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

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JUL 13 1993

McNeil, Silberber & Knupp

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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

WEDNESDAY, MARCH 24, 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; WEDNESDAY, MARCH 24, 1993; 4:30 PM

2 THE CLERK: Criminal 87-422, United States of
3 America v. 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: Ms. Fulginiti, Messrs. Blancarte and
9 Medvene for Mr. Zuno, and Mr. Zuno is present, Your Honor.

10 THE COURT: All right.

11 First, the defendant has filed a motion, which
12 apparently has not been served on the government, for
13 reconsideration of a motion for new trial based on
14 additional evidence which has been presented to the Court.

15 Ordinarily, if a motion has not been served on
16 another party, that is sufficient reason to deny it. But
17 in this case, I'm going to decide this motion based on its
18 own merits, even though the government has not had an
19 opportunity to respond.

20 The motion should be denied, is my view. It
21 should be denied on its face. It does not undermine
22 confidence in the verdict; that is, this newly discovered
23 evidence in no way undermines the confidence in the verdict
24 that the jury reached in the case.

25 The existence of the interrogation tapes and other

1 evidence produced at the trial of Camarena's knowledge of
2 the drug operations probably reasonably precludes any
3 undermining of the confidence in the verdict based on the
4 newly discovered evidence.

5 So the tentative conclusion of the Court is to
6 deny it.

7 Did you wish to be heard briefly on that?

8 MR. MEDVENE: Yes, sir.

9 As Your Honor recalls, the Court ordered turned
10 over to counsel --

11 THE COURT: I know that, Counsel.

12 MR. MEDVENE: Basically, the material that was
13 turned over indicated a witness said that the reason
14 Camarena was picked up was because of Quintero's anger over
15 a romantic relationship between Sara Cosio and Camarena.

16 THE COURT: Yes.

17 MR. MEDVENE: That theory contradicted the
18 government's presentation that the reason he was picked up
19 was because of the DEA's effectiveness.

20 Your Honor at the hearing last time indicated, at
21 least in part, there was no substantiation or no witness
22 has come forth to corroborate any part of that theory.

23 In other words, how would Mr. Zuno present
24 evidence that the reason for having him picked up was
25 different than the reason advanced by the prosecution at

1 trial.

2 Subsequent to Your Honor's denial, an article
3 appeared in a Mexican paper about the denial and about the
4 Brady material, and a witness has come forward. Your Honor
5 has the declaration where the witness states that on the
6 day of the kidnapping he was present. He was present when
7 Camarena was in a restaurant with Sara Cosio. Where they
8 said romantic things to one another, where they touched
9 each other, and were romantic to one another; that they
10 left the restaurant together; that from the restaurant they
11 went to the Camelot Restaurant and shortly thereafter were
12 picked up.

13 So it does two things: One, it's significant
14 evidence that suggests that the information from the
15 interrogation is correct. That there was a relationship
16 and a significant relationship. It also undermines the
17 testimony of one of the government witnesses who made
18 statements where Camarena was picked up.

19 That witness -- you not only have his declaration,
20 but he has come up from Mexico. He is present in the
21 courtroom. And we seek to put him on.

22 The witness has been interviewed. In my judgment
23 as an officer of the court, he is, as far as I can tell,
24 credible.

25 I can represent to the Court that I cross-examined

1 him. And as far as I can tell, this is a credible witness
2 who gets nothing and has nothing to gain by coming forward.

3 He has said he thought maybe an injustice was done
4 here because of what was recorded in the paper, and his
5 only intent is to tell Your Honor the truth.

6 Now, there is a witness who says at an
7 interrogation that there was this romantic relationship and
8 that's why the kidnapping took place. Here is a witness
9 that can substantiate a significant part of that statement
10 that there was such a relationship between Camarena --

11 THE COURT: But not the important part.

12 MR. MEDVENE: Well, I have one other point on
13 this.

14 The witness will also state that after the
15 kidnapping, agents of the government, representing
16 themselves as from the Consulate, interviewed this
17 individual, asked him questions, and among other things,
18 asked for, and the witness believes received, credit cards
19 substantiating that Camarena was in that restaurant the day
20 of the kidnapping. And the witness can testify that he was
21 there with Sara Cosio.

22 So this is something pretty close. Now when you
23 say "not all of it."

24 What really Brady is about is, there was a counter
25 theory that the government had possession of and they

1 didn't give us.

