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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

- - -
HONORABLE EDWARD RAFEEDIE, JUDGE PRESIDING
- - -

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) No. CR 87-422(f)-ER
)
RUBEN ZUNO-ARCE,)
)
Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
FRIDAY, MAY 10, 1991
4:30 P.M.

GEORGE A. HAAS
OFFICIAL COURT REPORTER
438 UNITED STATES COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012
(213) 613-1228

1 A-P-P-E-A-R-A-N-C-E-S:

2 FOR THE PLAINTIFF:

3 LOURDES G. BAIRD
United States Attorney
4 ROBERT L. BROSIO
Assistant United States Attorney
5 Chief, Criminal Division
MANUEL MEDRANO
6 JOHN CARLTON
Assistant United States Attorney
7 1441A United States Courthouse
312 North Spring Street
8 Los Angeles, California 90012

9
10 FOR THE DEFENDANT RUBEN ZUNO-ARCE:

11 MITCHELL, SILBERBERG & KNUPP
BY: EDWARD M. MEDVENE, ESQ.
12 JAMES E. BLANCARTE, ESQ.
DONALD A. DINICOLA, ESQ.
13 MARY FUGINITI, ESQ.
11377 West Olympic Boulevard
14 Los Angeles, California 90064

15 ALSO PRESENT:

16 MARIA DOLOREZ MARTIN,
Spanish/English Interpreter
17
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I-N-D-E-X

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HEARING: Motion by defendant for judgment of acquittal.
Motion by defendant for new trial.

1 LOS ANGELES, CALIFORNIA; MAY 10, 1991; 4:30 P.M.

2 * * * * *

3 THE CLERK: Item 2. 87-422(f)-ER. United
4 States of America versus Ruben Zuno-Arce.

5 Counsel, please state your names for the
6 record.

7 MR. MEDRANO: Good afternoon, your Honor.
8 For the United States, Manuel Medrano and John Carlton.

9 MR. MEDVENE: Good afternoon. Edward M.
10 Medvene, James Blancarte, Ronald DiNicola and Mary
11 Fuginiti for Mr. Zuno.

12 Mr. Zuno is present, your Honor.

13 THE COURT: Good afternoon.

14 At our hearing earlier this week, Counsel
15 for the government requested an opportunity to do some
16 further briefing on the issues we discussed the other
17 day. You made some statements to me about what you
18 believe the record will show.

19 I have read the supplemental document that
20 you have filed and it fails to live up to that
21 promise. Basically a regurgitation of the arguments
22 that were made the other day.

23 So I have to assume that these ameliorated
24 facts we talked about are not in the record.

25 I have read your supplemental brief and it

1 really adds nothing. It does not persuade the Court
2 that its tentative decision should be changed in any
3 way. The basic statements that I made other day have
4 not been answered.

5 It's clear to me that the government had
6 knowledge that the bodies of Camerena and Savala were
7 buried at Primavera Park. They knew that. They knew
8 that as early as the trial several years ago. And it
9 is clear to me that the import of the argument that was
10 made by the government during the close, was that the
11 bodies were buried on Mr. Zuno's land, and that is the
12 reason that they had to be moved. And it appeared to
13 me that the government exploited the testimony of their
14 witness, Mr. Cervantes, to reach that conclusion.

15 In other words, his testimony was really
16 inconsistent with the government's evidence, but you
17 made it appear in your argument as though he
18 corroborated the government's evidence. His testimony
19 was not that bodies were buried at Primavera Park, but
20 that they were -- he was simply reciting what was said
21 to him. And while your supplemental memo here deals a
22 lot with the credibility, his credibility isn't at
23 issue. It is not really Mr. Cervantes' credibility,
24 but the credibility of the evidence he recited, namely
25 that these bodies were buried on land owned by

1 Mr. Zuno. And you made it appear in your argument and
2 adopted the argument that that is in fact what he said,
3 which is not what he said.

4 I believe that as a result of this and as
5 a result of the impact of that evidence, this is very
6 important evidence; evidence that both bodies were
7 buried on land owned by the defendant is extremely
8 important evidence that might very well have swung the
9 case against Mr. Zuno. For that reason I believe he's
10 entitled to a new trial. And I think it was unfair for
11 the government to have conducted the argument in the
12 way it about did, given the proceedings that occurred
13 during the course of the trial, which I recounted at
14 length here the other day.

