

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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HONORABLE EDWARD RAFFEDIE, JUDGE PRESIDING

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UNITED STATES OF AMERICA,)
)
 PLAINTIFF,)
)
 VS.) NO. CR 87-422(F)-ER
)
 RUBEN ZUNO-ARCE, ET AL.,)
)
 DEFENDANTS.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
MONDAY, MARCH 12, 1990

VELMA B. THOMAS, CSR, RPR
OFFICIAL COURT REPORTER
4255 WEST FIFTH STREET
SUITE 108
LOS ANGELES, CALIFORNIA 90020
(213) 386-4492
CSR NO. 2683

APPEARANCES:

FOR PLAINTIFF:

ROBERT L. BROSIO
UNITED STATES ATTORNEY
MANUEL A. MEDRANO
ASSISTANT UNITED STATES ATTORNEY
JOHN L. CARLTON
ASSISTANT UNITED STATES ATTORNEY
1400 UNITED STATES COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

FOR DEFENDANT ZUNO-ARCE:

MITCHELL, SILBERBERG & KNUPP
BY: EDWARD M. MEDVENE, ESQ.
JAMES E. BLANCARTE, ESQ.
11377 WEST OLYMPIC BOULEVARD
LOS ANGELES, CALIFORNIA 90046-1683

OFFICIAL SPANISH INTERPRETER:

DOLORES MARTIN

I N D E X

PROCEEDINGS

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MONDAY, MARCH 12, 1990

DEFENDANT'S MOTION FOR A SUPPLEMENTAL
KASTIGAR HEARING

2

THE COURT'S RULING

10

LOS ANGELES, CALIFORNIA, MONDAY, MARCH 12, 1990, 10:00 A.M.

1 THE CLERK: CRIMINAL 87-422, UNITED STATES OF
2 AMERICA VERSUS RUBEN ZUNO-ARCE.

3 COUNSEL, PLEASE STATE YOUR NAMES FOR THE RECORD.

4 MR. MEDRANO: GOOD MORNING, YOUR HONOR. FOR THE
5 UNITED STATES MANUEL MEDRANO AND JOHN CARLTON.

6 MR. MEDVENE: IF THE COURT PLEASE, MESSRS.
7 BLANCARTE AND MEDVENE FOR MR. ZUNO-ARCE. HE IS PRESENT,
8 YOUR HONOR.

9 THE COURT: THIS DEFENDANT HAS FILED A MOTION
10 FOR A SUPPLEMENTAL KASTIGAR HEARING WHERE HE BASICALLY
11 ALLEGES THAT THE SIXTH SUPERSEDING INDICTMENT CONTAINS
12 ALLEGATIONS NOT CONTAINED IN THE FIFTH SUPERSEDING
13 INDICTMENT, AND HE IS ASKING THE COURT TO HOLD A HEARING
14 TO DETERMINE THAT THE NEW ALLEGATIONS OF THE SIXTH
15 SUPERSEDING INDICTMENT WERE NOT DERIVED FROM THE IMMUNIZED
16 TESTIMONY THAT HE GAVE BEFORE THE GRAND JURY, PURSUANT TO
17 18 UNITED STATES CODE SECTION 6002, WHICH PROHIBITS THE
18 USE OF COMPELLED TESTIMONY AND EVIDENCE DERIVED THEREFROM
19 IN ANY SUBSEQUENT CRIMINAL PROCEEDING.

20 THE COURT HAS READ AND CONSIDERED THIS MOTION,
21 AND I WANT TO REMIND COUNSEL OF THE PERTINENT LAW HERE.
22 ONCE THE DEFENDANT DEMONSTRATES THAT HE HAS TESTIFIED
23 UNDER A GRANT OF IMMUNITY TO MATTERS RELATED TO THE
24 FEDERAL PROSECUTION, THE FEDERAL AUTHORITIES HAVE THE
25 BURDEN OF SHOWING THAT THEIR EVIDENCE IS NOT TAINTED BY

