

Incident

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

HONORABLE EDWARD RAFFEDIE, DISTRICT COURT JUDGE PRESIDING

UNITED STATES OF AMERICA,)

PLAINTIFF,)

VS.)

) CASE NO: CR 87-422(F)-ER

JUAN RAMON MATTA-BALLESTEROS,)

) APPEALS NO: 91-50336

RUBEN ZUNO-ARCE,)

91-50351

JUAN JOSE BERNABE-RAMIREZ,)

91-50333

AND JAVIER VASQUEZ-VELASCO,)

91-50342

DEFENDANTS.)

) VOLUME 34

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, JULY 19, 1990

1:15 P.M.

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U.S. DISTRICT COURT, RM. 442-C
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APPEARANCES OF COUNSEL:

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APPEARANCES (CONTINUED):

FOR DEFENDANT JAVIER VASQUEZ-VELASCO:

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ALSO PRESENT:

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HECTOR BERRELLEZ, SPEC. AGT. D.E.A.

SPANISH INTERPRETERS

CR 87-422(F)ER, U.S. VS MATTA, ET AL., 7-19-90, V. 34

I N D E X

1:15 JURY QUESTION

P. 4

1 LOS ANGELES + CALIFORNIA THURSDAY, JULY 19, 1990

2 + 1:15 P.M.

3
4 (JURY NOT PRESENT.)

5 THE COURT: ARE COUNSEL ALL HERE ON THIS MATTER?
6 CALL THE CASE.

7 THE CLERK: CR-87-422(A), UNITED STATES OF AMERICA
8 VERSUS RAFAEL CARO QUINTERO.

9 MR. MEDRANO: GOOD AFTERNOON, YOUR HONOR.

10 THE COURT: GOOD AFTERNOON.

11 MR. CARLTON: FOR THE UNITED STATES, MR. CARLTON AND
12 MR. MEDRANO.

13 MR. STOLAR: THE USUAL APPEARANCES FOR DEFENSE
14 COUNSEL --

15 THE COURT: ALL COUNSEL ARE PRESENT.

16 MR. NICOLAYSEN: BUT NOT THE CLIENTS, YOUR HONOR.

17 THE COURT: NOT THE DEFENDANTS. YOU'VE ALL SEEN THE
18 NOTE THAT THE JURY SENT?

19 MR. NICOLAYSEN: YES, YOUR HONOR.

20 MR. STOLAR: YES, WE HAVE.

21 THE COURT: WHAT DO YOU THINK THE COURT SHOULD
22 RESPOND HERE?

23 THE GOVERNMENT HAS SUBMITTED A PROPOSED RESPONSE.
24 HAVE YOU ALL SEEN THAT?

25 MR. STOLAR: YES, WE HAVE. WE HAVE CONSULTED -- AND

1 I'M GOING TO ATTEMPT TO SPEAK FOR THE CONSENSUS AMONG ALL FOUR
2 DEFENDANTS -- THE CONSENSUS BEING THAT THE APPROPRIATE
3 RESPONSE WOULD BE THAT THE JURY HAS SIX COPIES OF THE COURT'S
4 INSTRUCTIONS, THAT THE INSTRUCTIONS THEMSELVES ARE CLEAR
5 ENOUGH AS THEY STAND, AND THAT THERE IS NO NEED FOR ADDITIONAL
6 REPLIES TO THIS NOTE, THAT THE COURT'S INSTRUCTIONS WERE
7 PERFECTLY CLEAR, THAT THEY LAID OUT WHATEVER ELEMENTS WERE
8 THERE AND, THEREFORE, WE THINK THAT THE APPROPRIATE RESPONSE
9 WOULD BE THAT THE JURY IS REFERRED TO THE COURT'S INSTRUCTIONS
10 WITH RESPECT TO THE ELEMENTS OF EACH CRIME AND WHAT THE CRIMES
11 CHARGED ARE.

12 AND THAT'S OUR POSITION. THE GOVERNMENT'S PROPOSAL
13 WE DO NOT THINK IS APPROPRIATE.

14 THE COURT: DO YOU WISH TO BE HEARD?

15 MR. CARLTON: YOUR HONOR, IT SEEMS THAT THE ESSENCE
16 OF THE JURY'S QUESTION IS SOME CONFUSION AS TO WHETHER AN
17 INDIVIDUAL CAN BE CHARGED UNDER MULTIPLE STATUTES FOR
18 ESSENTIALLY THE SAME CONDUCT. THAT IS NOT STATED SPECIFICALLY
19 ANYWHERE IN THE INSTRUCTIONS, AND WE BELIEVE THAT SOME
20 STATEMENT TO THAT EFFECT WOULD BE APPROPRIATE TO CLARIFY THE
21 JURY'S CONCERNS.

