



MOD-83-0000121-A

WITNESS STATEMENT

(CJ Act 1967, s.9: MC Act 1980, ss.5A(3) (a) and 5B: MC Rules 1981, r.70)

Statement of: GARDENER THOMAS

Age if under 18: OVER 18 (if over 18 insert 'over 18') Occupation: CORPORAL [REDACTED]

This statement (consisting of 6 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.

Signed: T GARDNER

Date: 12/07/2004

This statement is provided further to my previous statement dated 5th August 2003 (05/08/2003). I have been shown my previous statement and asked to clarify points from each section in more detail. During my first paragraph, I refer to being based at the HACIENDA, 5km south of Ad- Dayr. The HACIENDA is a fortified villa accommodation where two troops reside. There were in total about 24 of us based here. It is a small military base with an Operations Room as well. It is from here that we conduct our daily patrols of the surrounding area. Our role during Operation Telic 2 was mainly to deal with criminal offences, such as cable stripping, theft of weapons and selling fuel. In fact anything that is illegal, we try to nip it in the bud. Iraq has a very prominent "gun culture". I would say that most Iraqis are armed with or have access to AK-47s and there were 'rounds' regularly being let off at night. Prior to the incident however, there were no incidents of the HACIENDA coming under attack. Since the incident I have been fired upon on a number of occasions. For the five weeks I was there prior to the incident, I had been more or less based at the HACIENDA. My duties included completing stag duties, Landrover and Tank Patrols of the surrounding area. The Iraqi people themselves can be of a mixed nature. Many were quite selfish and crime was rife. They would steal the eyes out of the back of your head! A lot of our work involved dealing with the criminal elements although the majority of the Iraqi people were ok and civil. I cannot think of any specific incident against any soldier at the HACIENDA prior to the incident. I can confirm that I was also involved in Operation Telic 1, which was the war in Iraq. I would have to say that I felt safer in Operation Telic 1 than I did in Operation Telic 2, albeit Telic 1 was the war period. This was due to the fact that I spent most of my time driving around in trucks in the rear echelons providing support. During Operation Telic 2 however, we did a lot of patrolling on the ground and so had face-to-face dealings with the Iraqis. We had a local fuel station nearby.

Signed: T GARDNER
2003(1)

Signature Witnessed by: STEVE FOXLEY DS

where we had to restore order because they were distributing kerosene. There were five or six hundred people all wanting fuel at once. We had to calm that situation down. Some of the Iraqis were alright towards us. After the incident the guys in the garage said they liked the British Forces. I have been asked to clarify my knowledge of S009 and S008. I did not know S008 very well. He was stationed at a local police station. I knew of him but had nothing to do with him. He was just another soldier doing his job. He was teaching the Iraqi police and getting them uniforms and that. I am not sure if I patrolled with him prior to the incident. I knew S009 reasonably well. We had just formed a new Squadron. He was one of the guys and I would describe him as a colleague, not a close friend. I did know him prior to the incident but I did not spend any time with him socially. I had no knowledge of anything he may have been involved in, on or off the record. I would describe him as a level-headed guy, he wasn't thick. He was always keen and eager and wasn't fazed by the situation that we were involved in. I have been asked to clarify whether there was an Operational meeting prior to us going on patrol. The patrols we completed were a regular routine, possibly two or three a day. We would collect the RMP from a station, take him to the next station and complete our daily patrol so no exact briefing was given prior to each patrol. However there was a daily "O" Group, which is where our Sqd Leader would get the orders for the day and disseminate it to the whole troop in a meeting. This would have been given by either Lt HALLORAN or the other troop leader whose name I cannot remember. This included updated intelligence, which would have been noted by them. On the 2nd August 2003 (02/08/2003), we definitely had an O group meeting that morning that was given to us but I can't remember who by and I can't remember what was said. But I can remember that I had no extra fears or concerns on that day when I went on patrol. I know nothing about any Risk Assessments carried out regarding the patrols but I am aware that they are a big thing with the Army so one would have been done to cover our patrols but I do not know by whom or where it would be. I now refer to the section of my statement when I encountered the Iraqi men with the handcart. Initially, I stated there were two Iraqi men left after the others had run towards the town. However, I was guarding two of the men and a third made off pursued by S008 and S009. The two men that I was guarding began to resist arrest; I had the Iraqis on their knees so they could not run away. I was covering them and I told them to put their hands behind their backs and removed my plasticuffs from my webbing. One of them, the

Signed: T GARDNER
2003(1)

