

Republic of the Philippines
DEPARTMENT OF JUSTICE
OFFICE OF THE CITY PROSECUTOR
Olongapo City

[REDACTED]
Complainant,

- versus -

I.S. No 05-N-1999
For: Rape

ALBERT LARA,
Respondent.

X-----X

COUNTER-AFFIDAVIT

I, **ALBERT LARA**, an American, of legal age, single, with postal address at c/o the Embassy of the United States of America, Roxas Boulevard, City of Manila, Philippines, after being sworn in accordance with law, hereby depose and state that:

1. I am one of the respondents in the above-entitled case.
2. I am a Lance Corporal of the United States Marines Corps assigned to the 31st Marine Expeditionary Unit S6, Unit 35621 FPO, AP 96606.
3. There is no probable cause to hold me liable for Rape under the Revised Penal Code of the Philippines, as I shall discuss hereafter:
4. I was never identified nor described as one of the persons involved in the incident by the complainant and her witnesses in their respective sworn statements.
5. According to the sworn statements of the complainant and her witnesses, there were only five (5) persons allegedly involved in the

incident, and none of their descriptions comes even close to my physical attributes. Thus:

5.1. In her sworn statement, the complainant, [REDACTED] identified and described only one (1) person. Quoted below are the pertinent portions of her statement:

"21. T: May nakilala ka ba doon?

S: Mayroon po.

22. T: Maaari mo ba itong I-describe at sa paanong paraan mo siya nakilala?

S: May isa pong servicemember na nakipagsayaw sa akin. "Gerard" o "Genard" po ang pangalan niyang naibigay sa akin. Matangkad po siya, maputi, blonde hair, katamtaman ang laki ng katawan, matangos ang ilong, pagitan ng 20-23 ang taong gulang."

x x x

"24. T: Ginawaan mo ba ng paraan para makilala mo sila o malaman ang tunay nilang pagkatao?

S: Pilit ko pong tinatanong sa kanila ang pangalan nila at tingnan ang identification nila. Pinakita po nila ang ID nila pero dahil madilim po ang lugar ay hindi ko matandaan ang mga nakalagay doon."

5.2. Mr. Timoteo L. Soriano Jr., the driver of the Starex Van, mentioned five (5) persons in his sworn statement as follows:

"06). T - Sinabi mong Gang rape ilan bang tao ang sakay mo sa van na iyong minamaneho ng mga sandaling iyon?

S - Limang US military servicemen at isang babaeng Filipina na kanilang biniktima."

x x x

"15). T - Ito bang si SSG Carpenter at iba pang mga kasama niay ay maide describe kung gaano kataas, kalaki ang katawan at kung mayroon pagkakakilanlan sa kanilang mga pagkato maliban sa kanilang pangalan?

S – Si Carpenter ay may taas na humigit kumulang sa 5' 8" isang puting Amerikano, katamtaman ang katawan, ito namang si Borris ay isañg Black American na may taas na humigit kumulang 5' 6" katamtaman ang katawan manipis ang buñok, ito naman si Smith ay isang Amerikanong Puti, may taas 5' 5', maliit ang katawan, palaging may suot na ball cup at iyong dalawa na kasama nila ay ay parehong Amerikanong Puti, katamtaman ang katawan."

5.3. In Ms. Ma Fe P. Castro's sworn statement, she described four (4) persons who alighted from the Starex van. The relevant portions of her statement are quoted as follows:

7. T: Habang minamasdan ninyo ang takbuhan ng mga US servicemember, may kakaibang pangyayari ba kayong napansin?

S: Opo. May isang Starex van na huminto sa mismong likuran nang aming sasakyan na naka-park paharap sa barkong USS Essex. Napansin ko po na may bumaba na isang Negro mula sa van. Sumunod po ang tatlong US servicemember na Caucasian, at may buhat buhat na isang babae, na tila o parang lango sa alcohol (o anupaman), may blusang berde na may puti sa itaas, at naka-pang-ibaba (panty) lamang.

5.4. Mr. Gerald A. Muyot, a security personnel of the Neptune Club, stated that "may isang kano na lumabas sa entrance ng Neptune Club na may isang Filipinang babae na nakabakay sa kaniyang likod..."

5.5. Mr. Tomas S. Corpuz Jr., who is also a security guard at Neptune Club, and Mr. Noel A. Paule, a member of SBMA's Law Enforcement Department, did not identify nor describe the persons involved in their respective sworn statements.

6. To summarize, [REDACTED] identified and described only one person – Gerard or Genard, who is tall, white, with blonde hair, of medium build, with pointed nose, and between 20 to 23 years old.

Mr. Timoteo L. Soriano Jr. described five (5) persons and identified three (3) of them – Ssg Carpenter is tall (about 5' 8"), a white American, of medium build. Borris is a black American, about 5' 6" in height, of medium build, thin hair. Smith is a white American, about 5' 5" in height, of small build. The two others are white Americans, both medium built.

Ms. Ma Fe P. Castro described four (4) persons – one (1) Black American and three (3) Caucasians.

Mr. Gerald A. Muyot mentioned only one (1) American.

