soldier and good person to talk to. This girl who had been walking with another soldier seemed apparently to have been enjoying herself in that she had not been forced into walking along with him, nor did she seem to mind being half nude. The witness also knew Bunning well, perhaps even better than the accused, and they were close, but Bunning wasn't in My Lai (5) at that time. Captain Demetz asked the witness if the accused had said anything as he was leaving the hootch and pulling up his pants, but the accused had not said anything. Nevertheless, the witness saw a line similar to a chow line waiting outside the hootch and assumed it was a rape, but the Defense Counsel objected, stating it might have just been sexual intercourse, not necessarily rape. The witness was excused, subject to recall.

The third witness, SP5 Harold Brown, was then called as a witness, was sworn, and testified in substance as follows. The witness also recognized the accused as being a member of the same company, C/1/20, in Vietnam where the witness was assigned near the end of March of 1968, for the period of one year. The Investigating Officer mentioned his CID statement regarding the point where several persons had stated killing Vietnamese. The witness heard it in a group that Torres was just involved in the My Lai (4) operation. From the CID statement he had thought the man coming out of the hootch was armed, but couldn't be sure. The defense counsel discovered from the witness that these group sessions were often more or less just scare talk, and the witness was quick to agree. The witness was excused.

After a brief recess, the fourth and last witness, SP4 Leonard R. Gonzalez, was called, was sworn, and testified in substance as follows. Again the witness recognized Torres, but contrary to the other witnesses, Gonzalez had been assigned to C/1/20 in November of 1967, so he was in the company and present at My Lai (4) on the day of the operation, 16 March 1968. His duty assignment on that day was as a grenadier. At this point, the witness stated that he hadn't observed Torres at that time. Prior to the 16th of March, on the evening before the operation, the company commander, Captain Medina, had told the men of his company that they would be going through the small hamlet "killing anything and everything we see" for "revenge". The witness was sure that Captain Medina had said this operation was for revenge, although there were no actual orders to kill noncombatants, but to shoot everything. The witness also stated that Captain Medina had received orders to kill everyone in the village that remained, because an announcement had been made over a public address system and via notices dropped from aircraft warning all

inhabitants to leave the area or they might get hurt. Therefore Captain Medina had told them that if they saw or ran into anything they would be VC or NVA. Aside from these instructions from Captain Medina, the witness could not recall any other instructions from his platoon leader, Lieutenant Brooks; his platoon sergeant, nor his squad leader. The witness knew Torres before the operation into My Lai (4), but the witness was in the second squad and didn't know what squad the accused was in, or his job at that time. When they went into the operational area, the landing zone was cool. They received no hostile fire after landing or during the operation. Small arms fire was heard. No casualties by booby traps or land mines were seen to go off in the area the witness covered, and no resistance from anyone. After giving his own story about how they went through the village, the witness stated that Torres had been there. Gonzalez had observed no firing after the first round of the day (after they got on the ground) had gone off when it hit a baby in the head because he had turned around and got sick. Once again, the witness stated that Torres was there. When he turned back around he saw about 15 bodies. At this point it was discovered by the Investigating Officer that the witness didn't know the difference between legal and illegal orders. After a brief discussion of that, the hanging incident was brought up, and the witness could not specifically say that Torres had hanged a man or that ~~this~~ man had been hanged. When the witness was questioned by the defense counsel, he stated that Captain Medina had been a very strict commanding officer, and actually did give these orders to kill. He only had a vague recollection of the details in the alleged hanging incident. The witness agreed that the CID might have possibly helped put words in the witness's mouth due to his problems comprehending the English language connected with being unable to remember. On the Government's side of the questioning, the witness recalled

that there was a seven or eight man line going through the village. The
witness had been on the far right of this line, and the shot fired at the baby
was in close proximity to his, only three or four men down the line, one of
whom he was sure had been Torres. Then the witness stated that he had seen
Torres no more after the alleged hanging incident. The witness wished to
correct the CID statement in that he didn't actually see Torres put the rope around
the man's neck. The man was being carried inside the bootch. The witness
couldn't tell Wright and Hutson apart because they looked so much alike to him
so he didn't know which was torturing the man. But it looked like Torres was
hitting the man's wounded leg with the side of the blade of his knife. The
witness didn't see Torres secure the rope around the man's neck. And "just
minutes later" he couldn't say he saw the man's feet off the ground or that he
was actually hanging. He also stated that the CID didn't really help him
remember things, but read other statements from other people they had questioned.
He wished to emphasize that the statements presented today are more accurate
than the CID statement. He also assured the Government's Representative that
he would testify under oath that Torres was carrying this man. Torres'
picture wasn't in any of the 65 black and white photographs the CID showed
the witness. The witness was excused.

At this point, the Defense Counsel requested time to go through the CID
statement of Gonzalez made on the 28th of February 1970 since the one
previously mentioned had been the only one he had seen, and it was dated
27 February 1970.

The Investigating Officer then stated that the hearing would next meet at
1330 hours on Tuesday, 14 April 1970, at which time all last requests for
witnesses must be made and comments on anything either side requested and
hasn't been available will be made. Just as the hearing was about to recess,