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

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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, MARCH 1, 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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1 LOS ANGELES, CALIFORNIA; MONDAY, MARCH 1, 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 for the record,
5 please.

6 MR. CARLTON: Good afternoon, Your Honor. John
7 Carlton and Manuel Medrano on behalf of the United States.

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

11 THE COURT: The Court has read and considered a
12 number of motions filed on behalf of Mr. Zuno. And I will
13 go through them and give my tentative decision on each one,
14 explain the reasons, and then I will permit counsel to be
15 heard.

16 The first motion, is a motion for a judgment of
17 acquittal, which the Court has read and considered all of
18 the papers submitted in this matter by both the defendant
19 and the government. And the Court's tentative conclusion
20 is that a judgment of acquittal is inappropriate in this
21 case and should be denied.

22 The evidence presented at the trial supports the
23 defendant's conviction of Counts Three, Four, Six and Seven
24 of the indictment, if viewed in the light most favorable to
25 the government, which is the standard by which a motion for

1 judgment of acquittal should be viewed.

2 The further part of the standard is that if any
3 rational trier of fact could have found the essential
4 elements of the crime beyond a reasonable doubt.

5 The Court, viewing the evidence in that light, can
6 say that any rational trier of fact could have found that
7 the essential elements of the crime have been proved beyond
8 a reasonable doubt.

9 In convicting Mr. Zuno for Counts Three and Four
10 under 18 USC 1959(a)5 and (a)1, the government presented
11 eyewitness direct testimony of the defendant's direct
12 participation in the membership in the Guadalajara
13 narcotics cartel.

14 Moreover, the jury was presented with evidence
15 indicating Defendant Zuno's attendance at several meetings
16 as part of a conspiracy to kidnap and murder Agent
17 Camarena.

18 This evidence similarly supports the conviction of
19 the defendant under Counts Six and Seven for conspiracy and
20 the kidnapping of Agent Camarena.

21 Although the defendant may have introduced
22 contradictory evidence, it is within the exclusive province
23 of the jury to determine the credibility of the witnesses
24 and to resolve evidentiary conflicts.

25 It must be assumed that the jury resolved all such

1 matters in a manner which supports the verdict. That is
2 after all what they did, is render a verdict against the
3 defendant.

4 So based on the testimony offered at trial, a
5 rational trier of fact could have found the essential
6 elements of conspiracy to kidnap and murder Drug
7 Enforcement Agent Camarena beyond a reasonable doubt,
8 therefore, this motion, in the view of the Court, should be
9 denied for those reasons.

10 We have three separate motions filed under Rule
11 33. The first is a motion under Rule 33 for a new trial
12 based upon the verdict being against the weight of the
13 evidence.

14 Well, I think by what I have just said, I do not
15 believe the verdict to have been against the weight of the
16 evidence. In fact, the verdict would be well-supported by
17 the evidence presented if the evidence is believed. And
18 the jury believed it.

19 The Court's conclusion is that a new trial should
20 not be granted on the grounds that the verdict is against
21 the weight of the evidence.

22 Now, Federal Rule 33 provides that the Court may
23 grant a new trial to a defendant if required in the
24 interest of justice, and places the burden on a defendant
25 in a motion for new trial to persuade the Court that the

1 conclusion reached by the jury was a miscarriage of
2 justice. The Court does not reach that conclusion.

3 So the Court finds that with respect to this
4 motion, none of the grounds raised by the defendant meet
5 the standard required for the granting of a new trial based
6 on the verdict being against the weight of the evidence.

7 There is another 33, these could have been
8 combined probably because this motion is close to the other
9 motion. It is again under Rule 33. And in this motion the
10 defendant asks the Court to grant a new trial because it is
11 required in the interest of justice. However, for a new
12 trial to be granted, the evidence must preponderate
13 sufficiently heavily against the verdict that a miscarriage
14 of justice has occurred.

15 The Court's view is that the evidence does not do
16 so in this case. In fact, it is the Court's view that it
17 preponderates in favor of the verdict rather than against
18 it.