2 We asked you at the time of the oral argument when
3 we first got it, we didn't even get it until later than the
4 oral argument, but we said, "Can we see it and reopen?"

5 And you said, "No. See what the jury does, and
6 come back."

7 Now we are coming back and saying this evidence
8 goes to the heart of their theory. Here's a live witness
9 who sees Camarena that very day. He is prepared to
10 testify. He knows Camarena --

11 THE COURT: You are repeating it now. You are
12 repeating yourself. You made your point.

13 MR. MEDVENE: Yes, sir.

14 THE COURT: Did you wish to respond?

15 MR. CARLTON: Briefly, Your Honor.

16 This is ridiculous; that this witness shows up at
17 this time is inherently suspicious. I can't respond
18 specifically to everything that the witness says cause, as
19 Your Honor knows, we haven't gotten the document; but I
20 will point out two things: Evidence was presented in all
21 three of the trials that Camarena was in the DEA office on
22 the morning that he was abducted and he left the office to
23 walk across to his truck. So this witness' testimony is
24 inherently not credible.

25 And I believe, Your Honor, what is getting to a

1 point in relation to the tapes that needs to be made, which
2 is this: The tapes confirm why Camarena was abducted, why
3 he was held there, and why he was being questioned.

4 He was being questioned about what he knew and
5 what the DEA knew about the Cartel's activities, regardless
6 of whether he had lunch with somebody before he was
7 kidnapped.

8 The tapes establish the motive for the kidnapping,
9 and this testimony, whatever it might be, simply cannot
10 impeach the verdict.

11 MR. MEDVENE: I just want to say one thing. The
12 issue, Judge, with due respect -- you are kind to us
13 here -- with due respect, it is for the jury, not the
14 Court, to hear the testimony, to hear the counter theory.
15 The government kept it from the jury. The government had
16 this information before we went to the jury.

17 THE COURT: If you had that information, you would
18 have had to prove through competent evidence. The
19 interview with some individual, report of an interview with
20 some individual, is not sufficient to present it to the
21 jury. You would have had to come forward with competent
22 evidence of that fact.

23 This is what I was referring to when I denied your
24 motion the last time, and suggested that is what I expected
25 you to go out and search for.

1 MR. MEDVENE: I understand, Your Honor.

2 THE COURT: But you didn't produce anything at the
3 time of the hearing.

4 MR. MEDVENE: Your Honor, the rules as I
5 understand them are, we have opportunity before it went to
6 the jury. We should have had an opportunity to investigate
7 this theory, just like we didn't know about Cervantes
8 before. We investigated and there is no Cervantes. And
9 now he is not here.

10 Now we get this information and we start the
11 investigation and it turns out it's right. There was a
12 relationship.

13 Now, the government says they know nothing about
14 it. They saw this person. Let the government get up and
15 say, "We didn't interview this person." He is here in the
16 courtroom.

17 Let the government get up and say, "Hey, Medvene
18 is making it up when he says they have their credit cards
19 and he wasn't there the day before."

20 THE COURT: You argue in your motion here that
21 this evidence mandates the granting of a motion for new
22 trial because the lack of Brady disclosure by the
23 government creates a reasonable probability that the result
24 of the proceedings would have been different had the
25 evidence been disclosed.

1 And the reasonable probability is defined as a
2 probability sufficient to undermine confidence in the
3 outcome. I do not believe that we would have had any
4 different result had you been able to obtain a witness or
5 had this witness testify before the jury.

6 Even if you had a witness who could competently
7 testify that the reason that Camarena was abducted, in the
8 face of that very graphic interrogation and torture tape
9 that was available, it was very clear from that alone,
10 together with other evidence that was presented at the
11 trial, that it is extremely unlikely that this evidence,
12 even if presented by competent witness, would have
13 undermined the confidence in the outcome and would
14 necessitate or result in a different outcome.

15 So that's the view of the Court, and I deny the
16 motion for reconsideration.

17 We will proceed now to the matter of sentencing.

18 The Court has received and read and considered the
19 report of the probation officer, the sentencing memorandum
20 filed on behalf of the defendant, the supplemental reports
21 of the probation officer which corrects some factors
22 objected to by the defendant, and all documents and all
23 letters that have been submitted to the Court on behalf of
24 the defendant.

25 Now, Counsel, have you and your client read the

1 probation report and the supplemental report that has been
2 filed in this case?

