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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
HONORABLE EDWARD RAFEEDIE JUDGE PRESIDING

- - - - -

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
RAFAEL CARO-QUINTERO, et al.,)
)
Defendants.)
_____)

Case No. CR-87-422-ER

COPY

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

MONDAY, FEBRUARY 8, 1993

MARY TUCKER, CSR 9308
Official Court Reporter
429-D U.S. Courthouse
312 North Spring Street
Los Angeles, Calif. 90012
213/687-0530

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APPEARANCES:

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1 LOS ANGELES, CALIFORNIA; MONDAY, FEBRUARY 8, 1993; 3:00 PM

2 THE CLERK: CR-87-422, United States of America v.
3 Ruben Zuno-Arce.

4 Counsel, please state your names, please.

5 MR. CARLTON: Good afternoon, John Carlton on
6 behalf of the United States.

7 MR. MEDVENE: Good afternoon, Your Honor. Ms.
8 Fulginiti, Messrs. Luellen and Medvene for Mr. Zuno. Mr.
9 Zuno is present, Your Honor.

10 THE COURT: The Court has received and read the
11 defendant's motion for an order requiring the government to
12 produce certain documents and the opposition thereto.

13 First, I want to comment that this is a post-trial
14 request. These are the types of things that ordinarily are
15 made before trial. I entertain them, but I point that out
16 in that context. The trial in this case is over.

17 What is the reason for this now, for these
18 requests in the nature of discovery?

19 MR. MEDVENE: We received, as Your Honor knows,
20 the day of oral argument, certain Brady material from the
21 government. We asked at that time before we argued to the
22 jury to reopen so that we would have a chance to examine
23 the material and interview the particular witnesses. Your
24 Honor at that time, as I remember, said that the matter is
25 going to go to the jury. We can deal with this material

1 performance of an agent in his official duty, but may well
2 have had to do with a personal relationship of that agent
3 and a personal relationship of Caro-Quintero.

4 But the point is, it would undermine the testimony
5 that was given. As Your Honor knows, it's been the defense
6 contention that the testimony's fabricated; that Cervantes'
7 testimony was fabricated. He wasn't put on. They had two
8 new witnesses.

9 If what the informant said is correct, it would
10 mean there were not a series of meetings that talked about
11 retaliation because the taking had to do with something
12 else, Point "A".

13 Point "B", it undermines the credibility of Godoy
14 and Lopez-Romero, because there would have been no
15 discussion at these meetings of who was the agent, because
16 they knew who the agent was. That was the centerpiece of
17 all three meetings.

18 Three, while it's not an ingredient of the crime,
19 there would have been no motivation by Mr. Zuno, as the
20 government claims, either as an alleged drug dealer or as a
21 politician, to do these things, because they had nothing to
22 do would with anything.

23 So the testimony that what this was about or the
24 statement that what this was about, this relationship
25 between Cosio, Camarena and Quintero is very, very material

1 and very relevant. Now that goes to the first two
2 requests.

3 The third request, which is very specific, Your
4 Honor, and different than Brian, again springs directly
5 from the Brady material we were given the day of oral
6 argument.

7 The government put on one witness, Lopez-Romero,
8 who testified for the first time counter to the testimony
9 in the first trial. And he is the only witness that has
10 ever stated, it had to be devastating, that Zuno was
11 present on February 7th at the time of the interrogation of
12 Camarena at Lope de Vega, and that Zuno participated, while
13 not in the room, suggested that he be questioned further or
14 this or that be done with him. First one that said that.
15 At the very time apparently, it springs forth from the
16 Brady material an admission by the government.

17 Dr. Kosonoy who was apparently somebody that
18 looked like what they said Machain was, a doctor who was
19 keeping Camarena alive allegedly at Lope de Vega February
20 7th, was sitting in the government's custody. We believe
21 that witness would say Zuno was not present on February
22 7th. We think --

23 THE COURT: Did you try to talk to him?

24 MR. MEDVENE: We have no idea where he is. We
25 want to talk to him. He is in the government's custody.

1 But we think it's reasonable to believe, as thin as this
2 case was that was presented, it was basically a one witness
3 case again, different witness, different meetings, it's
4 different people, et cetera; but we think it's a reasonable
5 inference that as thin as the case was, that if this
6 witness would have said that Zuno was present on February
7 7th, they would have had him in here. He was in the
8 government's custody, and we think we are entitled to him
9 and entitled to talk to him because we believe he will say
10 Zuno wasn't there.

11 In addition to that, the Brady material
12 establishes two other witnesses, a Changa and somebody
13 named Velasquez, who both say they were present, I believe
14 on the 7th, or present at the kidnapping of Lope de Vega,
15 and identified people who were present and don't identify
16 Zuno. We think they're certainly material. They have
17 relevant testimony or testimony that would lead to relevant
18 testimony.