19 The Court finds that having weighed the evidence
20 and considered the credibility of witnesses, the jury's
21 verdict is supported by the evidence presented by the
22 government at trial. And that the verdict is not contrary
23 to the weight of the evidence. And that this motion also,
24 in the view of the Court, should be denied, this motion for
25 new trial under Rule 33.

1 The final motion is a motion also brought under
2 Rule 33, and it is based on the claim that the government
3 has failed to disclose Brady material.

4 The Court has read and considered all of the
5 papers submitted in this matter, as it has in all of the
6 other motions, and tentatively concludes as follows: The
7 failure to disclose Brady material requires reversal only
8 if there is a reasonable probability that had the evidence
9 been disclosed to the defense, the result of the proceeding
10 would have been different. The reasonable probability is a
11 probability sufficient to undermine confidence in the
12 outcome of the trial.

13 Looking at the evidence provided to the defendant
14 by the disclosure of documents ordered by the Court, the
15 Court is unable to find that there is any such probability
16 that the result would have been different.

17 First, I have to note, that the Court's main
18 impetus in providing the discovery at the time that it did
19 was to enable the defendant to see based on that discovery
20 whether or not they could during the two months that have
21 passed, two and a half months since the defendant was
22 convicted, whether indeed investigation of those factors
23 set forth in those reports could produce some new evidence
24 or some evidence that might have been available and is
25 found at this time.

1 I have to note that since that date nearly three
2 months ago, the defendant has not come forward with any
3 evidence, has not shown how this might have helped his
4 case, in the form of statements or declarations or
5 affidavits by parties which suggests that any of the
6 persons named by the informants would exculpate the
7 defendant Zuno in any manner.

8 The defendant is required to convince the Court
9 under this ruling, that is under the state of the law, that
10 the evidence withheld would have led to a different result
11 at the trial. Aside from mere speculation, the defendant
12 has not done so.

13 And the defendant could potentially extract four
14 pieces of evidence from the disclosed documents. Sara
15 Cosio's alleged involvement with Agent Camarena, the
16 presence of Dr. Kosonoy at 881 Lope de Vega, the alleged
17 statements of El Changa, and the alleged statements of
18 Alfonso Velasquez.

19 Early in this trial before the trial began, I
20 ordered the government to disclose to the defendant the
21 names of all percipient, non testifying witnesses. My
22 purpose in doing so was that I believed in fairness that
23 the defendant should know all of the people who allegedly
24 witnessed any of the criminal acts charged.

25 And in compelling the government to produce the

1 names of those people was to assist the defendant to
2 investigate the possibility that among these non percipient
3 witnesses, because if they were percipient and the
4 government wasn't calling them, there is always a
5 possibility that they would have favorable evidence to
6 offer in favor of a defendant. And that is the reason the
7 Court ordered that their names and identities be disclosed.

8 In regard to Sarah Cosio and El Changa, the
9 defendant had access to their names prior to this latest
10 disclosure, because they were among the list of percipient
11 and non testifying witnesses that was disclosed to the
12 defendant long before the trial.

13 So the failure to disclose, in the view of the
14 Court, did not have adverse affect, but for the defendant's
15 failure to pursue the witnesses further.

16 The Brady case does not give the defendant a right
17 to have the government construct the defense and identify
18 defense witnesses.

19 Where the defendant prior to trial had within
20 their knowledge the information by which they could have
21 ascertained the alleged Brady material, there is no
22 violation by the government.

23 As far as the percipient witnesses of Velasquez
24 and Kosonoy are concerned, they would merely provide
25 defendant with further evidence to attempt -- well, first

1 let me say about these alleged witnesses, and I have in
2 mind that these reports that were ordered disclosed were
3 hearsay on hearsay.

4 It is extremely unlikely that anybody who was
5 present at 881 Lope de Vega, who either witnessed or
6 participated in what took place there, and who is
7 unindicted, it is extremely unlikely that such a person
8 would come forward to testify and make the statements that:
9 Yes, he was present while Agent Camarena was being
10 tortured. And, yes, he would testify on behalf of a
11 defendant.