15 Do you wish to be heard further,
16 Mr. Carlton?

17 MR. CARLTON: Your Honor, I would have
18 just a few brief comments.

19 I think that the transcript of the July 6
20 evidentiary hearing which was attached to the
21 supplemental filing should put to rest any notion that
22 the government made any misrepresentations as to any
23 evidence to keep out Exhibit No. CC. The
24 misrepresentation we have been accused of making was
25 that we had no intention of ever proving that the

1 bodies were buried in La Primavera Park. That was the
2 focus of the original motion filed by counsel for
3 defendant.

4 If you review the transcript of July 6,
5 it's obvious that we never said any such thing, and it
6 wouldn't have made any sense for us to have done that.
7 It was clear to everyone on July 6 when Exhibit CC was
8 excluded, that one element of the government's case
9 that we intended to prove were that the bodies were in
10 La Primavera Park.

11 By the time this whole issue came up, the
12 forensic evidence regarding Primavera Park had been
13 introduced. The evidence regarding Dr. Radelet's visit
14 to the grave site of his son in Primavera Park had been
15 introduced. Our case in chief was closed. So, not
16 only did we not make any representation that Primavera
17 Park was irrelevant on July 6, it would have flown in
18 the face of the record and common sense for the
19 defendants to have understood otherwise.

20 All that we said in relationship to
21 keeping out Exhibit CC was that Cervantes never
22 testified that Zuno owned land in Primavera Park. His
23 testimony, on his own personal knowledge, was only in
24 relation to the town.

25 The focus --

1 THE COURT: He never said town.

2 MR. CARLTON: He did say town, your
3 Honor. And I believe that transcript is in front of
4 you, not attached to the supplemental pleading but in
5 one of other pleadings. He expressly said town.

6 He was cross examined at length by
7 Mr. Medvene as to whether he could point out the street
8 in the town, if you recall. He looked at a map and he
9 said, well, I can show you the town, but I can't show
10 you the street. This the map is too small for that you
11 kind of detail. He went over with Mr. Medvene, the
12 fact that his only knowledge, his only personal
13 knowledge had to do with the town of La Primavera.

14 If you look at the reason this was argued
15 in the closing, the only mention of it that what was
16 ever made in closing was twofold.

17 One, only once in relation to Mr. Zuno,
18 when Mr. Medrano reiterated the Javier Vasquez
19 statement. And the point of that, as your Honor
20 pointed out several times on Tuesday, was that it
21 corroborated what Cervantes had said. The point of the
22 forensic evidence.

23 THE COURT: What is it that Cervantes has
24 said that is corroborated?

25 MR. CARLTON: First of all that he had a

1 conversation with Javier Vasquez. The forensic -- and
2 that Javier Vasquez said the bodies were buried there
3 Primavera Park.

4 The forensic evidence corroborated the
5 bodies were buried in La Primavera Park. This served
6 to corroborate Cervantes that he had a conversation
7 with Vasquez. He didn't serve to corroborate much of
8 anything else. If it corroborated Cervantes that's one
9 thing, because Cervantes never testified that Zuno
10 owned land in La Primavera Park. That wasn't anything
11 the corroboration of Cervantes could contribute to.
12 That was the reason it was argued by Mr. Medrano in
13 closing. That doesn't go to the notion that Ruben Zuno
14 owned the land. If you look, that was never a focus of
15 the closing argument. It was never a focus of the
16 government's case. Had it been a focus of the case,
17 certainly more than two sentences would have been
18 devoted to it in over five hours of closing argument.

19 More evidence, something would have been
20 done to highlight that incredible piece of evidence.
21 If you look at the closing argument, your Honor, you'll
22 see if anything, Mr. Medrano played it down. It was
23 part of what Javier Vasquez said, and when Javier
24 Vasquez's statement was summarized, it came up, but it
25 was tangential. It was not consequential. It wasn't

1 the purpose for which that was offered.

2 In fact, I submit to you, your Honor, that
3 this one statement cannot have swayed the trial. This
4 photograph could not have seriously impeached Hector
5 Cervantes de Santos. Please look at all the other
6 impeachment evidence that the defense introduced.