19 We think there is no explanation why we didn't
20 have the material before. We moved the second we got the
21 material, Your Honor. And Your Honor said, "Later, not
22 now. We are ready to argue."

23 We think we are entitled to it. Your Honor, I'm
24 suggesting to you that these meetings --

25 THE COURT: There is some material that you are

1 saying you are entitled to that the government says they do
2 not have.

3 MR. MEDVENE: Well, in terms of what they say they
4 don't have, it seems to me at this juncture with the
5 lateness we received other material and this very material
6 that the government claimed as late as oral argument was
7 not Brady. You know, they were still claiming it wasn't
8 Brady, even though it is clearly Brady as we read it; that
9 what we need is for, and what we would ask through Your
10 Honor, is for Mr. Carlton to review the material.

11 Now, they don't say they don't have any people
12 with information who told about who was there February 7th
13 and claims Zuno was not there. In other words, one of our
14 requests is: Who did you talk to that said Zuno was not
15 there? Or what information do you have Zuno was not there?
16 Cause really in fairness, you can't present one witness who
17 said he was there, while you are sitting with knowledge
18 that 19 say he wasn't there, including possibly Kosonoy.

19 I note from the government's response that they do
20 not claim they have not spoken to other witnesses or don't
21 have information from other witnesses who testified as to
22 who was there February 7th.

23 We would ask at this stage that there be a
24 declaration signed by Mr. Carlton, a declaration signed by
25 someone in authority at the D.E.A., and someone in

1 authority at the FBI, because that is where the memos came
2 from, that they swear under penalty of perjury that this
3 material isn't present and that the D.E.A. material and the
4 FBI material also be run through Mr. Carlton so he could
5 personally review it.

6 Because I don't believe, you know, we were taught
7 never to say "I don't"; but I'd say this: There is a real
8 question whether these meetings that Godoy seven years
9 later claims happened, ever happened, Judge, in light of,
10 and in light of this Brady stuff, it doesn't seem like they
11 happened, and certainly not the way they said that it
12 happened. This takes away motive. It takes away any sense
13 of this offense.

14 And we think we are entitled to this information.

15 THE COURT: All right. Do you wish to be heard?

16 MR. CARLTON: Just briefly, Your Honor.

17 The government has objected to each of these
18 requests. In particular, the third one where he seeking
19 all references to anyone who might have been at 881 Lope de
20 Vega who did not mention Mr. Zuno.

21 As I believe we argued in the report, that is a
22 grossly overbroad request that isn't relevant and isn't
23 exculpatory and the case law supports us on that.

24 Beyond that, he refers to certain items that were
25 turned over at the end of the case, as if everything there

1 was Brady and exculpatory. I would take issue with the
2 production of the D.E.A. Six, referring to Velasquez and La
3 Changa. I don't believe that was a Brady document. The
4 other document the Court ruled clearly was.

5 But even if it was, only La Changa and Velasquez.
6 La Changa was identified to the defense in discovery that
7 was provided to them as being a person who was at 881 Lope
8 de Vega.

9 Velasquez was identified to them as being a person
10 who was involved in the Bravo Ranch. That wasn't a secret.
11 They could have attempted to find La Changa. And they
12 haven't made any effort, as far as we know, to do that.
13 That's a red herring.

14 Everything that Mr. Medvene has said goes more to
15 post-trial motions and not to discovery. And I can assure
16 you that Mr. Medvene, and everybody who works with him,
17 have indeed filed all of the post-trial motions and raised
18 these very issues.

19 But as Your Honor remarked, and as I agree, the
20 time is past for this kind of discovery requests, and I
21 don't think there was anything in the documents that were
22 produced at the close of the trial to change that.

23 THE COURT: The Court's view is that this motion
24 should be denied in all respects.

25 First, the three motions relating to information

1 that the government contends they do not have. The Court
2 accepts that as being truthful. If they do not have it,
3 they cannot be ordered to produce it.

4 With respect to the matters submitted to the Court
5 in camera, the Court does not find that to be Brady
6 material.

7 Should be remembered that a defendant in a
8 criminal case has no general constitutional right to
9 general discovery but only those rights that are found in
10 statute or in the decisional law of the Supreme Court and
11 other controlling courts.

12 Rule 16 is the main source for discovery. Brady
13 v. Maryland is another source, the disclosure of
14 exculpatory material, and the Jencks Act which applies to
15 having to produce the testimony of a witness at the time
16 that he testifies.

17 Under Rule 16, a defendant is entitled to the
18 disclosure of documents which are in the possession,
19 custody or control of the government, and in which are
20 material to the preparation of the defendant's defense or
21 are intended for use by the government as evidence in chief
22 at the trial.