12 I dare say that that is probably the reason that
13 we have had no evidence of such witnesses coming forward,
14 either from the list of witnesses previously provided to
15 the defendant or since the end of the trial with respect to
16 the information provided.

17 Even if these witnesses were to come forward, the
18 net effect would be to offer conflicting evidence to that
19 offered by the two government witnesses, Rene Lopez-Romero
20 and Jorge Godoy.

21 The defendant certainly impeached these witnesses
22 extensively at the trial, showing their history and their
23 participation in various crimes, and sufficiently
24 challenged their credibility.

25 I don't know that had a witness come forward and

1 stated or contradicted what their testimony was, whether it
2 would have made any difference.

3 Now, with regard to Alfonso Velasquez. His
4 statements are not material in that a failure to inculcate
5 the defendant does not infer favorable testimony.

6 That was held in United States v. Brian in the
7 Ninth Circuit in 1989. But Velasquez' failure to name Zuno
8 as one of the persons at Lope de Vega does not alone
9 exculpate Mr. Zuno.

10 Defendant has not provided this Court -- well, let
11 me put it this way: This event at 881 Lope de Vega was
12 prolonged over a two day period. We don't know exactly
13 when this witness was there, whether he was there at a time
14 early on or later on. It is not really very helpful to
15 show that he did not inculcate the defendant by the
16 statements that he made.

17 So the Court will not infer exculpatory testimony
18 sufficient to undermine the confidence in the jury's
19 verdict, which is the standard.

20 So it would be the Court's view that this motion
21 as well should be denied.

22 Did you wish to be heard, Counsel?

23 MR. MEDVENE: Yes, I do, Your Honor. Thank you.

24 Your Honor, we submit to you that under Rule 33
25 there is a miscarriage of justice if the verdict is allowed

1 to stand. Something --

2 THE COURT: Tell me what it is.

3 MR. MEDVENE: What is --

4 THE COURT: A miscarriage of justice is usually
5 obvious to a Court.

6 MR. MEDVENE: Let me tell you why I believe it's
7 obvious, Your Honor.

8 There are two key components that the prosecution
9 case rests on. If either of which falls, I suggest the
10 verdict must fall.

11 The first component is that there was credible
12 evidence that the kidnapping meetings occurred. The
13 government put forth a witness, basically Godoy, who was a
14 witness that claims the kidnapping meetings occurred.

15 Now, what is critical here, and it's a rare
16 situation, Your Honor, and we have gone over the transcript
17 thoroughly. What the record shows is this: Putting aside
18 that it took six to seven years for this witness to come
19 forward, putting that to the side for the moment, putting
20 aside the fact that it took him seven months of talking
21 about Zuno before he first claimed he was at a kidnapping
22 meeting, putting those things to the side, before anyone
23 focused on the fact that we would get discovery showing
24 this witness did not even work for Fonseca or attend
25 meetings in November and December of 1984, this witness

1 clearly and unequivocally identified the kidnapping
2 meetings in question as meetings he attended in November
3 and December. There is no question about that.

4 And we can go through the transcript quickly. Only when
5 the prosecution realized, months later, months after April
6 of '92, in December of '92 when they realized through
7 discovery, we got a hold of Godoy's confession where Godoy
8 admitted he was not working for Fonseca in November and
9 December, was a change made in the Godoy testimony.

10 Now Godoy tries to move from the confession by
11 saying he was tortured or whatever, but on the stand, on
12 cross-examination in front of Your Honor, Godoy admitted he
13 was not working for Fonseca in November and December of '84
14 or January of '85. And we have the cite for that.

15 Now with that in mind, the government had no way
16 to go but to try to move Godoy from saying the meetings
17 occurred in November and December and have him say they
18 occurred earlier.

19 And for the first time at this time trial, and you
20 must remember, Your Honor, this is at a time when
21 Cervantes, and only Your Honor would know this because of
22 the pleadings filed with Your Honor and the government,
23 this is at a time when Cervantes is no longer a viable,
24 credible government witness, as substantiated by the fact
25 they didn't call him. Circumstantially supportable they

1 didn't call him.