7 THE COURT: The other impeachment evidence
8 does not deal with bodies being on land belonging to
9 Mr. Zuno. That is a devastating impact. To say that
10 bodies were on land owned by Mr. Zuno that they would
11 have to be moved because it might implicate him. That
12 was the import of the argument that was made by your
13 client.

14 That is a lot different in a case like
15 this than these other things that were impeaching that
16 were really not impeaching most of it.

17 MR. CARLTON: What would the photograph
18 have done?

19 What it was, was a photograph of a park.
20 It's Primavera public park or whatever, I don't
21 remember the exact language that was on this
22 photograph. How would that have successfully rebutted
23 any argument, if an argument had been made that Zuno
24 owned some property within the park? Even within our
25 own national park system there are concessions operated

1 by other people. There are pieces of private property
2 within national parks in the United States. Why
3 couldn't that have been true in Mexico as well?

4 A photograph? What would that have
5 rebutted? We never contended what Javier Vasquez was
6 saying was the truth. The photograph wouldn't
7 necessarily rebut that Javier Vasquez was telling the
8 truth. And if Javier Vasquez was wrong, they were free
9 to have said that as well, because there wasn't
10 anything to support him or to tear him down.

11 When you look at the -- this is a ten week
12 trial. The amount of evidence that was introduced, all
13 of the evidence that they presented to tear down our
14 one witness. And if you also look, your Honor, look at
15 the reasons why they were trying to introduce this on
16 July 6. The whole focus of the argument was on what
17 Cervantes had said. What Cervantes had said. And that
18 was the focus of Mr. Medrano's reply.

19 The focus was on what Cervantes has said,
20 because they wanted to introduce this in order to
21 impeach Cervantes. That was the whole purpose. And
22 yet it wouldn't have impeached Cervantes, because
23 Cervantes himself never testified he knew this. He
24 didn't vouch for --

25 THE COURT: It would have impeached if the

1 evidence that he related --

2 MR. CARLTON: How would you --

3 THE COURT: It would have impeached the
4 evidence that the bodies were buried on Mr. Zuno's
5 land.

6 MR. CARLTON: That wasn't why it was being
7 offered on July 6. The whole argument was: What did
8 Cervantes talk about?

9 THE COURT: That was my understanding of
10 why it was being offered.

11 MR. CARLTON: In any event, the responses
12 given by the government and the argument on July 6
13 seemed to focus more on whether Cervantes was going to
14 be credible or not and that is why the arguments were
15 made on July 6.

16 Now, how this could have impeached
17 Cervantes, as we have gone over and over and over this,
18 is marginal. It wouldn't have had much impeachment
19 value. In light of everything else they tried to do,
20 which was rejected, I don't think that this would have
21 turned the tide.

22 When you look at how the jury dealt with
23 all the other Mexican documents that were introduced,
24 again, I don't think the exclusion of this additional
25 document was sufficiently prejudicial to warrant a new

1 trial. The jury rejected the other documents. There
2 is no reason why they wouldn't have rejected this one
3 as well, particularly when its relevance was so
4 marginal and so was its impeachment value as we
5 indicate.

6 Lastly, your Honor, I just want to
7 reemphasize that the government did not place emphasis
8 on this evidence, significant emphasis on this
9 particular piece of evidence in its closing and in its
10 case. In five hours of closing and rebuttal, it was
11 only mentioned twice in passing. It wasn't mentioned
12 in rebuttal at all. It wasn't mentioned in opening.
13 It was almost an offhand, a casual remark to a
14 tangential piece of evidence that wasn't the focus of
15 the case.

16 To throw out the ten weeks of trial and
17 the jury's verdict on the basis of this particular
18 issue, the government submits, would be an injustice.

19 Thank you.

20 THE COURT: All right. Do you wish to
21 respond, Counsel?

22 MR. MEDVENE: No, your Honor.

23 THE COURT: Counsel made some good
24 points. Do you wish to be heard on it?

25 MR. MEDVENE: We think it's clear, your

1 Honor, that the comments -- we think it's clear, your
2 Honor, that as you had said, it was a close case. It
3 was a one witness case. The comments were not made in
4 passing. The prosecutor was arguing the credibility of
5 Cervantes, which was their case. And they can't get
6 away from the language where they talk about the
7 supposed corroboration of Cervantes and they say, "This
8 is significant, ladies and gentlemen, because it serves
9 to corroborate everything Cervantes is telling you."