7. Remarkably, despite the fact that I was never identified, or named, nor described in any of the sworn statements of the complainant and her witnesses, I was still included in the criminal complaint and was charged of the crime of rape. Fairness and justice dictate that I should be dropped from the complaint:

8. It must be remembered that "the purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the state from useless and expensive trials. (Trocio v. Manta, 118 SCRA 241; citing Hashim v. Boncan, 71 Phil. 216). The judge or fiscal, therefore, should not go on with the prosecution in the hope that some credible evidence might later turn up during trial for this would be a flagrant violation of a basic right which the courts are created to uphold. It bears repeating that the judiciary lives up to its mission by vitalizing and not denigrating constitutional rights. So it has been before, it should continue to be so." (Salonga v. Cruz, 134 SCRA 438 citing, Mercado v. Court of First Instance of Rizal, 116 SCRA 93).

9. At any rate, I categorically deny the allegation that I, along with other marines in the van, gang raped complainant [REDACTED] the truth of the matter being as follows:

9.1. At about 8:00 o'clock in the evening of November 1, 2005, I left the USS Essex, together with Corporal Corey Burris ("Cpl. Burris"), also known as "Charley", Corporal Daniel Balascek, and Corporal Juan Correa, and proceeded to Dewey's Club where we stayed for about an hour. At that time, Cpl. Burris was my designated buddy, which means that we must stay together at all times, and that we must sign in together when we get back to the vessel. This is a written rule that is being strictly followed by all of the Marines, and failure to abide by the same is considered a serious offense that could warrant possible demotion and decrease in salary.

9.2. Thereafter, at around 9:00 o'clock in the evening, Cpl. Burris and I decided to leave Dewey's Club and went to Neptune's Bar. When we arrived at the Neptune's Bar, we saw Lance Corporal Keith Silkwood, Lance Corporal Daniel Smith and Lance Corporal Dominic Duplantis. At Neptune's Bar, I danced alternately with two (2) female members of the U.S. Marines, namely Sergeant Isabel Rodriguez and Lance Corporal Rosalinda Vasquez.

9.3. At about 11:30 o'clock in the evening, I saw Staff Sergeant Chad Carpentier inside Neptune's Bar. A few minutes after, Cpl. Balascek, Cpl. Correa, Cpl. Burris and I left the Neptune's Bar and then boarded a taxicab going to a Yellow Cab Pizza Co., which is located just one to two minutes by motor vehicle away from the Neptune's Bar, as we were then already hungry.

9.4. Cpl. Burris was the one who ordered and paid for my pizza at Yellow Cab. It was already close to midnight when we got our orders so Cpl. Burris and I had to hurry back to the USS Essex as we have an internal rule in the U.S. Marines to the effect that all of us should already

be aboard the vessel by 12:00 o' clock midnight, lest we be subjected to punishment. Cpl. Balacsek and Cpl. Correa, however, did not have to hurry back to the vessel because they were, at that time, holding the so-called "Gold Liberty Cards" which entitle them to stay outside the vessel until 1:00 o' clock in the morning instead of 12:00 o' clock midnight.

9.5. As Cpl. Burris and I could not find any taxicab at that time, and considering that it was already getting close to midnight, we decided to just walk fast towards the vessel. While walking towards the vessel, I heard SSgt. Carpentier yell out our (referring to me and Cpl. Burris) names. I then turned around and saw SSgt. Carpentier standing beside a van which was parked across the street from where Yellow Cab is located.

9.6. Cpl. Burris and I then walked fast towards the van and saw Jun Soriano and SSgt. Carpentier seated in the front while LCpl. Silkwood and LCpl. Duplantis were seated in the middle row of the van. I did not see LCpl. Smith.

9.7. I tried to get inside the van and told LCpl. Duplantis to move over so I can sit beside him. However, when LCpl. Duplantis finally moved over, and while I was about to enter the van, Cpl. Burris told me that it was already getting really late. Cpl. Burris then suggested that we just run fast towards the vessel.

9.8. Cpl. Burris and I then ran fast and were able to board the vessel approximately 12:00 o'clock midnight. We then handed our Red Liberty cards to Corporal Jeffrey Rumans who was then in charge with the vessel's logbook. Thereafter, Cpl. Burris and I went up to our berthing areas where we ate our pizzas and then slept.

10. Finally, it must be emphasized that the other four (4) respondents, namely, SSgt Chad Carpentier, LCpl. Keith Silkwood, LCpl. Dominic Duplantis, and LCpl. Daniel Smith, had already admitted in their respective counter-affidavits that the four of them were the only US

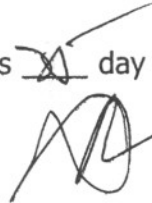
servicemen inside the Starex Van when the alleged rape happened in the evening of November 1, 2005, and that Cpl. Corey J. Burris and I were not with them inside the Starex Van at that time.

11. I am executing this Counter-Affidavit to attest to the truth and correctness of the foregoing statements and to pray for the dismissal of the criminal complaint against me for lack of probable cause.

AFFIANT FURTHER SAYETH NAUGHT.

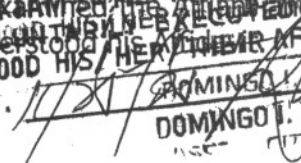

LCPL. ALBERT LARA
Affiant

SUBSCRIBED AND SWORN to before me this 1 day of November 2005 at Manila, Philippines.



Certification

I HEREBY CERTIFY that I have personally examined the affiant and I am satisfied that he voluntarily executed and understood his/her/their affidavit.

I HEREBY CERTIFY THAT I HAVE PERSONALLY EXAMINED THE AFFIANT AND I AM SATISFIED THAT HE/SHE/IT UNDERSTOOD HIS/HER/THEIR AFFIDAVIT.
MANILA. 
DOMINGO T. ORDA
NOTARY PUBLIC