2 They know they don't have a witness. They know
3 you called this case to trial. They have nobody to place
4 in the kidnapping meetings because they know Cervantes is
5 not who he claimed to be. We spelled it all out. And they
6 confirm it by not calling him.

7 So they get Godoy. Seven months later, if you can
8 believe this in your experience, seven months later, after
9 they've questioned him for seven months, they no longer
10 have Cervantes, and all of the sudden he implicates Zuno as
11 being at kidnapping meetings.

12 Now, what do they then do? He puts him at the
13 meetings in November and December. They find out getting
14 closer to the trial date, we've asked for and got a hold of
15 his confession, where it says he wasn't working for Fonseca
16 then and didn't attend meetings then.

17 For the first time at trial there is no D.E.A.
18 report on this. He claims that contrary to what he told
19 the D.E.A., he moved the meetings back to September and
20 early October. So he tells the D.E.A. the first meeting
21 was late October, early November. He testifies on direct,
22 late September, early October. No reason for the change.

23 On cross we bring him back to October, early
24 November. And then he says he testified incorrectly to the
25 D.E.A.

1 The second meeting is cleaner. The second meeting
2 he tells Agent Levya the latter part of November of '84.
3 And I have the cites. On direct he says two weeks after
4 that earlier date, and on cross we bring him back, he says
5 the latter part of November approximately. That's the
6 December 8th transcript, page 66.

7 Now we know independently he is not working for
8 him then. He didn't attend meetings then.

9 The third meeting at 114 Tonalá, he tells Leyva,
10 cause we know from Leyva and we get from the witness, late
11 November early December. We know he is not working for him
12 then.

13 He tries to cheat in his testimony for the first
14 time saying it happened in October, but we get from him on
15 cross late November, early December, approximately.
16 December 8 transcript, page 66.

17 The fourth meeting, the Oficina meeting, he tells
18 Leyva beginning of December. With no reason for changing
19 he then has that on direct the beginning of December, when
20 we know it can't be. He is not working for Fonseca the
21 beginning of December. We get on cross the beginning of
22 December.

23 Now he admits he was not working for Fonseca in
24 November and December of '84 and January of '85 due to the
25 bad back. They didn't know he had that, but he had that.

1 That is the December 8th transcript, page 13.

2 So it is never this clean, Judge. You got the man
3 making it up. He makes it up after meeting for seven
4 months. And have you ever seen a case where it is as hot
5 as this case? When they are questioning him about Zuno, he
6 is giving them stuff about Zuno. For seven months he
7 doesn't put him in a kidnapping meeting. And then he puts
8 him at one November and December. We are then able to
9 prove he is not working for Fonseca. He moves it with no
10 explanation. No D.E.A. report about it.

11 He never said he was changing it until he got on
12 the stand at trial.

13 Now, the government -- I mean that's pretty
14 impressive. So the government says, "Well, let's take a
15 look at this seven months." Did it really take him seven
16 months? And did it really take Godoy and forty days and
17 four or five meetings? And this fellow Godoy says he met
18 for 20 occasions with the D.E.A. And the first time is
19 seven months later. I mean, that strains anybody's belief.

20 The government says, "Well, maybe he told him at
21 the second meeting." And we got the transcript and we are
22 talking to Godoy: "Is it correct, sir, to the best of your
23 recollection, all you mentioned at the second meeting is
24 something about seeing Mr. Zuno at a party, but nothing
25 about kidnapping; is that correct?" "Yes." December 8,

1 page 41.

2 Godoy ultimately testifies that April of '92 is
3 the first time he makes the claim Zuno's at a kidnapping
4 meeting, that is seven months later.

5 Romero tells the D.E.A. same thing as Godoy, as
6 Godoy's friend, this November, December; and at trial he
7 doesn't remember when the meetings happened.

8 And Leyva was crystal clear, as clean as he could
9 be, as clean as he could be. We went down every D.E.A.
10 report of Godoy's and every one of Lopez', and he said,
11 "That's when he made the statement."

