

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

\_\_\_\_\_ X  
THE PEOPLE OF THE STATE OF NEW YORK, :  
: AFFIDAVIT

-against- :  
JOHN GIUCA, : Indictment No.  
Defendant. :  
\_\_\_\_\_ X

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss:

John Avitto, being duly sworn, states under penalty of perjury, as follows:

1. This Affidavit is intended to supplement, not replace, my prior Affidavit, which was executed on July 8, 2013.
2. I was diagnosed with mental illnesses, including schizophrenia, while I was incarcerated in Riker's Island in 2004. I met with a jail psychiatrist who diagnosed me and then prescribed me Seroquel, among other medications.
3. In addition to meeting with ADA Nicolazzi and Detective Byrnes a few times in June 2005, I spoke to Detective Byrnes on the telephone several times. When I would warrant or otherwise get into trouble with my drug program, I would notify Detective Byrnes. He in turn would tell me to notify my counselor Sean Ryan, who would then appear with me in court after I

was "violated." As detailed in my July 8, 2013, at all times I was a cooperating witness with the DA, I remained out of jail despite my violations and problems in my treatment program.

4. Detective Byrnes absolutely knew that I was having problems in my program after I became a cooperating witness. In fact, the reason I would call Detective Byrnes was to notify him that I had a problem so that he would work with the DA and help keep me from going to prison.

5. ADA Nicolazzi, Detective Byrnes and another woman whom I believe was a Brooklyn prosecutor, visited me in my inpatient program, while I was a cooperating witness. I believe this occurred when I was in Kingsboro.

6. On or about September 19, 2005, I smuggled cigarettes into the inpatient facility, which I knew was against the rules. I then absconded from the program and was subsequently discharged. This occurred a few days before I testified as a witness against John Giuca.


7. I have reviewed the "violation" letters dated September 19 and 20, 2005. Both of them are true. In other words, as the September 19 letter indicates, I did smuggle contraband into the program and I was discharged. As the September 20 letter indicates, at that time, I had absconded and my counselor may not have known my whereabouts.

8. I have no idea why Sean Ryan prepared the September 20 letter or why he deleted the reference to my smuggling contraband and the fact that I had a court appearance scheduled for October 6, 2005.

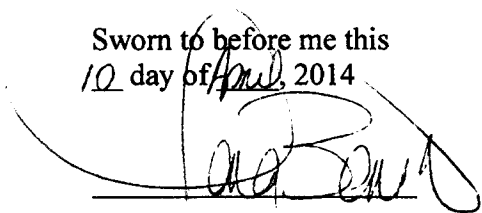
9. I called Detective Byrnes after I absconded the program. For the few days after I absconded and before I testified, I slept at home. Detective Byrnes knew this because I told him. Nobody from the warrant squad or police arrested me.

10. On the day that I testified against John Giuca, I was picked up at my house by someone from the DA's Office, who I believe was a detective.

11. I testified at trial that I received Seroquel in order to help me sleep and that not because of my schizophrenia. Although it is true that the Seroquel did help me sleep, I testified falsely when I claimed that I did not receive a prescription for it because of my schizophrenia. As I stated above, I was diagnosed for schizophrenia and prescribed Seroquel as a result of that diagnosis.

  
John Avitto

Sworn to before me this  
10 day of April, 2014



TARA M. BONILLA  
Notary Public, State of New York  
No. 01806257717  
Qualified in Queens County  
Commission Expires 3/31/16