Signature Witnessed by: STEVE FOXLEY DS

small stocky one wasn't willing to put his wrists together. I think it was because of what Saddam's men used to do to them, once cuffed they were taken away and would never be seen again and so I think he was scared. It was difficult because I was trying to keep my rifle secure, which was on a sling, and it kept swinging around my front every time I tried to bend down to put on the cuffs. I was also in possession of a side arm at the time because I am a 'loader'. This means that my job entails me loading ammunition onto vehicles and driving them. Due to this being inside the wagon, I am authorised to carry a side arm for self-protection. S008 and Lt HALLORAN were also in possession of side arms but S009 was not. S008 was wearing a side arm in a side holster with a clip on for security, whereas I had my pistol in its holster inside my tactical vest that was zipped up. I believe S008 belt and holster was a black issue, light one. I can't remember which way the handle of the pistol was pointing but I know that all you have to do to remove the weapon is to pinch the sides of the clip to release it. This wouldn't be difficult. Whilst I was struggling with the two Iraqis, LT HALLORAN came across and began shouting and swearing at them. I don't know exactly what he said though. He did this to gain control of the situation. You have to put some fear into them for them to wind their necks back in so they would comply with your wishes. I also showed them my rifle, not in a threatening manner, pointing it at them but making them aware that I was armed and to show them who was boss. I did not search my prisoners at that time as everything suddenly went mad. However, they may have been searched afterwards at the station but not by myself. Whilst I was dealing with the prisoners the third male made off and S008 and S009 gave chase. Lt HALLORAN stayed and helped me with the prisoners. He had told me to arrest the two of them for the things they were carrying. It wasn't until later that I realised what they were actually pushing was anti aircraft rounds. It is not unusual to see this sort of thing as there are mounds of ammunition all over Iraq. These are invariably in open ground and not buried. Quite often, they are in container loads and detonate due to the heat of the sun. Whilst I continued to deal with the two Iraqis, a large group of people had begun to gather around our location. I was aware that the interpreter was trying to control the situation and keep them away from us. Some of the people ran after the two soldiers back towards the town. The interpreter went missing after the incident and I didn't see him again that day. I have seen him since in passing but not to talk to. Most of the interpreters you can have a laugh with and they seem to be respected by the other Iraqi people. I have been asked what Officer Safety

Signed: T GARDNER
2003(1)

Signature Witnessed by: STEVE FOXLEY DS

equipment we possess. By issue we have our rifles and pistols. Other equipment we purchase ourselves by personal preference. I have purchased and carry my own extendable baton and unofficial knife. Plasticuffs are not personal issue however there are piles of them readily available that you can just help yourselves to when needed. Not everybody takes them though. We are not issued with any CS Gas. I have never seen it being used. I believe it is illegal. After S008 and S009 had run after the Iraqi male, LT HALLORAN and I began trying to load the two prisoners into our Landrover which was parked about 10 feet away. This was quite difficult trying to get them into a high-sided vehicle when they were unable to use their hands as an aid. The whole process of getting them in must have taken two to three minutes. Just prior to securing the prisoners I had seen S008 followed by S009 chase the Iraqi male towards the town. I heard a commotion in my peripheral hearing followed by a gun going off. I didn't pay much attention but I was quite surprised he let off a warning shot. I believe it was S008 as I could see he had his rifle pointed up in the air. There are rules in regard to warning shots. I would only let off a round if I felt under threat. He was behind the Iraqi so he wasn't causing him a threat; he was running away so I can't understand why he let off a warning shot. I would not have let off a warning shot in that situation - I believe it is unacceptable practice. For example, if someone were going to shoot you or throw or detonate a bomb, then you would be able to shoot him or her without a warning shot. We do not have any specific training in regards to warning shots but we do have training on Rules of Engagement. Rules of Engagement vary from 'theatre' to 'theatre' but we are issued with a white 'Rules of Engagement' card. However, I do not know if this actually covers warning shots. A couple of minutes after I had last seen the two soldiers disappear Lt HALLORAN said to me "Go and see where the other two are". I followed the route that they had taken and where some of the Iraqi civilians had followed. As I got to a point inside the village I could see a group of about 40 people. The group was made up of various ages and sexes from children to adults. I have been shown a copy of exhibit WDB/1B and have shown on a dotted line the path I took when I entered the village. I exhibit this as my exhibit TG/1. I would best describe this path as after having entered the village, running down a street past a large crowd of people who I have described and running round a small block of buildings to my right whilst I tried to find my two colleagues. Eventually as I was making my way back to the Landrover I looked down to my right to the original pathway I had taken and to where the

Signed: T GARDNER
2003(1)