12 We went through each report, and we said, "Is
13 there any reference in there to Zuno being at any meeting?"
14 Boom. Boom. Boom. Boom. Boom. Till seven months later,
15 finally the first reference. And he then tries to waffle
16 and they try to rehabilitate him a bit, "Maybe he mentioned
17 it somewhere?" "He might have. He might have."

18 But then he falls back the other way and says,
19 "Look, I was asking him about specific things." Giving the
20 impression: I didn't ask him about was Zuno at meetings,
21 kidnapping meetings, till I had time to do that, that was
22 seven months later.

23 Now that just strains belief. They got Zuno
24 socializing at parties. This badness, that badness, but no
25 kidnapping meetings for seven months.

1 So you have Leyva tying in the testimony that the
2 first time he tells him is seven months later and the first
3 time he tells him, all the meetings are in November and
4 December.

5 And we know independently from the Mexican
6 confession and from Godoy on the stand, he wasn't working
7 for Fonseca November and December, and attended no meetings
8 in November and December.

9 Now, that's pretty good. I mean that's really
10 pretty good. It doesn't get much cleaner than that. We
11 got a tough case with the jury. We are arguing 33. We are
12 not saying -- I am not arguing 29. I'm not saying there is
13 not sufficient and they couldn't argue.

14 But I'm saying as a 13th juror, miscarriage. And
15 something that's unarticulated, and I just want to say it.
16 They cite Tibbs saying, U.S. Supreme Court, saying in a
17 closely contested case, conflicting testimony, same
18 evidence, the trial judge can grant a 33; but gosh darn it,
19 if that jury comes back the next time, same evidence, he
20 doesn't have to grant the 33.

21 I say to you, Judge, the critical words in Tibbs
22 are the "same evidence". We have totally different
23 evidence in this case. The connecting evidence, there was
24 no Cervantes. If anything, this is a stronger case for
25 looking at it like you did the last time. There is an

1 honest to gosh miscarriage here. These men made it up.

2 We will tell you in a minute how Cervantes even
3 strengthens our case. They're contradictory to
4 Cervantes. We don't have the same evidence here at this
5 trial. It's not what Tibbs is talking about. We got
6 different evidence and contradictory evidence to the first
7 trial.

8 And why do I say that? Godoy says he was with
9 Fonseca at all the meetings. He says, you remember
10 Cervantes says there was a baptism meeting in September of
11 '84. He never attended any baptism meeting. Better than
12 that, he says he attended the Javier Barba wedding
13 celebration. You remember that's when Cervantes says the
14 meeting was.

15 He says he was there, and he says there was no
16 kidnapping meeting there. So he is contradictory to
17 Cervantes.

18 In addition, Cervantes is improbable because
19 Cervantes has one meeting in February, early February, and
20 this fellow has another meeting in early February with
21 different people and different discussions. Directly
22 contradicts Cervantes. And more than that, they don't know
23 who Cervantes is. One of them didn't know who Cervantes
24 was.

25 But Diaz, Castillo and Gardoqui are not at the

1 Cervantes meetings. They are present on Godoy's meeting.
2 Matta, the main co-conspirator, is present at the Cervantes
3 meetings. He is not present at the Godoy meetings.

4 But the critical thing here is, under Tibbs we
5 got completely different evidence.

6 I know if I were sitting as a trial judge I would
7 say, "Hey, look, the guy got a break once." It's not
8 really a break. It was right you did what you did. It's
9 right you did what you did. But the implicit point is,
10 "Hey, fellow, I did it once. You got another trial. You
11 got twelve new jurors."

12 But, Judge, it is a different case. It's not the
13 same case. And the case they presented this time compounds
14 the badness of the first case. We proved Cervantes was
15 made up. They gave us these guys. On a Saturday and
16 Sunday we get the stuff. We got to cross-examine them the
17 next week. And implicitly I think we are able to show, you
18 are able to show, I wasn't good enough in front of the jury
19 with the killings and the drugs. I just wasn't good
20 enough.

21 But, gosh, I got to be good enough in front of you
22 that: How could it be? How could he place the meetings in
23 November and December and say he wasn't working for them,
24 and then he tries to move them back without an explanation?