23 Under Brady, the government is required to produce
24 evidence that is favorable to the defendant, if the
25 evidence is material to guilt or punishment; however, the

1 requested evidence must be both material and exculpatory to
2 warrant discovery.

3 In the U.S. v. Cadet, a case in the Ninth
4 Circuit, has stated that it must be both material and
5 exculpatory.

6 Materiality is not satisfied by a mere conclusory
7 allegation that the requested information is material to
8 the preparation of the defense. That is the Cadet case,
9 also.

10 Furthermore, undisclosed information and material
11 only if admissible, United States v. Kennedy has so held.

12 The defendants have requested documents that
13 pertain to Camarena's alleged relationship: Personal,
14 professional or otherwise, with one Sarah Cosio.

15 In this case, the government states that it is not
16 aware of any documents which is responsive to this request
17 that have not been previously produced.

18 Since there is a presumption that the government
19 obeys the laws when it signs the pleadings attesting to the
20 truth of the statements contained in it, there is no good
21 cause to believe at this time that the government had any
22 information. Therefore, there appears to be no need for
23 the Court to order the government to produce that which it
24 claims it does not have. And that has been held to be
25 appropriate in the Case In Re Kirkenhal, a Ninth Circuit

1 case.

2 The defendant has requested documents pertaining
3 to any motive or reason why Camarena was abducted other
4 than a government theory that it was a retaliatory from the
5 result of a conspiracy that was driven by Camarena's
6 efforts against the Cartel.

7 The government states that it is not aware of any
8 documents responsive to this request that have not
9 previously been produced.

10 Again, the presumption provided by decisional law
11 is that there is no good cause to believe that the
12 government has any such information.

13 Therefore, the defendant's request will be denied,
14 that information which the government professes not to
15 have.

16 The Court also finds that the requested documents
17 containing information regarding individuals who identified
18 persons allegedly present at 881 Lope de Vega on February
19 7th, 1985, and that do not mention Mr. Zuno, are not Brady
20 material.

21 In a case called United States v. Brian, a Ninth
22 Circuit, a 1989 court stated that information that does not
23 incriminate a defendant does not automatically exculpate a
24 defendant either if the prosecution were required to turn
25 over any statement of a witness that did not fully

1 incriminate the defendant, it would be required to report
2 statements of virtually any witness it did not intend to
3 call at trial.

4 The Court finds that such statements are not
5 exculpatory and would only be arguably relevant if the
6 statements were made by a person who was present and who
7 could identify Zuno and who purported to identify everyone
8 who was present.

9 The Court has also viewed the documents the
10 government have submitted in camera. These do not appear
11 to be material or exculpatory and are not Brady material.

12 The submitted documents appear to be inadmissible,
13 double and triple hearsay, and are not subject to
14 disclosure under U.S. v. Kennedy.

15 Finally, this statement was not used in the
16 government's case against the defendant, therefore, it is
17 not required to be disclosed under Federal Rule of Criminal
18 Procedure 16.

19 The Court denies the request by the defendant that
20 the government produce documents that contain information
21 that directly or indirectly contradicts Hector Cervantes --
22 he was not a witness in this case, I have to remind you --
23 or otherwise indicate that it was false or inaccurate.

24 The government has represented that it is not
25 aware of any documents that are responsive to this request

1 that have not been previously produced.

2 Now, finally, the defendant has requested relevant
3 and material information contained in the files of other
4 government agencies. The Ninth Circuit has held that the
5 government has a duty to review files only of other Federal
6 agencies who participated in the investigation. That's in
7 United States v. Brian.

8 The government has stated that the D.E.A. and the
9 FBI are the only agencies which participated in this
10 investigation. And that all reports emanating from that
11 participation have been requested and provided.

12 Again, under the presumption given to us by the
13 case of *In re Kirkenhal*, there appears to be no good cause
14 to believe that any other agency participated in this
15 investigation, or that the government is currently
16 withholding reports.

17 It appears that the government has fulfilled its
18 duty in searching the files of the D.E.A. and the FBI.

19 And so all of these defendant's requests are
20 denied at this time.

21 MR. MEDVENE: May I address you very briefly?

22 THE COURT: No further argument.

23 MR. MEDVENE: May I address you very briefly.

24 THE COURT: Not related to this.

25 I heard the argument on this and I read all the

1 papers.

