

**WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY**

UNITED STATES)	SPECIAL COURT-MARTIAL
)	
v.)	GOVERNMENT RESPONSE TO
)	DEFENSE MOTION TO SUPPRESS
VEGA, Nicolas)	STATEMENT
Staff Sergeant)	
U.S. Marine Corps)	(8 Nov 10)
XXX XX 4253)	
)	

1. **Nature of Motion.** The Government submits the instant motion in response to the Defense motion to suppress the statements elicited from SSgt Vega, by NCIS investigators Rebecca Fitzsimmons, Wilfredo Villalobos, and Sean Teague, regarding a sexual relationship with Nuvia Gomez.

2. **Summary of Facts.**

- a. SSgt Vega is charged with violating Article 134 of the UCMJ for allegedly having sexual intercourse with Nuvia Gomez between on or about November 2007 and on or about May 2009.
- b. SSgt Vega married his ex-wife, Ruth Vega, on 28 September 2004.
- c. SSgt Vega divorced his ex-wife, Ruth Vega, on 11 May 2009.
- d. On 17 June 2010, SSgt Vega was interrogated by NCIS agents Rebecca Fitzsimmons, Wilfredo Villalobos, and Sean Teague at their office aboard MCAS Miramar.
- e. SSgt Vega was advised of his Article 31(b) rights and waived them.
- f. SSgt Vega admitted to engaging in sexual acts with Nuvia Gomez, his ex-girlfriend.
- g. Nude photographs of Nuvia Gomez were recovered from the NMCI email account of SSgt Vega.

h. On 24 August 2010, in an Article 32 hearing, Nuvia Gomez gave testimony that she engaged in a sexual relationship with SSgt Vega beginning in late 2007 and continuing through 2008.

i. During this time, SSgt Vega was married to his ex-wife, Ruth Vega.

j. Nuvia Gomez gave testimony that SSgt Vega, using his NMCI email address, asked for nude pictures of her. She complied and sent the pictures. The pictures were eventually recovered from SSgt Vega's NMCI email account.

k. In support of the allegation that SSgt Vega committed adultery with Nuvia Gomez, the government intends to introduce into evidence the admissions given by SSgt Vega to NCIS investigators, the testimony of investigators Rebecca Fitzsimmons and Wilfredo Villalobos, the testimony of Dana Orcutt and the testimony of Nuvia Gomez.

3. **Burden of Persuasion.** When an appropriate motion or objection has been made by the Defense under MRE 304, the Government has the burden of establishing the admissibility of the evidence. MRE 304(e). When corroboration is at issue, "The independent evidence need raise only an inference of the truth of the essential facts admitted." MRE 304(g)(1).

4. **Discussion.** MRE 304 (g) requires independent evidence, either direct or circumstantial, to corroborate the essential facts admitted to justify sufficiently an inference of their truth. The independent evidence need only raise an inference of the truth of the essential facts admitted, and need not be sufficient by themselves to establish beyond a reasonable doubt the truth of the facts stated in the confession. MRE 304(g)(1).

The Defense motion cites *United States v. Melvin*, 26 M.J. 145 (C.M.A. 1988). The court in *Melvin* concluded that the amount of corroboration generally needed is not great. The

court noted that a confession is corroborated when independent evidence supports its truthfulness or reliability. It is sufficient if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth.

Applying *Melvin* to the instant case, the Government can establish that adultery occurred through independent evidence. During the Article 32 hearing of 24 August 2010, Nuvia Gomez testified that she had a sexual relationship with SSgt Vega. This sexual relationship occurred while he was still married to his ex-wife. Ms. Gomez also testified that she provided SSgt Vega with nude pictures of herself, upon his request. Additionally, on 22 August 2010, Nuvia Gomez provided a sworn statement to NCIS detailing her sexual relationship with SSgt Vega.

Dana Orcutt, another ex-girlfriend of SSgt Vega and the victim of other charges against SSgt Vega, will testify that SSgt Vega told her during their relationship that he had sex with Nuvia Gomez in the past and continued to do so while he was dating Orcutt. The direct testimony of these two witnesses and the evidence recovered from SSgt Vega's NMCI email account satisfies the low standard of corroboration stated in *Melvin*.


The Defense states in their motion that the facts of this case are analogous to those of *U.S. v. Faciane*, 40 M.J. 399, 403 (CMA 1994). *Faciane* held that a mother's and a daycare provider's testimony about the unusual behavior of a child victim after spending time with her father was insufficient to corroborate an admission of molestation by the father. The Government, in this case, is relying on more than testimony about the unusual behavior of a child to infer that a crime was committed. As stated above, the Government will rely on direct testimony from Nuvia Gomez that she carried on a sexual relationship with SSgt Vega at a time when he was married to his ex-wife.

The Defense motion states that “The defense has a good faith basis to believe Nuvia Gomez will not testify at trial.” The Government requests that Defense counsel state on the record what their good faith basis is for believing that Nuvia Gomez will not testify at trial.

5. **Relief Requested.** The Government respectfully requests that Defense’s Motion to Suppress be denied.

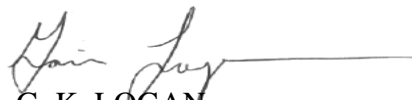
6. **Evidence.** Testimony of Nuvia Gomez, if necessary.

7. **Oral Argument.** The Government respectfully requests oral argument.


G. K. LOGAN
Capt, USMC
Trial Counsel

CERTIFICATE OF SERVICE

A true copy of this response was served upon the Defense on this date: 8 Nov 2010.

A handwritten signature in cursive script, appearing to read "G. K. Logan", followed by a horizontal line extending to the right.

G. K. LOGAN
Capt, USMC
Trial Counsel