25 And you got all this other stuff. Seven months,

1 does that make sense to Your Honor? Forty days where he is
2 talking about Zuno, but never mentions kidnapping.

3 THE COURT: Counsel, you are repeating a lot of
4 points now. I think you have about made your point,
5 haven't you?

6 MR. MEDVENE: Additionally, Your Honor, what was
7 said at each meeting intrinsically we are saying doesn't
8 make any sense. We will just hit two or three areas.

9 One, there was the alleged discussion at the
10 meetings about, the first meeting, the testimony is by
11 Aldana, "We know who the agent is. Pick him up."

12 The second, third and fourth meetings, all the
13 testimony is about, allegedly, these people are talking
14 about, "Who is the agent?"

15 It intrinsically, academically doesn't make any
16 sense. How can they know who the agent is and then they
17 are talking at the second, third and fourth meeting, they
18 have to explain why they haven't picked him up? What is
19 his name? They said they know his name.

20 We know they know his name from Kuykendall's
21 testimony, who said that they were well aware that Enrique
22 Camarena was the agent in charge, was working at Zacatecas,
23 had infiltrated, knew Chavez, Chavez knew Quintero. They
24 knew who he was. And that Kuykendall and Camarena attended
25 a meeting with the attorney general so they knew who he

1 was.

2 So the conversations make no sense. "We know who
3 he is. He won't take a bride." Next three conversations,
4 "Who is he?"

5 Also the conversations where he said at the first
6 couple meetings, allegedly Aldana and Ibarra, I think, or
7 Aldana and Castillo were supposed to find out who is this
8 agent and identify the agent.

9 The last meeting they say, the third or fourth
10 meeting, he testifies to, he says, "No. It's not Aldana
11 and Castillo. It is Fonseca and Quintero who were supposed
12 to find out who the agent was."

13 There were many things like that. There were 30
14 people going into somebody's bedroom to have a discussion.

15 How about the fourth meeting? Judge, how could
16 there be a fourth meeting? You have two things. One, the
17 witness at all times places it in December. And he has
18 told us he wasn't there in December. He didn't work for
19 them.

20 More than that, you have Salvador Lopez, an
21 independent lawyer, not cross-examined on this point, that
22 said there couldn't have been a meeting at Oficina because
23 Oficina is not owned by Javier Ibarra-Hernandez. It's
24 owned by people I know, and Javier Ibarra-Hernandez and
25 these bad guys were never there. You got independent

1 reasons why there was no Oficina meeting.

2 Putting to the side the meetings, I submit to you
3 that's enough. Putting that to the side, the other part of
4 the government's case, if we win on the meetings, we have a
5 Rule 33 and a new trial for the first time.

6 If you think we lose on the meetings and there is
7 not enough injustice and you want to put it together, they
8 have to prove he is in the Cartel. And as, Your Honor,
9 pointed out: Three and four he has to be in the Cartel,
10 and if we can knock out three and four that he is not in
11 the Cartel, I think six and seven should go because you
12 lose your motive and the drug evidence shouldn't have come
13 in.

14 Now, what do you have? I'm not going to go
15 through it all. But in the brief we laid out about six
16 different areas that their testimony broke into. The focus
17 of the investigation: You have Kuykendall, Gomez,
18 Guadalupe Gamez, and Lugo. One confidential informant,
19 three agents, who told you about their infiltration,
20 investigation. Gamez was at the highest level. No
21 mention of Zuno of any kind.

22 Two, the absence of reference to Zuno in any drug
23 raids. You have Zacatecas. You have Bufalo. You had
24 Padrino, the cocaine transaction. You have Retamoza
25 testifying, the cousin Felix-Gallardo, in the intermost

1 circle. No mention of Zuno of any kind.

2 On the drug meetings, many drug meetings of all
3 the dealers, and Harrison overhearing thousands of
4 conversations, no mention of Zuno of any kind.

5 Payoffs, you have Guadalupe Gamez talking about
6 payoffs to officials every twenty or thirty days. No
7 reference to Zuno of any kind.

8 Searches by Ayala, Gonzalez, Clements, nothing
9 that came up on Zuno. Not in the phone book. Not
10 anywhere. No reference of any kind.