1 ESTABLISHING THAT THEY HAD AN INDEPENDENT, LEGITIMATE
2 SOURCE FOR THE DISPUTED EVIDENCE.

3 THE PROBLEM HERE IS THAT THE SIXTH SUPERSEDING
4 INDICTMENT ADDS THE NAMES OF TWO DEFENDANTS AND PLACES
5 THEM, AS I RECALL -- THESE ARE TWO DEFENDANTS WHICH THE
6 DEFENDANT TESTIFIED HE KNEW. THEY WERE NOT IN THE FIFTH
7 SUPERSEDING INDICTMENT. THEY WERE IN THE SIXTH, AND THE
8 DEFENDANT IS RAISING A QUESTION OF WHETHER OR NOT THIS
9 EVIDENCE IS TAINTED BECAUSE OF NOT HAVING BEEN OBTAINED
10 THROUGH AN INDEPENDENT, LEGITIMATE SOURCE.

11 NOW, EARLIER I CONDUCTED A KASTIGAR HEARING TO
12 DETERMINE WHETHER THE FIFTH SUPERSEDING INDICTMENT WAS
13 TAINTED BY THE DEFENDANT'S IMMUNIZED TESTIMONY. AT THAT
14 TIME I DETERMINED THAT THE GOVERNMENT HAD SHOWN BY A
15 PREPONDERANCE OF THE EVIDENCE THAT THE FIFTH SUPERSEDING
16 INDICTMENT WAS NOT TAINTED. I DENIED THE MOTION WITHOUT
17 PREJUDICE AND TOLD THE DEFENDANT THAT THE MATTER COULD BE
18 REVIEWED AGAIN DURING THE TRIAL. IF IT APPEARED THAT ANY
19 EVIDENCE WAS OBTAINED THROUGH THE USE OF THE DEFENDANT'S
20 IMMUNIZED TESTIMONY, HE COULD RAISE THE ISSUE AGAIN.

21 THE SIXTH SUPERSEDING INDICTMENT, WHICH WAS
22 RETURNED ON JANUARY 31, CONTAINED THIS ADDITIONAL
23 ALLEGATION. IT ALLEGES THAT IN OR ABOUT OCTOBER OF 1984
24 THIS DEFENDANT AND OTHER DEFENDANTS MET AT THE RESIDENCE
25 OF ONE OF THE DEFENDANTS, JAVIER BARBA-HERNANDEZ, IN

1 GUADALAJARA AND DISCUSSED THE KIDNAPPING OF SPECIAL AGENT
2 ENRIQUE CAMARENA. THE LIST OF PEOPLE INCLUDED THE TWO
3 THAT THE DEFENDANT APPARENTLY TESTIFIED HE WAS ACQUAINTED
4 WITH OR KNEW.

5 NOW THE DEFENDANT IS REQUESTING A HEARING TO
6 DETERMINE WHETHER THIS ADDITIONAL ALLEGATION WAS TAINTED
7 BY HIS IMMUNIZED TESTIMONY.

8 I'D LIKE TO HEAR FROM THE GOVERNMENT ABOUT THIS.

9 MR. MEDRANO: VERY BRIEFLY, YOUR HONOR.

10 THE COURT: WHY WASN'T THIS ALLEGATION INCLUDED
11 IN THE FIFTH SUPERSEDING INDICTMENT?

12 MR. MEDRANO: SIMPLY PROSECUTORIAL DISCRETION,
13 YOUR HONOR. THE INFORMATION THAT FORMS THE BASIS FOR THAT
14 OVERT ACT THAT YOU JUST DESCRIBED THAT DESCRIBES AN
15 OCTOBER 1984 MEETING IN WHICH DEFENDANT ZUNO WAS PRESENT
16 WAS KNOWN TO THE GOVERNMENT. IT SIMPLY WAS NOT THROWN
17 INTO THE LAST INDICTMENT, THE FIFTH SUPERSEDING
18 INDICTMENT, UNTIL JANUARY 31, 1990, WHICH WAS THE LAST
19 SUPERSEDING INDICTMENT ISSUED BY THE FEDERAL GRAND JURY.