10 After a situation where your Honor was
11 prepared to let in CC, we are going to let in CC and
12 the government argued Primavera Park in effect is not
13 where the bodies are buried for this purpose. We are
14 not going to argue that. And then they come back and
15 argue, Primavera Park is where it's buried. This
16 corroborates Cervantes, this corroborates everything he
17 says and that's why it's so significant.

18 We think your Honor said it all last time.

19 THE COURT: All right.

20 Let me tell you one or two things.

21 First of all, the zeal with which you
22 prosecuted this case is very admirable. But the great
23 exaggeration that you have placed on the great amount
24 of evidence that you have placed against the defendant
25 is really a grand exaggeration.

1 The evidence against all of these
2 defendants was minimal in the view of the Court. It
3 was sufficient to get to the jury and sufficient for
4 the Court not to disturb it in the case of all of the
5 other defendants who have made motions, but there was
6 not a lot of evidence. And it's evidence based on a
7 great deal of inferential base.

8 In this case the Court believes, because
9 this evidence is properly characterized in that fashion
10 as to Mr. Zuno, that this suggestion by the government,
11 and it was clearly the import of the argument that the
12 bodies were buried on land owned by Mr. Zuno, and that
13 therefore that was a significant piece of evidence.
14 For the government to make that argument when they know
15 that that is not true, that the bodies were not buried
16 on land owned by Mr. Zuno, and to have taken the
17 position -- it's true that the exhibit you were talking
18 about is not that important, but in this case it might
19 have been that important. It might have provided the
20 link that was necessary for the jury to get a close
21 picture.

22 So in the case of this defendant, and
23 because his lawyers have brought it up, have raised the
24 issue, and done a good job of lawyering, I am persuaded
25 that the trial was unfair as to him.

1 Now, you will stand there and you argue to
2 me how much evidence you had against these people. You
3 refer to things that happened, mostly things that the
4 narcotics traffickers were doing. And all that is
5 true. But if you look at the evidence against this
6 defendant, other than the statements of Mr. Cervantes,
7 there was not that much to corroborate.

8 And when you argue to the jury that the
9 bodies were buried on land that he owned and had to be
10 moved in order not to implicate him, I believe that is
11 the type of argument that should not have been made
12 under the circumstances, particularly in light of what
13 you told the Court earlier, that you would not do. And
14 I believe, therefore, that it was prejudicial and
15 requires the defendant to have a new trial.

16 And that is the order of the Court. I'm
17 going to vacate the verdict of the jury against this
18 defendant and order the matter to be reset for trial.

19 I will hear from counsel on what they
20 consider an appropriate date.

21 MR. CARLTON: May I just make a statement
22 for the record in response to your comment that the
23 closing argument was made in relation to something we
24 knew was not true?

25 I would disagree with that.

1 I believe that the argument that the -- if
2 an argument was made, as your Honor seems to believe it
3 was, that the bodies were buried on land owned by
4 Mr. Zuno, the prosecutor certainly could not know that
5 that was not the truth. Certainly, simply on the basis
6 of this photograph that they proffered, I don't think
7 that's sufficient basis to conclude Mr. Zuno did not
8 own the land. There is no other evidence about it. We
9 do not know it was not true and I would say that the
10 argument was at least made in good faith.

11 THE COURT: All right. What about the
12 date for retrial?

13 MR. MEDVENE: We would suggest, your
14 Honor, the second week in June, if it were convenient
15 to your Honor.

16 THE COURT: That is not convenient.

17 MR. MEDRANO: Your Honor, we would need
18 perhaps additional time to prepare to go to trial again
19 with regard to Mr. Zuno.

20 THE COURT: Why is that?

21 MR. MEDRANO: Well, your Honor, to cull the
22 evidence necessary to redo the case again is going to
23 involve not only getting all the evidence, but finding
24 the agents, getting them here. Many traveled from
25 abroad. It's going to take a bit of time. We would

1 ask, respectfully, for least two months before we go to
2 trial again on Mr. Zuno.

3 MR. CARLTON: I should point out, also,
4 your Honor, we have to pursue a process of going back
5 through the Department of Justice in Washington to
6 ascertain whether this ruling will be appealed or not.
7 And that is sometimes a somewhat lengthy process. It
8 may take 30 days or so.