11 They are pretty thin against what they have on it,
12 Judge. He would have showed up if he is in the Cartel.
13 They have some alleged socialization, if you believe Godoy
14 and Harrison. Your Honor pointed out last time, even if
15 you believe socialization, socialization isn't being in the
16 Cartel.

17 You have Quintero allegedly at the Lope de Vega
18 house when Zuno is not there making phone calls, which we
19 think Harrison was undermined on where the calls came from.
20 Did they come from there? Sergio Virgen was living there
21 and said no such thing happened. We know Zuno-Arce wasn't
22 there.

23 And, lastly, the only direct thing they have are
24 two things: One, a marijuana truck that stopped, you
25 remember, and the other is the hand drawn map.

1 On the marijuana truck, we think we substantially
2 impeached, no such truck, whatever; but at worse it's an
3 independent truck. No tie of that truck and that
4 marijuana, if there was a such a thing, to the Cartel.

5 On the hand drawn map, lastly, testimony you can't
6 do that trip in ten hours. That's all they have against
7 this mass -- against a couple of weeks of evidence of
8 people in the highest ranks of the Cartel where you would
9 have thought Zuno's name would be referenced once. It
10 never came up once.

11 And nothing on standard of living, nothing on big
12 house, nothing on money transfers, nothing on ostentatious
13 anything.

14 You got no tie, no forensic tie of anything. No
15 phone calls. No anything.

16 You've been patient with me, Your Honor, on the 29
17 and 33. I will just touch Brady, if I might.

18 THE COURT: All right.

19 MR. MEDVENE: Brady breaks down into two parts. I
20 will do it fast. One is Cosio and the other he wasn't at
21 meetings, or whatever.

22 On the Cosio part, this is a little overly
23 aggressive, but I don't think the government really fights
24 the Brady part of it, that's it is exculpatory or
25 potentially exculpatory because Cosio really undermines the

1 government's theory. It knocks out the relevance of the
2 Cartel, et cetera.

3 And, Your Honor comes back, as the government did,
4 that's fine, if that's the way you see it. You said,
5 "Well, it's not, in effect it's not material or where are
6 you going with it?"

7 Where we are going with it is, we would be
8 entitled to cross-examine -- we couldn't argue it. We got
9 it the day of closing. You know when we got it. So the
10 point is: We couldn't investigate for trial; but more than
11 that, we could have questioned witnesses about this theory.
12 It's a totally contradictory theory. And the theory has
13 some substance to it.

14 The substance is this: It's not a made up theory
15 if you look at the evidence. These guys are thugs. They
16 are like hired killers. They see the Latter-Day Saints,
17 they see the Mexican couple. They just kill people. La
18 Langosta, they kill Radelat. They are not like into lots
19 of conversations. Forty-seven meetings like they claim
20 happened here. They're into doing it. And that's kind of
21 what the Cosio theory is about. Kind of doing it. A guy
22 like Quintero gets upset. Says, "Pick him up and slap him
23 around."

24 We think we should have been able to do
25 investigation on it, and certainly we should have been able

1 to raise it at trial as an alternative theory.

2 The other point Your Honor makes is, "Hey, you got
3 the name, Fellow. You got it." Judge, we got the name
4 with 74 other names and there was no identification. We
5 all know Cosio is the lady friend of Quintero. And we all
6 know that she flies off to Costa Rica with him from where
7 ever she flies off from, Guadalajara or where ever she
8 flies off from. That we know.

9 But we have no idea of this theory that they hit
10 us right before the closing argument. We think, we think
11 we are clearly entitled to it. They can't sit with that.

12 Talking about sitting, in the D.E.A. report or
13 this FBI report, they're sitting with testimony and we
14 didn't know until we went to trial about Primavera Park,
15 why the first case got reversed, and what would happen when
16 the bodies were buried.

17 They were sitting with a report that they didn't
18 give us saying the bodies were buried, the source said the
19 bodies were buried on somebody else's land. On somebody
20 else's land. I mean, that's as bad as what they did with
21 Dr. Machain.