20 THE COURT: YOU SAY IT WAS KNOWN?

21 MR. MEDRANO: YES, YOUR HONOR.

22 THE COURT: HAD IT BEEN PRESENTED --

23 MR. MEDRANO: IT WAS --

24 THE COURT: -- TO THE GRAND JURY?

25 MR. MEDRANO: IT WAS NOT PRESENTED TO THE GRAND

1 JURY UNTIL JANUARY 17, 1990, YOUR HONOR.

2 THE COURT: IT WASN'T PRESENTED TO THE GRAND
3 JURY THAT ISSUED THE FIFTH SUPERSEDING INDICTMENT; IT WAS
4 PRESENTED TO THE GRAND JURY THAT ISSUED THE SIXTH
5 SUPERSEDING INDICTMENT, AND THESE WERE DIFFERENT GRAND
6 JURIES?

7 MR. MEDRANO: IT WAS THE SAME GRAND JURY, YOUR
8 HONOR.

9 THE COURT: IT WAS THE SAME GRAND JURY?

10 MR. MEDRANO: EXACTLY.

11 AND, YOUR HONOR, IF I COULD ACTUALLY, WITH THE
12 COURT'S INDULGENCE, LAY THIS OUT PRETTY SUCCINCTLY AND
13 OBTAIN THE NEED FOR AN ADDITIONAL HEARING, I THINK.
14 PRELIMINARILY, YOUR HONOR, LET ME STATE THAT WE WOULD AT
15 THIS TIME ASK THE COURT TO SIMPLY ADOPT THE TESTIMONY OF
16 AGENT BERRELLEZ WHEN HE TESTIFIED BEFORE YOU ON JANUARY 29
17 AND JANUARY 30. IF HE WERE TO BE CALLED TO THE STAND
18 RIGHT NOW, HE WOULD STATE THE IDENTICAL SET OF FACTS, YOUR
19 HONOR, SO THAT THERE IS NOTHING NEW FOR AGENT BERRELLEZ TO
20 OFFER.

21 WHAT I CAN OFFER YOU, HOWEVER, IS THE FOLLOWING
22 INFORMATION. THE SIXTH SUPERSEDING INDICTMENT ISSUED ON
23 JANUARY 31, 1990 -- NOW, THE ONLY ADDITIONAL EVIDENCE THAT
24 THAT GRAND JURY HEARD WITH REGARD TO DEFENDANT ZUNO WAS BY
25 C.I. 2, WHICH WAS ON JANUARY 17, 1990, ABOUT 13 DAYS

1 BEFORE.

2 WE HAVE GIVEN YOU IN CAMERA, YOUR HONOR, AS WE
3 ARE PERMITTED BY CASE LAW, THE GRAND JURY TRANSCRIPT FOR
4 C.I. 2, AND THAT IS IN CAMERA WITH THE COURT.

5 SO THE EVIDENCE THAT FORMS THE BASIS FOR THIS
6 ADDITIONAL OVERT ACT CAME THROUGH C.I. 2 BEFORE THE
7 FEDERAL GRAND JURY ON JANUARY 17, 1990, AND THEN OTHER
8 EVIDENCE UNRELATED TO DEFENDANT ZUNO WAS PRESENTED ON
9 JANUARY 31, AND THEN FINALLY THE FEDERAL GRAND JURY
10 RETURNED ITS SIXTH SUPERSEDING INDICTMENT ON JANUARY 31,
11 1990.

12 THE BOTTOM LINE IS THIS, YOUR HONOR. WE HAD THE
13 INFORMATION AT THE TIME OF THE FIFTH SUPERSEDING
14 INDICTMENT. WE SIMPLY DID NOT THROW IT IN FRONT OF THE
15 GRAND JURY UNTIL AFTER THE FIFTH SUPERSEDING INDICTMENT.
16 SO THE INDEPENDENT BASIS IS IDENTICAL. IT REMAINS THE
17 SAME. THERE ARE NO NEW FACTS, NO CURVE BALLS OF ANY SORT.
18 IT WAS SIMPLY A FUNCTION OF PROSECUTORIAL DISCRETION AS TO
19 WHEN WE WANTED TO THROW IN THAT ADDITIONAL OVERT ACT OF
20 WHICH MR. MEDVENE NOW COMPLAINS.