9 MR. MEDVENE: If the Court please.

10 Mr. Zuno, as your Honor knows, for the
11 better part of two years has been in custody, save the
12 time that he was out on bond on the previous case. We
13 would have no objection to two months or whatever the
14 government wants, if they would have no objection to
15 bail for Mr. Zuno.

16 We would be willing to suggest to the
17 government, through your Honor, that at the
18 government's pleasure he could either go back to Mexico
19 -- he has come back on the two occasions when he's been
20 ordered by the Court. If the Court was uncomfortable
21 with that, that he be released to the Los Angeles
22 area. We could develop, I think, something
23 satisfactory to your Honor where there would be
24 appropriate restraints so there would be an indication
25 if Mr. Zuno ever moved out of a particular area or a

1 particular house or a particular neighborhood, we would
2 have a 24 hour restraint.

3 It seems to me the government shouldn't
4 have it two ways; one, not being ready to go to trial
5 now and at the same time wanting to keep him in
6 custody. We are willing to have almost any kind of
7 restraint if we can get him out of the custody.

8 If the government wants to go, we are
9 ready to go now. If they are not ready to go, let him
10 out subject to whatever restraints are necessary.

11 THE COURT: One really has not much to do
12 with the other. They are entitled to the time they
13 reasonably need, including the time to consult the
14 Justice Department about appealing the decision of the
15 Court. Unfortunately, the Justice Department and all
16 of government seems to do things in 30 or 60-day
17 increments. I don't know why you need that much time,
18 but the Court will not be available in June, in any
19 event. So that the matter should probably be set some
20 time in July.

21 The question of bail should be for a
22 written motion to be submitted and opposition to be
23 filed and the Court should consider it at another time,
24 not at this time.

25 MR. MEDVENE: That's fine, your Honor.

1 THE COURT: I would suggest July 23 as the
2 date for the new trial of this matter, at 9:30 AM.

3 MR. MEDRANO: May I make another request at
4 this time, your Honor?

5 THE COURT: Yes.

6 MR. MEDRANO: Of course the Court would
7 recall the extensive voir dire we went through at the
8 specific request of the defense counsel. In light of
9 that we would ask you to resurrect the prior order you
10 had with regard to counsels' contact with the press,
11 because we don't want to poison the well. And we would
12 ask you to impose that at this time, because we are
13 going to have the same problem with the questionnaires
14 --

15 THE COURT: I think the only problem we
16 had with the press before was from Mr. Stolar. And he
17 is no longer in the case. I don't recall that these
18 counsel in any way contributed to that. I thought they
19 conducted themselves very responsibly.

20 MR. MEDRANO: With that I would
21 respectfully disagree. Again, the sole goal being to
22 have a fair jury here. I don't see any harm to anyone
23 by keeping quiet for two months.

24 THE COURT: Maybe we should bring back the
25 same jurors. They have already been found to have been

1 fair.

2 MR. MEDRANO: We would ask that, your
3 Honor, to avoid an extensive voir dire, because that
4 took over a week, if you recall.

5 THE COURT: No, it didn't. It only took
6 three days, and that was because we did 101 jurors
7 individually.

8 MR. MEDRANO: But we had the
9 questionnaires, as you may recall, and as compared to
10 other jury selections in this courthouse, it took a
11 period of time.

12 THE COURT: It was one of the slowest --
13 one of the fastest jury selections for this kind of a
14 case that has ever been done in this courthouse. I
15 recently lectured the 9th Circuit judges on it, on how
16 to do it.

17 MR. MEDRANO: I just wanted to raise the
18 issue, your Honor.

19 We would ask for that relief, just to
20 protect a possible panel.

21 THE COURT: I don't want all this walk in
22 business at this time. I see no need for any kind of
23 order at this time. And therefore I deny that without
24 prejudice to review at another time.

25 MR. MEDRANO: Thank you, your Honor.

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THE COURT: All right.

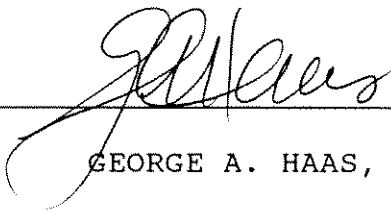
We'll adjourn.

THE CLERK: All rise.

This court is in recess.

o0o

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.



GEORGE A. HAAS, CSR

5-13-91

DATE