22 MR. STOLAR: AND OUR POSITION IS THAT THE
23 INSTRUCTIONS LAY OUT YOU CAN CONVICT SOMEBODY IF THE FOLLOWING
24 ELEMENTS ARE PROVED: A, B, C, D; AND YOU CAN CONVICT SOMEBODY
25 OF THIS CRIME IF THE FOLLOWING ELEMENTS ARE PROVED: A, B, C,

1 D.

2 IT IS PERFECTLY CLEAR FROM THE COURT'S INSTRUCTION
3 THAT THE SOLE CONDUCT CHARGED IS AS LAID OUT, AND IT IS LAID
4 OUT IN THE COURT'S INSTRUCTIONS.

5 THE COURT: ELL, IS THERE ANYTHING INACCURATE ABOUT
6 THE STATEMENT PROPOSED BY THE GOVERNMENT?

7 MR. STOLAR: I WOULD THINK SO.

8 MR. MEZA: IT ASSUMES A NUMBER OF THINGS IN THEIR
9 CHARGE, EXACTLY WHAT IT IS THE JURY IS SUPPOSED TO DETERMINE.
10 IT ASSUMES THAT IT HAS BEEN AN ABDUCTION, IT ASSUMES THERE HAS
11 BEEN A MURDER AND, IN EFFECT, IN SOME SENSE, IT'S ALMOST A
12 DIRECTED VERDICT, THAT THEY NEED NOT EVEN CONSIDER WHETHER
13 THERE HAS BEEN AN ABDUCTION OR MURDER.

14 IN FACT, THE INSTRUCTION SUGGESTS STRONGLY THAT THERE
15 IS NOT EVEN A QUESTION FOR THEM TO DECIDE, AND THAT IS WHAT
16 THIS WHOLE TRIAL HAS BEEN ABOUT.

17 MR. STOLAR: AT A MINIMUM --

18 MR. MEZA: ASSUME THAT CRIMINAL CONDUCT -- IT IS A
19 CIRCULAR BOOT STRAP INSTRUCTION, AND I THINK IT'S TOTALLY
20 IMPROPER.

21 MR. CARLTON: WE HAVE NO OBJECTION TO INSERTING THE
22 WORD "ALLEGED" CRIMINAL CONDUCT.

23 (COURTROOM LAUGHTER.)

24 MR. MEDVENE: IT IS NOT ACCURATE, YOUR HONOR. TO
25 FOLLOW UP ON WHAT MR. MEZA SAID, IT SAYS: "ALL OF THESE

1 COUNTS ARISE FROM THE SAME CRIMINAL CONDUCT," BUT THAT IS
2 REALLY THE ISSUE BECAUSE ONE OF THE COUNTS THEY'RE TALKING
3 ABOUT IS 4, WHICH IS MR. ZAVALA. SO WHETHER IT IS THE SAME
4 CRIMINAL CONDUCT OR DIFFERENT CRIMINAL CONDUCT, THAT'S REALLY
5 WHAT THE ISSUE IS.

6 MR. CARLTON: THE LAST SENTENCE SEPARATES MR. ZAVALA,
7 IF YOU LOOK AT THE LAST SENTENCE AGAINST MR. --

8 MR. MEDVENE: WHAT IT SAYS, SIR, IS ALL OF THESE
9 COUNTS ARISE FROM THE SAME CRIMINAL CONDUCT: I.E., THE
10 ABDUCTION OF MR. CAMARENA.

11 AND THIS IS HOW EACH OF THE COUNTS REQUIRES DIFFERENT
12 ELEMENTS OF PROOF, BUT IT SAYS -- IT IMPLIES YOU HAVE THE SAME
13 CONDUCT FOR MR. ZAVALA AND CAMARENA. THAT'S CERTAINLY NOT
14 TRUE. AND IT ASSUMES THAT THERE IS CRIMINAL CONDUCT AND IT
15 ASSUMES THAT THERE IS AN OFFENSE.

16 MR. STOLAR: NOT ONLY THAT, THE STATEMENT THAT EACH
17 OF THESE COUNTS REQUIRES DIFFERENT ELEMENTS OF PROOF IS
18 INCORRECT AS A MATTER OF LAW.

19 THERE ARE SEVERAL ELEMENTS IN EACH OF THE COUNTS
20 WHICH TRANSPOSE ONE TO ANOTHER. SOME OF THE ELEMENTS ARE
21 DIFFERENT. FOR EXAMPLE, VIOLENCE IN AID OF RACKETEERING
22 REQUIRES PROOF OF THE UNDERLYING ENTERPRISE AND RACKETEERING
23 ACTIVITY, BUT IT STILL REQUIRES ALL THE SAME ELEMENTS OF THE
24 KIDNAPPING AND MURDER.