21 THE COURT: WELL, IF THE HEARING WERE TO BE HELD
22 AT THIS TIME, WHAT EVIDENCE WOULD YOU PRESENT TO THE
23 COURT?

24 MR. MEDRANO: THE FOLLOWING, YOUR HONOR. AS I
25 HAVE STATED AT THE BEGINNING, AGENT BERRELLEZ WOULD TAKE

1 THE STAND AND OUTLINE WHAT TESTIMONY HE GAVE TO THE
2 FEDERAL GRAND JURY, WHICH WAS PART OF THE PROBABLE CAUSE
3 FOR ZUNO'S INDICTMENT, AND THAT TESTIMONY HAS ALREADY BEEN
4 GIVEN TO YOU ON JANUARY 29 AND JANUARY 30. FOR THAT
5 REASON, SIMPLY TO EXPEDITE MATTERS, I WOULD ASK THE COURT
6 TO ADOPT THAT PREVIOUS TESTIMONY BECAUSE THERE IS NOTHING
7 NEW TO ADD.

8 THE ADDITIONAL TESTIMONY, THEN, I GUESS, IS
9 THROUGH MY PROFFER INDICATING TO YOU THAT WE HAD THE
10 INFORMATION THAT IS THE NEW OVERT ACT EVEN WAY BACK THEN
11 WHEN WE INDICTED THE FIFTH SUPERSEDING INDICTMENT, BUT WE
12 SIMPLY EXERCISED OUR DISCRETION AND DIDN'T ADD THE OVERT
13 ACT ON THE INDICTMENT UNTIL JANUARY 31 WHEN THE GRAND JURY
14 COULD CONSIDER IT AT THAT TIME.

15 THE COURT: MR. MEDVENE, DO YOU WISH TO BE HEARD
16 REGARDING THIS?

17 MR. MEDVENE: YES, YOUR HONOR. I AM JUST TRYING
18 TO UNDERSTAND THIS. AS I UNDERSTAND WHAT THEY ARE
19 SAYING -- AND I AM ASKING THROUGH YOUR HONOR -- AT THE
20 LAST HEARING I BELIEVE THE GOVERNMENT SAID, IF WE ARE
21 TALKING ABOUT THE SAME C.I. 2, THAT THEY GOT THE
22 INFORMATION FROM THAT INDIVIDUAL ROUGHLY A WEEK BEFORE
23 THANKSGIVING, AND HE TESTIFIED ROUGHLY AROUND THANKSGIVING
24 ABOUT FEBRUARY OF '85 AND MR. ZUNO. I DON'T KNOW IF WHAT
25 THEY ARE SAYING NOW IS THAT C.I. 2 HAD GIVEN THE

1 GOVERNMENT ON NOVEMBER 24TH OR 30TH THE INFORMATION ABOUT
2 OCTOBER, OR IF THEY ARE SAYING NOW THAT THEY GOT THAT FROM
3 C.I. 2 LATER, AND HE TESTIFIED TO IT ON JANUARY 17TH.

4 THE COURT: WELL, C.I. 2 HAS TESTIFIED ONLY ONE
5 TIME?

6 MR. MEDRANO: THAT WOULD BE TWICE, YOUR HONOR.
7 THE FIRST TIME WAS NOVEMBER 30, 1989, BEFORE THE FIFTH
8 SUPERSEDING INDICTMENT ISSUED. THE SECOND TIME WAS
9 JANUARY 17, 1990.

10 THE COURT: WELL, WHEN WAS THE EVIDENCE WHICH
11 FORMED THE BASIS OF THIS ALLEGATION IN THE SIXTH
12 SUPERSEDING INDICTMENT PRESENTED? ON NOVEMBER 30TH?

13 MR. MEDRANO: NO, YOUR HONOR.

14 THE COURT: NOT UNTIL NOVEMBER 17 -- JANUARY 17?

15 MR. MEDRANO: IT WAS LEARNED, MY RECOLLECTION
16 IS, A FEW DAYS BEFORE JANUARY 17 WHEN MYSELF AND MY CO-
17 COUNSEL, MR. CARLTON, CONTINUED TO DEBRIEF AND INTERVIEW
18 THE WITNESS, AND AT THAT TIME HE ALSO REFERENCED THAT
19 OCTOBER 1984 MEETING. THEN WHEN WE HAD THAT INFORMATION,
20 THAT IS WHEN WE PRESENTED IT TO THE GRAND JURY THROUGH
21 C.I. 2 ON JANUARY 17.