2 MR. MEDVENE: It's not to re-argue in any way.

3 THE COURT: Do you want to argue with the Court's
4 statements and reasons?

5 MR. MEDVENE: No. I don't think you want me to.

6 THE COURT: No, I don't.

7 MR. MEDVENE: I am not going to. I'd like the
8 opportunity -- I don't think this is arguing with Your
9 Honor. We would like the opportunity to interview Dr.
10 Kosonoy, because there is somebody that is in the custody
11 of the government. We don't know where he is. We think
12 it's certainly reasonable to assume that it is said in the
13 statement he was at Lope de Vega February 7th to keep
14 Camarena alive. They put on a witness that says our client
15 was there. We think we are entitled to ask him: Did you
16 see him there? We think that's relevant evidence. And we
17 think circumstantially you can assume that if he was going
18 to say Zuno was there, he would have testified.

19 THE COURT: What about that? Do you know where
20 this person is?

21 MR. CARLTON: At this point I do not. It's my
22 understanding he is incarcerated, I believe somewhere in
23 Arizona, awaiting trial.

24 THE COURT: No reason to think you couldn't find
25 him?

1 MR. CARLTON: No. I think we probably could. At
2 this point, I don't know.

3 THE COURT: Well, I don't see any reason why the
4 presence should not be disclosed, his whereabouts should
5 not be disclosed, and the defendant given an opportunity to
6 talk with him, if he wants to talk to him.

7 MR. CARLTON: I will attempt to find out where he
8 is.

9 THE COURT: Find out where he is and provide that
10 information to counsel.

11 MR. MEDVENE: And if we might ask through the
12 court who his attorney is.

13 THE COURT: Do you know or does he have an
14 attorney?

15 MR. CARLTON: I'm sure he does. I don't know who
16 it is.

17 THE COURT: Can you find out and inform counsel.

18 MR. MEDVENE: Have you ruled on the -- we had
19 asked you on the in camera material for the ability to see
20 them. Have you ruled --

21 THE COURT: Well, I think that's not necessary;
22 that's why it's filed in camera.

23 MR. MEDVENE: The third thing would just take a
24 second. It's not re-arguing. I want to make sure -- there
25 is just one point I want you to think about, and I don't

1 know we said it clearly enough in the papers. The point
2 is: If -- on Cervantes -- if the hypo is Cervantes was not
3 truthful, that he fabricated --

4 THE COURT: In the first trial?

5 MR. MEDVENE: If the first trial. Fine. Assume
6 that's true for the moment. The only evidence that caused
7 the indictment against Zuno, the only connecting evidence
8 to the kidnapping, murder, before the grand jury, to my
9 knowledge, was Cervantes.

10 If Cervantes was fabricated, the government had no
11 credible evidence in front of the grand jury and the
12 indictment ought to fall.

13 And I don't know if we spelled it out. In other
14 words, the indictment we went to trial -- that's not saying
15 they couldn't re-indict him.

16 THE COURT: You went to trial on an indictment
17 that was obtained through the testimony of a witness who
18 did not testify in the trial.

19 MR. MEDVENE: Yes. But if it turns out to the
20 government's knowledge, or if turns out to the Court's
21 knowledge --

22 THE COURT: How is that going to turn out to the
23 government's knowledge?

24 MR. MEDVENE: Well --

25 THE COURT: Assuming he lied, you are saying that

1 you want the Court to assume his testimony was fabricated?

2 MR. MEDVENE: I'm saying two hypos.

3 THE COURT: I think the issue is this: If his
4 testimony was false --

5 MR. MEDVENE: Yes.

6 THE COURT: -- presented to the Grand Jury to form
7 the only basis for the indictment --

8 MR. MEDVENE: That's the hypothetical.

9 THE COURT: -- is the government still entitled to
10 try the defendant using the testimony of other witnesses?

11 MR. MEDVENE: That's it.

12 THE COURT: I mean --

13 MR. MEDVENE: That's the issue.

14 THE COURT: You haven't briefed that.

15 MR. MEDVENE: We are going to brief it. But I
16 wanted to raise that. Cause I don't know that we
17 adequately in our moving papers said that's one of the
18 reasons we wanted anything contrary that they had on
19 Cervantes. Anything that showed, in addition to what we
20 have already given them in court, that Cervantes was a
21 fabrication, whatever assumptions Your Honor could make
22 because they didn't put him on.

23 MR. CARLTON: Your Honor, they could have made
24 these arguments from the day of the last trial, the 1990
25 trial ended. What is he raising it now for?

1 MR. MEDVENE: What is the difference if I'm right?
2 I don't know if I'm right. What is the difference if I am
3 right? I mean, if we don't have --

4 THE COURT: There may be a legal difference.

5 MR. MEDVENE: Well, there may be.

6 THE COURT: Well, I think I ruled on everything
7 before me today.

8 (Proceedings adjourned.)

9 * * * * *

10 I, MARY TUCKER, CSR, do hereby certify that
11 the foregoing transcript is true and correct.

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Mary Tucker 6-17-93

MARY TUCKER, CSR

DATE