

# Two attorneys take on task of defending ex-GI

Pair seeks to appeal military murder conviction, claim former lieutenant had ineffective counsel

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Two Chicago-area attorneys seeking a new trial for a former U.S. Army lieutenant convicted of murdering Afghan civilians have asked the military's highest criminal appeals court to review the case.

John Maher of John N. Maher Legal Services, one of the attorneys representing former 1st Lt. Clint Lorange, said he and Western Springs lawyer John Carr of Illinois Government Affairs Management, Inc., filed a petition earlier this month requesting review from the U.S. Court of Appeals for the Armed Forces. Lt. Col. Christopher Daniel Carrier, of the U.S. Army Legal Services Agency in Virginia, is also representing Lorange.

The court has discretion to accept or deny the case.

The U.S. Army Criminal Court of Appeals, a lower military appeals court, denied Lorange's request for a new trial in June.

Lorange's case centers on his actions in July 2012 that resulted in the death of two unarmed Afghans, who were approaching his platoon on a motorcycle.

In June 2012, Lorange became leader of his platoon after the former first lieutenant was wounded in a bombing.

On July 2, 2012, Lorange was leading his platoon on patrol in southern Afghanistan.

Shortly after beginning the patrol, one of the soldiers, Pfc. James Skelton, spotted a motorcycle with three people heading in the direction of the platoon, according to the opinion written by Judge James Herring Jr. with the U.S. Army Court of Criminal Appeals.

Skelton fired shots at the motorcycle but missed.

Whether Skelton reported the men as a threat is under dispute.

Lorange, 32, and his lawyers assert that Skelton did vocalize his concern that the approaching motorcycle posed a threat and requested permission from Lorange to fire at the motorcycle. They cite Skelton's testimony that he fired at the motorcycle to protect his platoon.

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But the U.S. Army Court of Criminal Appeals opinion, issued June 27, claims that Skelton did not view the men on the motorcycle as a threat and he would not have fired without Lorange's order.

A second soldier in the platoon, following Lorange's orders, shot at the motorcycle, killing two of the men. The third man escaped on foot.

In August 2013, a general court-martial convicted Lorange of murder, attempted murder, reckless

endangerment, wrongfully communicating a threat and soliciting a false statement. He was also convicted of obstructing justice by making a false radio report after the two men on the motorcycle were killed.

He is serving a 19-year sentence at the U.S. Disciplinary Barracks at Fort Leavenworth, Kan.

On appeal to the U.S. Army Court of Criminal Appeals, Lorange's lawyers argued he deserves a new trial because his rights to due process and effective assistance of counsel were violated, among other issues.

Maher and Carr argue that the prosecution violated its discovery obligations by failing to investigate the victim's identities and determine whether they were connected to terrorist activities.

The U.S. Army Court of Criminal Appeals found that "the language of the discovery request reflects the typical boilerplate request for discovery" and therefore, the prosecution did not need to search intelligence databases in order to fulfill its discovery obligations.

The Army court also found that the information linking the victims to bomb-making was ultimately not favorable to Lorange since he "was not aware of any of this information at the time he ordered his soldiers to engage."

It also rejected claims that Lorange's Sixth Amendment rights were violated because his initial defense lawyer failed to produce

it does not violate due process when a prosecutor makes no attempt to search biometrics data to confirm potential links to terrorism.

Biometrics data is used by the military, and it refers to fingerprint or DNA information collected from bomb parts as well as local nationals encountered by military personnel.

Maher said the evidence that the victims were bomb makers is relevant if the government argues that they are innocent civilians.

"It stands to reason, if they left their fingerprints on bombs, that would negate the prosecution's showing that they were innocent civilians," Maher said in an interview. "This is a matter of constitutional law ... and the Army court, we think, is flat wrong"

The brief also claims that the conduct of Lorange's initial defense attorney "fell below the standard of reasonableness required of this case," by failing to interview members of his client's platoon, among other mistakes.

Maher said the conflicting testimony by Skelton is one reason why Lorange's conviction is worth appealing.

"[The Army Court of Criminal Appeals] cherry-picked what it wanted to support the outcome it was seeking," Maher said. "[Herring] did not tackle head on [Skelton's] testimony that he fired his shots in self-defense to protect him and his unit."

The defense attorney also did not elicit testimony on cross-examination that members of Lorange's platoon were given immunity against criminal liability in exchange for testifying against Lorange, Maher said.

"Counsel's failure to explain that the soldiers were all accused of murder, stigmatized as 'war criminals,' that the soldiers were re-assigned to different units, given immunity and ordered to cooperate, left substantial and experiential questions unanswered, to [Lorange's] detriment," the brief states.

Army Public Affairs did not respond to a request for comment.

This case is *United States v. Clint A. Lorange*, No. 20130679.

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