

AFFIDAVIT

This Affidavit of the Accused is made pursuant to the protections of MRE 304(f). MRE 304(f) provides that "the accused may testify for the limited purpose of denying that the accused made the statement or that the statement was made voluntarily...Nothing said by the accused... may be used against the accused for any purpose other than in a prosecution for perjury, false swearing, or the making of a false official statement." MRE 104 permits hearsay, such as this Affidavit, to be used at a 39a session.

AFFIANT, Major Pietro Scarselli, USMC, says that per his best memory, the below is true and correct:

I am the accused in this case and the former provost marshal of 29 Palms. Before I was relieved in late 2009, I was the OIC of the provost marshal's office (PMO) and the military policemen that worked at PMO.

As part of an inspector general (IG) investigation, I gave three pretrial interviews with Mr. David Gill, the 29 Palms IG. I gave an in person interview with Mr. Gill on 8 July 2009. I gave a telephonic interview with Mr. Gill on 30 July 2009. I gave a final telephonic interview with Mr. Gill on 12 August 2009 via cell phone when I was on a cruise ship in the Caribbean on leave.

I believe that much of the contents of those interviews as Mr. Gill summarizes them in his IG investigation summary are inaccurate at best.

Before I gave my interviews to Mr. Gill, I was under the belief, after talking to senior members of my command; that I was not a primary subject of the investigation or truly suspected of any criminal misconduct.

For example, shortly after the IG investigation began, I spoke with Col John Holden, the Chief of Staff at 29 Palms. Col Holden told me words to the effect: "How are you holding up? Hang in there. I know you must be feeling frustrated or angry. I remember when I was a junior officer and my unit was investigated, that I was real angry, but my CO at the time pulled me aside and told me not to worry about it because it all works out for the best in the end; if there is nothing wrong then that will come out, and if there is anything going on, at least you will then know about it and be able to take corrective action; and he was right. So, just hang in there, let the investigation take its course and you will be better off for it in the end."

Also, LtCol Brandon McGowan, my battalion commander, told me in May 2009 words to the effect "The IG will be conducting an investigation into your unit. Fully cooperate. I expect, you, your staff and your Marines to cooperate and make sure you do not give any loyalty oath or anything like that, whatever you do. Let the investigation ensue. It will probably take a while before it's complete. Mr. Gill is a fair man and if there is anything wrong, it will be identified and you will be able to take corrective action. I cannot discuss who is or is not the subject of the investigation, but you are not a primary subject."

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These conversations with Col Holden and LtCol McGowan, quelled my anger and frustration; made me feel that the investigation was unit focused, rather than personally on me; and that as long as my Marines and I fully cooperated with and trusted in the IG and the system, as is our duty not only as Marines, but more so as MPs, that everything would work out in the end. I felt that I was not a primary subject or target of the investigation and I was not going to be suspected of any true criminal misconduct or the subject of any criminal charges, for that matter.

I am now aware and believe that Mr. Gill conducted literally dozens of interviews with witnesses in this case before he did his interviews with me, the primary target of the IG's criminal investigation.

Prior to me giving my 8 July 2009 interview with Mr. Gill, Mr. Gill told me to fill out a rights statement. Mr. Gill did not read me any Article 31b rights. Had he read me Article 31b rights out loud and told me I was actually suspected of any of the charges and specifications I am now accused of, I would have immediately invoked my right to remain silent and requested a lawyer. This is because doing so would have made me aware that Mr. Gill was going to try and get incriminating information from me.

I did not believe I was suspected of criminal misconduct when I gave my interviews to Mr. Gill because of what Mr. Gill and my senior officers told me.

In this case, on 8 July 2009, Mr. Gill had me fill out a rights waiver. For the portion that said what I am suspected of, I asked Mr. Gill what I should write in there, and Mr. Gill told me, "ahhh, just put dereliction of duty, for now." That, coupled with Mr. Gill's very casual and nonchalant tone during the interview and my sense of dutiful obligation to fully cooperate in any investigation, as the senior law enforcement official to the CG, gave me no impression that I was a subject, much less the primary subject/target, of the criminal investigation at all.

Months later, after receiving my charge sheet and reading the IG investigation portions produced in discovery; I realize that this was a gross understatement by Mr. Gill on 8 July 2009 as he, at a minimum, clearly suspected me of obstruction of justice, false official statements, fraternization, hazing, contributing to under age drinking and several other crimes I am now charged with.

At no time did Mr. Gill ever inform me that he suspected me of a false official statement during or before any of the three conversations I had with him. At no time did Mr. Gill accuse me during any of the interviews, that he suspected me of lying about taking a PFT or conducting MCMAP training with SSgt Baker. If Mr. Gill had mentioned anything about false official statements, obstruction of justice or had he described any of the charges I am now charged with; there is no way that I would have given any interviews with Mr. Gill. I had no intention of incriminating myself and would have immediately invoked and requested an attorney.

I also want to add that during the 30 July 2009 and 12 August 2009 interviews, Mr. Gill did not read me any rights warnings or cleansing

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warnings for that matter. He did not tell me I was suspected of any criminal misconduct before I did those telephonic interviews. Mr. Gill merely said words to the effect, "You are subject to the same rights warning." At no time, were any 31b rights read to me out loud by Mr. Gill or anyone else. Mr. Gill did not tell me that my 8 July 2009 interview could not be used against me.

Finally, during the 12 August 2009 interview, I was on a cruise ship in the Caribbean, could at times barely hear what Mr. Gill was saying; and had very garbled cell phone reception with Mr. Gill. I dispute the summary of that interview as Mr. Gill reports it.

I swear that the above official statement is true and correct to the best of my knowledge.

<u>PIETRO P. SCARSELLI</u>	<u></u>	<u>100326</u>
Print Name	Signature	Date