3 MR. MEDVENE: Yes. We have read them and
4 discussed them and they have been described to Mr. Zuno.

5 THE COURT: Are there any other factual
6 inaccuracies contained in the report other than those
7 raised in your papers?

8 I think one issue that you raised.

9 MR. MEDVENE: There --

10 THE COURT: One issue about whether he said kill
11 him rather than drop him. That has been corrected. The
12 witness had attributed to your client a statement that if
13 he will not accept money, kill him. That was originally
14 reported in a probation report and has now been changed to
15 be consistent with the testimony of the witness which was
16 that he said to drop him.

17 MR. MEDVENE: I think, Your Honor, when we address
18 you on sentence, I think within the oppositions we filed
19 and what we will orally point out to Your Honor it will
20 include all of the comments on the sentencing report.

21 There are a number of things on the sentencing
22 report that we ask under Rule 32 that you do not consider
23 in the sentencing. But I would like to pick them up in the
24 course of not too long a presentation.

25 THE COURT: You and your client should attend the

1 lectern.

2 But you and your client have both read the report;
3 is that correct?

4 MR. MEDVENE: We have read the report, Your Honor.
5 We have had the report read in substance or discussed in
6 substance with Mr. Zuno.

7 THE COURT: Well, are there are any factual
8 inaccuracies contained in the report which you wish to
9 point out at this time, which the Court is required to
10 resolve before we proceed with the sentencing?

11 MR. MEDVENE: Well, in terms of what is in front
12 of you. One thing in front of you is the report, another
13 thing in front of you are certain memoranda by the
14 government. If we are talking about --

15 THE COURT: I'm talking about the probation
16 officer's report.

17 MR. MEDVENE: Yes.

18 In the probation officer's report there are a
19 number of statements attributed to the government in the
20 probation officer's report that in the defense view are
21 inaccurate or incorrect, and we point those or we would
22 like to point those out to Your Honor.

23 THE COURT: Well, I would like you to point them
24 out.

25 MR. MEDVENE: The prosector's version, Your Honor,

1 on page 11 makes reference, to among other things, that Mr.
2 Zuno's political affiliation enabled him to facilitate
3 necessary arrangements between high ranking government
4 officials and the Cartel. There is absolutely no evidence
5 at the trial Mr. Zuno's being sentenced of, of that fact.

6 I will point out to Your Honor that later in the
7 probation report as reported by the government, and we
8 think this is most significant, at pages 19 and 20, when
9 the prosecution tells the probation officer their version
10 of the meeting. The prosecution states at the bottom of
11 19, "The first meeting was at Las Americas," and they then
12 go on to discuss the second meeting and the third meeting
13 and the forth meeting.

14 I might point out to Your Honor that this purports
15 to recite, when they say the first and the second meeting,
16 they're not saying presented at trial. They are saying the
17 first meeting where Mr. Zuno was present discussing
18 kidnapping. This is the Godoy and Lopez testimony.

19 So the government is implicitly, if not
20 explicitly, rejecting Cervantes. Cervantes testified about
21 other first meetings.

22 So there is no more Cervantes as there wasn't at
23 the trial. And if now as they say on page 19, their
24 version to you and the Bureau of Prisons is that the first
25 meeting was at the Las Americas. They can't use Cervantes

1 in part and not use him in part we submit.

2 And in our trial, the last trial, there was no
3 evidence of political affiliation enabling him to
4 facilitate arrangements between government officials and
5 the Cartel.

6 Also on page 11 there is absolutely no evidence
7 that he delivered law enforcement credentials to Barba
8 Hernandez and picked up cash. No evidence of anything.

9 THE COURT: There was no evidence in this trial.
10 That evidence was presented in the prior trial.

11 MR. MEDVENE: Well --

12 THE COURT: You mean the Court cannot consider
13 that evidence?

14 MR. MEDVENE: It seems --

15 THE COURT: The Court granted a new trial to this
16 defendant.

17 MR. MEDVENE: Your Honor, for the government to
18 now say the meetings Cervantes testified to are a lie --

19 THE COURT: They haven't said that. You have said
20 that.

21 MR. MEDVENE: Your Honor, at page 19, it says,
22 "The first meeting" --

23 THE COURT: At page 19 they discuss the testimony
24 of the two witnesses who testified in this case, and they
25 do not include the testimony of the witness from the last

1 case.