25 AND SO IT'S AN INCORRECT STATEMENT OF THE LAW. I

1 THINK THE APPROPRIATE RESPONSE IS "WHAT THE COURT HAS GIVEN IS
2 THE STATEMENT OF THE LAW, AND THE JURY HAS THE INSTRUCTIONS.
3 READ THEM" --

4 THE COURT: I'M NOT SURE THAT'S SATISFACTORY IN VIEW
5 OF THE QUESTION ASKED BY THE JURORS. THE JURY SAID THEY WOULD
6 LIKE CLARIFICATION ON THE DISTINCTION BETWEEN 3 AND 4 AND 5, 6
7 AND 7.

8 MR. STOLAR: WHAT IS THE DIFFERENCE BETWEEN THE
9 KIDNAP MURDER IN SUPPORT OF AN ENTERPRISE ENGAGED IN
10 RACKETEERING AND THE KIDNAP MURDER ITSELF?

11 ARE THESE DEFENDANTS BEING CHARGED TWICE FOR THE SAME
12 CRIME?

13 THE COURT: WELL, THAT PART OF IT I DON'T THINK IS
14 THEIR CONCERN. IF IT IS AN ATTACK ON THE INDICTMENT -- BUT
15 ISN'T IT -- SHOULDN'T THE JURY BE INFORMED THAT EACH OF THE
16 COUNTS ARE CHARGED AS A SEPARATE OFFENSE?

17 OF COURSE THEY HAVE BEEN INFORMED OF THAT, BUT COUNT
18 3 AND 4 CHARGE VIOLENT ACTS OR CONSPIRACY TO COMMIT VIOLENT
19 ACTS, KIDNAP AND MURDER, WITH THE SPECIFIC INTENT TO GAIN
20 ENTRANCE TO OR MAINTAIN POSITION IN AN ENTERPRISE MAINTAINED
21 IN RACKETEERING, AS REFLECTED IN INSTRUCTION 21.

22 COUNT 5 CHARGES CONSPIRACY TO KIDNAP A FEDERAL AGENT
23 WHILE ENGAGED IN OR ON ACCOUNT OF PERFORMANCE OF HIS OFFICIAL
24 DUTIES.

25 COUNT 6 CHARGES KIDNAP OF A FEDERAL AGENT WHILE

1 ENGAGED IN OR ON ACCOUNT OF HIS PERFORMANCE OF HIS OFFICIAL
2 DUTIES, AND COUNT 7 CHARGES MURDER BY A MEMBER OF A CONSPIRACY
3 TO KIDNAP A FEDERAL AGENT WHILE ENGAGED IN OR ON ACCOUNT OF
4 HIS PERFORMANCE OF HIS OFFICIAL DUTIES OF WHICH THE DEFENDANT
5 IS A MEMBER IN THE COURSE OF AND IN FURTHERANCE OF THAT
6 CONSPIRACY.

7 SHALL WE TELL THEM THAT?

8 MR. STOLAR: THAT'S PRECISELY WHAT YOU TOLD THEM IN
9 THE INSTRUCTIONS ALREADY.

10 MR. MEZA: I WOULD JUST ASK -- AND I COULD BE
11 CORRECTED, BUT I DON'T BELIEVE THE COURT GAVE ANY INSTRUCTION
12 ON SPECIFIC INTENT -- IF YOU'RE GOING TO GIVE IT NOW --

13 THE COURT: I DIDN'T MEAN TO SAY IT NOW. THE INTENT
14 TO GAIN ENTRANCE TO OR MAINTAIN POSITION IN AN ENTERPRISE --
15 WHAT ELSE IS NOT CORRECT ABOUT WHAT WAS SAID HERE?

16 MR. STOLAR: WHAT THE GOVERNMENT'S PROPOSAL IS IS
17 WHEN THEY SAY --

18 THE COURT: WHAT IS YOUR PROPOSAL? I HAVE NOT SEEN
19 YOUR PROPOSAL.

20 MR. STOLAR: WE ARE PERFECTLY SATISFIED WITH WHAT THE
21 COURT HAS SAID ALREADY.

22 THE COURT: EXCEPT WHAT THE DIFFERENCES ARE, YOU HAVE
23 GIVEN US.

24 IF YOU WANT ME TO TELL THE JURY SOMETHING, YOU SHOULD
25 WRITE IT OUT AND SUBMIT IT.

1 MR. STOLAR: I'M AFRAID I DIDN'T GET THE RESPONSE
2 UNTIL I GOT HERE. I DID NOT GET THE RESPONSE UNTIL --

3 THE COURT: SEVERAL OF YOUR COLLEAGUES HAD IT BEFORE
4 NOON.

5 MR. STOLAR: IN ANSWER TO THE QUESTION: "ARE THE
6 DEFENDANTS BEING CHARGED TWICE WITH THE SAME CRIME," THE
7 ANSWER BASICALLY IS "YES."