22 THE COURT: WELL, OF COURSE, THAT IS ONE OF THE
23 PROBLEMS THAT THIS DEFENDANT IS RAISING -- WHETHER OR NOT
24 THE NAMES OF THESE TWO PEOPLE THAT HE TESTIFIED TO KNOWING
25 WERE SUGGESTED TO THIS WITNESS PRIOR TO THE TESTIMONY ON

1 JANUARY THE 17TH.

2 MR. MEDRANO: I UNDERSTAND THE COURT'S CONCERN,
3 YOUR HONOR. I GUESS THE WAY TO ASSUAGE EVERYONE'S
4 CONCERN, AND LET ME JUST THROW THIS OUT AS A SUGGESTION.
5 I BELIEVE AGENT BERRELLEZ COULD TESTIFY FURTHER THAT EVEN
6 AFTER C.I. 2 TESTIFIED THE FIRST TIME ON NOVEMBER 30, AT
7 NO TIME WAS ZUNO'S IMMUNIZED GRAND JURY DISCUSSED WITH
8 HIM, OR AT NO TIME HAS EVEN AGENT BERRELLEZ TO THIS DAY
9 EVEN REVIEWED THAT IMMUNIZED GRAND JURY TESTIMONY.

10 THE COURT: WELL, IT IS YOUR OBLIGATION TO MAKE
11 AN AFFIRMATIVE SHOWING OF THAT, AND THAT WOULD REQUIRE A
12 HEARING IN WHICH CROSS-EXAMINATION BY -- DEFENDANT'S
13 COUNSEL WOULD BE ENTITLED TO CROSS-EXAMINE THE WITNESS WHO
14 TESTIFIED. SO I THINK WE ARE GOING TO HAVE TO HOLD A
15 HEARING ON THIS.

16 MR. MEDRANO: VERY WELL, YOUR HONOR. AGAIN AS A
17 SUGGESTION, YOUR HONOR, TO EXPEDITE MATTERS, I COULD PUT
18 ON AGENT BERRELLEZ SIMPLY ON DIRECT. I WON'T COVER ALL
19 THE MATERIAL ALREADY DONE BECAUSE THAT IS DUPLICATIVE. IT
20 IS ALREADY IN THE RECORD. I COULD GO STRAIGHT TO THE
21 HEART OF THE MATTER AND NAIL DOWN THIS ISSUE THAT I HAVE
22 JUST RAISED FOR THE COURT.

23 THE COURT: WELL, YOU CAN PROCEED IN WHATEVER
24 MANNER YOU THINK IS APPROPRIATE. THAT IS YOUR OBLIGATION
25 TO ESTABLISH THAT THERE WAS NO USE MADE OF THE DEFENDANT'S

1 IMMUNIZED TESTIMONY IN ANY WAY.

2 MR. MEDRANO: VERY WELL, YOUR HONOR.

3 THE COURT: AND I WANT TO ALSO -- IF YOU RECALL,
4 AT THE LAST HEARING THERE WAS A LOT OF CASE LAW IN VARIOUS
5 CIRCUITS, AND IT IS SUGGESTED EVEN IN THIS CIRCUIT, THAT
6 BASICALLY THERE ARE FOUR WAYS THAT A COURT MAY DEAL WITH
7 THE QUESTION OF WHETHER OR NOT IMMUNIZED TESTIMONY HAS
8 BEEN TAINTED.

9 ONE, IT CAN HOLD A PRETRIAL EVIDENTIARY HEARING,
10 WHICH WE DID IN VASQUEZ-VELASCO.

11 IT CAN HOLD A TAIN HEARING DURING THE TRIAL AS
12 THE QUESTIONED EVIDENCE IS OFFERED, WHICH THE COURT
13 RESERVED THE RIGHT TO DO THAT IN THIS CASE.