22 They specifically said the bodies are on the land
23 of "X". I have it here. Now, they at that time were
24 wanting to argue in front of you, and we went back and
25 forth until you ruled, they wanted to argue that the bodies

1 were buried on Zuno owned land. They are sitting with one
2 of these two reports that says the bodies were buried on
3 somebody else's land. They didn't turn that over. That's
4 a pretty tough view of Brady.

5 So we are saying it is not right. It's a big
6 case, but Marquis of Queensberry rules.

7 The other part, little more speculative by us, but
8 I don't think we fall under Brian, and we suggest it's
9 Brady.

10 I mean to think the Cosio stuff is clean. I think
11 the government concedes it's clean. It's just a question
12 of when we get one of 74 names without identification of a
13 theory, is that good enough?

14 The other stuff on the witnesses, here is why it
15 is different than Brian, then I'm done. Brian, I think
16 what the Ninth Circuit is talking about is, an overall
17 assertion that, "Hey, every witness that the government
18 talks to, if they don't mention your guy, your defendant,
19 that's not Brady. They don't have to turn it over."

20 We are not talking about that. We are talking
21 about in the heat of this investigation when the D.E.A.
22 agents working this case, talked to this source, and they
23 said, "Who was at Lope de Vega?" And they're going to
24 trial against us. And we are the only live ones they are
25 going against, against us and Machain. It strains belief

1 that they wouldn't say, "Was Zuno there?"

2 They are not going to say Zuno was there in April
3 of '91 when you're about ready to grant the motion.

4 And is there any declaration by the agents that
5 did the interviewing or by the FBI agent that they didn't
6 ask is Zuno there? This isn't Brian. This is not all
7 witnesses. We are not asking for that. We are saying
8 witnesses that talked about who is at Lope de Vega when
9 they're making a claim.

10 Knowing they got a witness who maybe is going to
11 say Zuno is there, wouldn't they ask them if Zuno was
12 there? We are saying we are entitled to that and we should
13 have been able to run that out and should have been able to
14 cross-examine, at a minimum, the agents about it, and the
15 agent's knowledge of these people and the fact that they
16 wouldn't have put Zuno there.

17 You have been kind with your time, Your Honor.

18 THE COURT: Counsel, do you wish to be heard?

19 MR. CARLTON: Your Honor, the points have been
20 made in the written papers and argued in great detail in
21 the written papers. I won't address each of them
22 specifically.

23 I will say that since Mr. Zuno's arrest in
24 December of 1989, he and his counsel have been provided
25 with thousands and thousands of pages of discovery. Much

1 of that discovery consists of reports of the incidents
2 surrounding this case and the events that happened, and
3 have identified many, many people who conceivably would
4 have had percipient information about this.

5 Statements by persons who were present at Lope de
6 Vega identifying other people who were present have been
7 presented to them.

8 Many names have been given to the defense over the
9 years, including the list of 74 names that Your Honor
10 alluded to.

11 And Mr. Zuno has had every incentive from day one
12 to find some alternative theory to blame Agent Camarena's
13 kidnapping and murder on and it doesn't exist.

14 There is no such theory. He hasn't been able to
15 come up with it. In all of these years the only thing that
16 they have been able to latch on to is this FBI report, and
17 I believe Your Honor's analysis of that is exactly correct.
18 It's immaterial. It's multiple layers of hearsay. There
19 is no basis for finding a reasonable probability that
20 access to that document would have in any way affected the
21 outcome of this case.

22 Your Honor is well aware that two juries have
23 found Mr. Zuno to be guilty. Twenty-four people have been
24 convinced of his guilt. Not one person has been convinced
25 that he is not guilty.

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And yet despite that, the defense is constantly coming back saying there has been a miscarriage of justice. There has been a miscarriage of justice.

Your Honor, I submit, the facts show exactly the opposite. There has been no miscarriage of justice. This man is convicted because he is guilty and the verdict should stand.

THE COURT: The rulings of the Court as previously announced will stand. All motions are denied.

(Proceedings adjourned.)

* * * * *

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

Mary Tucker

6-17-93

MARY TUCKER, CSR

DATE