2 MR. MEDVENE: Your Honor, it doesn't say, with due
3 deference, "among the meetings that he attended". It says,
4 with due deference, "the first meeting". That's pretty
5 clear. It then doesn't say "among other meetings". It
6 says "the second meeting, the third meeting, the fourth
7 meeting," and they are contradictory to Cervantes.

8 You can't have Cervantes in part and not have him
9 in part without some explanation.

10 I would say further on credentials. What is
11 before Your Honor is the testimony of he did not testify
12 because it was not necessary because they didn't put
13 Cervantes on.

14 But you were presented with something from Jesus
15 Anaya-Labra, which was he was the man that got money and
16 gave the credentials. He gave the credentials to the
17 Mexican government and he gave the credentials to the DEA
18 when he was interrogated.

19 So I'm saying there is no credible testimony. If
20 you want to accept that, it is okay. I don't mean it is
21 okay. You're the judge. But I'm saying under Rule 32, we
22 would like a statement if that's being considered for
23 purpose of sentencing, the political affiliation statement
24 and the law enforcement for cash statement.

25 THE COURT: Well, let me say this to you: Whether

1 I consider it or not, I do not believe it would make any
2 difference in the sentence. That is, the sentence in this
3 case does not depend upon that testimony. It depends on
4 the fact that this defendant was convicted of the crimes of
5 which he was charged on the evidence that was presented in
6 this Court.

7 And the evidence presented to the Court in this
8 trial is largely what determines what is the appropriate
9 sentence in this case.

10 MR. MEDVENE: It's also stated, Your Honor, on
11 page 11, you're asking for what we think are inaccuracies.

12 THE COURT: Yes.

13 MR. MEDVENE: I believe it states that he was the
14 owner of the Lope de Vega when Mr. Camarena was tortured.
15 I understand the back and forth on that. But it's the
16 defense contention that he was --

17 THE COURT: What line is that? There is no line.
18 Where is that?

19 MR. MEDVENE: It's the second paragraph from the
20 bottom, sir.

21 THE COURT: "Lastly, he was the legal owner of the
22 residence at 881 Lope de Vega."

23 MR. MEDVENE: I think the government argument on
24 that would be in terms of when title passed. We're saying
25 in Mexico he had no right to the residence. The residence

1 was sold, et cetera.

2 THE COURT: Well --

3 MR. MEDVENE: I just point that out to Your Honor.

4 THE COURT: A fair view of the evidence, I think,
5 does not suggest that he was the owner at the time of the
6 events in this case.

7 The government's theory was he had been the owner
8 immediately prior to the torture and kidnapping at this
9 house a very short time previously, and they were
10 suggesting that the evidence supported an inference that
11 the transfer of the property through another person to
12 Caro-Quintero was a sham transfer, not a genuine transfer.

13 MR. MEDVENE: I understand.

14 THE COURT: That's what they argued or suggested
15 by --

16 MR. MEDVENE: I understand, sir. I just pointed
17 out --

18 THE COURT: The Court has heard testimony from the
19 other party, both in this trial and I think in the last
20 trial, that the purchase was made by a totally independent
21 third party, and then was later sold by him to
22 Caro-Quintero.

23 MR. MEDVENE: We're just pointing out --

24 THE COURT: In other words, I'm not making a
25 finding that this was a sham transaction. I suggest that

1 the evidence supports the defendant's claims that he sold
2 the house to someone else who then sold it to
3 Caro-Quintero.

4 MR. MEDVENE: What I would ask then is that this
5 portion be stricken under 32 or some of the -- Your Honor
6 indicate --

7 THE COURT: I think it may be stricken.

8 MR. CARLTON: May I just make a point. The deed
9 to the property that was admitted into evidence shows that
10 he was the registered owner of the property until June of
11 1985. So this is in fact correct.

12 THE COURT: It is not correct in my view, and it
13 may be stricken, or it may be replaced with a paragraph
14 setting forth the sequence of events that occurred.

15 If you want accuracy, that's the way it should be
16 done, including the government's position that the deed was
17 not signed until June.

18 MR. MEDVENE: With respect, Your Honor, to that
19 portion of the report that talks about the meetings that we
20 alluded to before at page 19.

21 THE COURT: Yes.

22 MR. MEDVENE: We would suggest under 32(c)3, it
23 says "The Court shall afford defendant and defendant's
24 counsel an opportunity to comment on the report," which you
25 are doing, "and in the discretion of the Court to introduce

1 testimony or other information relating to any alleged
2 factual inaccuracies contained in it."