8 THE COURT: IT'S NONE OF THE JURY'S BUSINESS.

9 MR. STOLAR: I UNDERSTAND THAT, IF YOU WANT TO TELL
10 THEM THAT --

11 MR. CARLTON: EVEN THAT QUESTION IS A
12 MISCHARACTERIZATION, YOUR HONOR. THEY'RE NOT BEING CHARGED
13 TWICE FOR THE SAME CRIME, AND THAT'S ONE OF THE POINTS.

14 I THINK THE JURY IS CONFUSED BECAUSE THEY'RE BEING
15 CHARGED IN SEPARATE CRIMES (SIC) FOR THE SAME CONDUCT. A
16 CRIME IS DIFFERENT FROM CONDUCT, AND THAT'S WHERE THEY SEEM TO
17 BE CONFUSED.

18 AND THAT IS THE ESSENCE, PERHAPS NOT AS ARTFULLY
19 EXPRESSED AS IT COULD HAVE BEEN, AS THE PROPOSAL THAT WE
20 SUBMITTED, THAT THE SAME CONDUCT COULD CARRY DIFFERENT
21 CHARGES, AND WE THINK THAT THE JURY SHOULD BE INFORMED OF
22 THAT.

23 MR. STOLAR: OUR POSITION IS THAT THE COURT'S
24 INSTRUCTIONS ARE ADEQUATE, BUT IF THE COURT IS GOING TO GIVE
25 SOMETHING ADDITIONAL, THEN WE MUST MAKE SURE THAT THE WORDS

1 "ALLEGATIONS OF THE SAME CRIMINAL CONDUCT" APPEAR BEFORE
2 ANYTHING .

3 MR. NICOLAYSEN: I WOULD SUGGEST THAT THE COURT
4 ADVISE THE JURY THAT THEY SHOULD NOT CONCERN THEMSELVES WITH
5 THE QUESTION OF WHETHER THE DEFENDANTS ARE BEING CHARGED TWICE
6 FOR THE SAME CONDUCT, THAT'S PURELY FOR THE COURT TO BE
7 CONCERNED ABOUT; THAT THEY SHOULD LOOK AT THESE SPECIFIC
8 INSTRUCTIONS AND OUTLINE THE ELEMENTS IN EACH COUNT, COMPARE
9 THEM AND THAT COMPARISON WILL HIGHLIGHT THE DIFFERENCES THAT
10 THEY'RE INTERESTED IN UNDERSTANDING BETTER .

11 THE COURT: THERE MAY BE A PROBLEM WITH INSTRUCTION
12 NUMBER 32 WHICH MAY HAVE CAUSED THIS, ON LINES 10 AND 11. IT
13 IS STATED: "YOU MUST FIND BEYOND A REASONABLE DOUBT THAT
14 THERE WAS A JOINT PLAN TO KIDNAP A FEDERAL AGENT."

15 AND THAT SHOULD READ "TO KIDNAP AND MURDER A FEDERAL
16 AGENT," WHICH IS WHAT IS ALLEGED IN THE INDICTMENT .

17 MR. STOLAR: JUST FOR THE RECORD, THAT'S ALSO ONE OF
18 THE PROBLEMS THAT I HAVE BEEN RAISING WITH THE COURT FROM THE
19 BEGINNING WITH RESPECT TO MR. MATTA, HAVING TO DO WITH THE
20 FACT THAT ONE 1959 COUNT IS CHARGED TO THE JURY WITH TWO
21 SEPARATE CRIMES; ONE IS CONSPIRACY OF 1959 AND ONE IS THE
22 SUBSTANTIVE --

23 THE COURT: I'M DEALING WITH THIS PROBLEM NOW .

24 MR. STOLAR: THAT'S WHERE I THINK IT COMES FROM,
25 THOUGH .

1 THE COURT: I DON'T NEED A REHASH.

2 MR. MEDVENE: WE AGREE, YOUR HONOR.

3 THE COURT: I DON'T WANT TO HEAR ANY MORE ARGUMENT,
4 COUNSEL.

5 YOU'VE NOT BEEN VERY HELPFUL, NONE OF YOU.

6 THE COURT WILL PREPARE A NOTE FOR THE JURY THAT WILL
7 ANSWER THEIR REQUEST.

8 MR. MEDVENE: MAY WE KNOW BEFORE IT IS SUBMITTED
9 WHAT IT IS?

10 THE COURT: YES.

11 MR. MEDVENE: THANK YOU, YOUR HONOR.

12 (COURT STANDS IN RECESS.)

13 C E R T I F I C A T E

14

15 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
16 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

17

18 Julie A. Churchill
19 JULIE A. CHURCHILL, CSR, RPR
OFFICIAL COURT REPORTER

2-20-92
DATE

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