Signature Witnessed by: STEVE FOXLEY DS

RESTRICTED

Continuation of Statement of: GARDENER THOMAS

Form MG11(T)(CONT)
Page 5 of 7

crowd of people had gathered and I saw **S008** standing near to them. He is marked with an X RMP on my exhibit TG/1. The crowd were wailing and making a high pitched screaming noise, which is a kind of distress signal and sounds like a Red Indian and is bloody scary. I think the screeching is a way of encouraging people to come and see what is happening. I don't think any of the crowd were armed with anything but I am aware that they all have access to AKs and are not afraid to use them. When I ran around the corner, I was scared. I was on my own and didn't have a clue what had happened. I saw all these people and there was all this wailing. I made my rifle ready, if there was anybody with a weapon, I would have taken them out. I definitely felt that they were a threat to me. I believe other soldiers were aware of this noise and also felt threatened by it. Having run around the building, I saw the RMP lad. I immediately made my way to where he was standing. He just said that there had been a shooting and I thought the boy had got it cos he was just standing there. I said, "Where is he?" and he said, "I think in there behind a green or blue door". I ran and booted the door as it was ajar and as I kicked the door open I saw **S009**. He was just standing there, shocked and stunned. I don't think he knew what had happened. I said, "Are you alright?" He said, "I'm alright". I told him to cover the door and not let anyone in. I asked who had been shot and he told me that he was through in the courtyard. I saw the guy lying on the deck by the wall with a red mark on him. There were no other Iraqis in that courtyard. I thought it best to secure the area and not let any Iraqis in. I took up a defensive position by the door on my left hand side as you go through the courtyard. I have shown the positions we took up on a copy of exhibit KB/5. This is now exhibit TG/2. **S009** was by the door, he is shown as **S009**. I am shown as TG taking up a defensive position. I do not know where exactly in the courtyard the shooting took place but I don't think anybody on the outside could actually have seen in. The crowd were still wailing and they started to come towards us. Nothing was thrown at us. I think that this was because I had taken up a defensive position. We didn't get any chance to give First Aid because at that time it was self-preservation. Anything could have happened in there. Two guys would never have stood a chance. We just wanted to get the injured Iraqi in the Landrover and get a message to 33 FOXTROT for the QRF (Quick Reaction Force) at Ad-Dayr Police Station who would come and get us out. After I had taken up a defensive position, the boss (Lt HALLORAN) turned up and asked what the fuck was going on. I briefed him. I told him an Iraqi had been shot and **S009** was guarding the other door. I still did not know who had shot the Iraqi so I didn't say

Signed: T GARDNER
2003(1)

Signature Witnessed by: STEVE FOXLEY DS

83

RESTRICTED

Continuation of Statement of: GARDENER THOMAS

Form MG11(T)(CONT)
Page 6 of 7

S009 had shot him. I ran out and the crowd were getting bigger and wailing louder. I made my way through the crowd to get to the Landrover. S008 was guarding the two prisoners. I didn't speak to S008 but made sure that he was in the Landrover as well before I took the Rover back to where Lt HALLORAN and S009 were. I drove the opposite way to the way that I had run and reversed up to the door. We tried to drag the casualty up to the Landrover but as we did that, one of the Iraqi prisoners was trying to get out. Apparently the guy who had been shot was his brother and he was trying to get to him. This Iraqi then helped us put the casualty in the back of the Rover. By this time there were Iraqis in the courtyard and all over the place and we were trying to keep them back. There was one woman in black trying to get forward, she was trying to get forward and was wailing and giving it 'large'. The others were following her. One young lad I thought was trying to get in the way, but Lt HALLORAN said to let him help. We were struggling because the casualty was a very big lad and as we were trying to get him in the Landrover, the other prisoner was trying to get out. But with the help of this young lad we managed to get the casualty on board and then we fucked off. At no time did I ever see any of the crowd with any firearms. After we left, we intended to make our way to the hospital but we weren't sure of the way. The boss (Lt HALLORAN) got on the radio to 33 FOXTROT and the QRF but we saw British soldiers further up the road and they were able to direct us to the Hospital. On the journey to the Hospital I was not aware of any conversation going on in the back. We drove into the Medical Centre and some Iraqi guys came out with a stretcher on wheels. I think we left them to take the casualty in and nobody else went with them. I don't know if any report was given to anyone at the hospital. When I sat outside I kind of relaxed and thought "fucking hell". Whilst we were at the Hospital I never saw anybody from the scene but there were plenty of Iraqi people around. There was nobody specifically with the casualty. When the casualty was taken in, the brother didn't look very happy. When we returned to the RMP station, the prisoners got taken in but I don't know who by. It was either LT HALLORAN, S008 or S009. I stayed in the Landrover. I don't know what happened to them after that. I have been asked about a report given to Squadron OP but I had nothing to do with the report and I don't know who made it. I did not do any report about the incident at all. I think Lt HALLORAN may have done one. I became aware of what had happened from talk at the base and told that I was not to speak to anybody. I just thought that this was normal RMP procedure. S009 had been taken down to the Riverside, the Squadron HQ by the boss. The

Signed: T GARDNER
2003(1)

Signature Witnessed by: STEVE FOXLEY DS

RESTRICTED

Continuation of Statement of: GARDENER THOMAS

Form MG11(T)(CONT)
Page 7 of 7

Squadron Leader and I were sat watching TV. S008 was around and kept going in and out on his mobile phone. He never said anything to me. It wasn't until some considerable time after that I was really aware of what had happened. I didn't speak to S009 before I made my statement. I did not speak to anyone of rank about the incident before I made my statement and I did not make any notes. S009 never came to me for any advice about what to write about what happened and I did not help him write anything. I would like to say that I am well aware of the Rules and Regulations regarding the use of "Minimum Force". If I found myself in a similar position to S009 where it became necessary for me to shoot any individual I would have shot that individual in a manner in line with my training. We are taught to shoot at the centre of the target. We are not taught to 'shoot to wound' but to 'take the target down I have read the above statement. I have been given the opportunity to add, alter or delete anything contained in the statement. I agree that it is a true reflection of my interview. I am willing to attend Court and give evidence.

Signed: T GARDNER
2003(1)

Signature Witnessed by: STEVE FOXLEY DS