14 WE CAN HOLD A POST-TRIAL HEARING TO DETERMINE
15 TAIN.

16 OR THE COURT CAN USE A COMBINATION OF THESE
17 ALTERNATIVES.

18 THE COURT WILL HOLD A HEARING, BUT IT DOES NOT
19 INTEND TO HOLD A MINI-TRIAL. IT MAY BE THAT THE COURT
20 WILL USE A COMBINATION OF THESE ALTERNATIVES IF THERE IS
21 NOT A CLEAR, AFFIRMATIVE SHOWING MADE -- STRIKE THAT -- IF
22 THERE IS A SHOWING MADE AFFIRMATIVELY BY THE GOVERNMENT
23 THAT THEY DID NOT USE THIS, THE COURT WOULD STILL LEAVE
24 THE MATTER OPEN TO CONSIDER EITHER AT THE TRIAL OR AT A
25 POST-TRIAL HEARING.

1 BUT I THINK THE DEFENDANT IS ENTITLED TO INQUIRE
2 INTO THIS AREA WHICH I HAVE SUGGESTED, AND WE WILL SET A
3 HEARING FOR THAT SOMETIME NEXT WEEK.

4 MR. MEDVENE: MAY I FLAG ONE MATTER FOR YOUR
5 HONOR?

6 THE COURT: YES.

7 MR. MEDVENE: SO THAT WE CAN MOVE EXPEDITIOUSLY
8 NEXT WEEK. AS I JUST UNDERSTOOD -- AND I HOPE I DON'T
9 MISSTATE MR. MEDRANO -- HE NOW SAYS THEY DID NOT HAVE THE
10 INFORMATION FROM C.I. 2 AS OF THE TIME HE FIRST TESTIFIED
11 BEFORE THE GRAND JURY; BUT I BELIEVE THE SECOND TIME HE
12 GOT UP BEFORE YOUR HONOR, HE NOW SAYS HE LEARNED IT IN HIS
13 QUESTIONING OF C.I. 2 SHORTLY BEFORE JANUARY 17. AT LEAST
14 THAT IS HOW I HEARD IT.

15 THE COURT: THAT IS WHAT I UNDERSTOOD HIM TO
16 SAY.

17 MR. MEDVENE: ALL RIGHT. IF THAT IS WHAT HE
18 SAID, HE WAS AT THE GRAND JURY AND PARTICIPATED, AND BEING
19 IN THE GRAND JURY WHEN ZUNO WAS TESTIFYING, IF THIS CAME
20 UP IN HIS QUESTIONING OF THIS WITNESS, IT SEEMS TO ME THAT
21 MR. MEDRANO IS LEGITIMATELY A WITNESS AT THE HEARING, AND
22 I WOULD FLAG THAT FOR YOUR HONOR SO THAT WE ARE NOT
23 DELAYED WHEN WE --

24 THE COURT: WELL, I THINK THAT IS CONCEIVABLY
25 CORRECT.

1 MR. MEDVENE: YES, SIR. WHEN IS CONVENIENT FOR
2 YOUR HONOR?

3 (OFF-THE-RECORD DISCUSSION BETWEEN COURT
4 AND CLERK.)

5 THE COURT: MARCH 21 AT 4:30. IT WILL BE AT
6 4:30 BECAUSE THE COURT IS IN TRIAL. IT IS 4:30 ON
7 WEDNESDAY, THE 21ST.

8 MR. MEDVENE: THANK YOU VERY MUCH, YOUR HONOR.

9 THE COURT: I WOULD HOPE TO RULE ON SOME OF THE
10 REMAINING MOTIONS AT THAT TIME.

11 MR. MEDVENE: THERE IS NO HEARING DATE YET SET.
12 IS THAT CORRECT, SIR?

13 THE COURT: FOR WHAT?

14 MR. MEDVENE: FOR ANY OF THE PENDING MOTIONS.

15 THE COURT: NO.

16 MR. MEDVENE: THANK YOU.

17 MR. MEDRANO: THANK YOU, YOUR HONOR.

18 (PROCEEDINGS CONCLUDED.)

19 - - -

20 I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT
21 TRANSCRIPT OF THE PROCEEDINGS HAD ON THE RECORD
22 IN THE ABOVE-ENTITLED MATTER.

23
24 Velma B. Thomas

25 OFFICIAL REPORTER

3/15/90

DATE