3 If it's not a stretch, Your Honor, we would also
4 ask again that the witness who is present in court, we
5 think it circumstantially undermines the testimony that
6 there were meetings. And again we would offer that
7 declaration in the sentencing portion of the hearing and
8 offer his testimony.

9 In other words, we think the meetings were
10 falsified, just as the Cervantes stuff was falsified. We
11 think this is a witness that, while circumstantial, goes to
12 that. And I just offer him again to Your Honor.

13 THE COURT: Well, based on that declaration of
14 that witness that you submitted to the Court, I don't
15 believe it bears any relevance to any issue regarding
16 sentencing, so I don't wish to hear from the witness.

17 I have read the testimony that he says he would
18 give.

19 Now, instead of nit picking this, I think that
20 these two objections regarding Lope de Vega and regarding
21 the credentials, that the report could be corrected to
22 reflect what really happened. That this witness at a prior
23 trial had testified to that fact. The jury believed him,
24 apparently. They convicted the defendant.

25 And that the witness was not called in this trial,

1 and this evidence was not presented in this trial. But I
2 think that the Court can consider it because it was
3 presented in a trial against this defendant in which he was
4 convicted, until the Court granted him a new trial. But it
5 could be explained, in other words, to make it perfectly
6 clear that the testimony was not presented at this trial.

7 MR. MEDVENE: All right.

8 THE COURT: With respect to the other issues
9 regarding Lope de Vega, I think that could be clarified to
10 spell out both positions of the defendant and the
11 government as to what the evidence shows in this case so
12 that then there need not be a characterization contained in
13 the report that he was a legal owner of the residence,
14 because I'm not prepared to make that finding.

15 There was evidence that could be construed to mean
16 that. There was evidence that could be construed to
17 dispute that. If you want both versions in there, then we
18 have accuracy.

19 You may prepare an order that makes these changes.
20 Get together with the government and make sure that the
21 order reflects just what happened at the trial, what the
22 evidence shows.

23 MR. MEDVENE: I think most important to us, Your
24 Honor, we will certainly do that, is what Your Honor takes
25 into consideration for purposes of sentencing and I think

1 you've indicated that on the record.

2 THE COURT: Yes.

3 MR. MEDVENE: We'll do what you said.

4 THE COURT: I think that would be a good way to
5 handle it.

6 Is there any other portion of this report --

7 MR. MEDVENE: Nothing other than pointed out in
8 the memorandum that has been filed in terms of the
9 presentence report.

10 In other words, in terms of the accuracy of the
11 government's version, they purport to give in effect the
12 direct of Lopez-Romero and Godoy. I won't repeat it, but
13 in our motion for new trial papers, we think we gave the
14 totality of their testimony and why it was inaccurate.

15 But I understand they're purporting to give the direct
16 and that is in front of Your Honor.

17 The only other additional corrections we have,
18 Your Honor, specifically as is in the sentencing memorandum
19 prepared by the government and also in the government's
20 opposition to the sentencing memoranda prepared by Mr.
21 Zuno, we believe there are some statements that are not
22 accurate.

23 THE COURT: Well, I am not required by Rule 32 to
24 correct inaccuracies contained in the government's
25 sentencing statement, am I?

1 MR. MEDVENE: I think --

2 THE COURT: I'm considering their statement. I'm
3 going by the report of the probation officer and my own
4 recollection of the evidence presented against the
5 defendant at the times at which he was convicted.

6 MR. MEDVENE: Well, my understanding of the law,
7 Your Honor, is that we have an opportunity to tell you
8 where we think there is no support in the records for the
9 statement.

10 THE COURT: I think you can do that.

11 I'm going to give you an opportunity to do that.

12 MR. MEDVENE: All right, sir.

13 THE COURT: Now, is there any legal cause why
14 judgment and sentence should not be imposed?

15 MR. MEDVENE: No, sir.

16 THE COURT: Do you wish to be heard in that
17 regard?

18 MR. MEDVENE: Yes, sir.

19 THE COURT: You've asked for certain specific
20 judgments here, such as probation or a halfway house,
21 things of that nature. You seriously consider that to be
22 appropriate in light of the sentences imposed on other
23 defendants in this case?

24 MR. MEDVENE: We seriously do, Your Honor, we
25 seriously do, and we'll tell you why.

1 THE COURT: All right.

2 MR. MEDVENE: Let me start there and then go back
3 to what we think some inaccuracies on what has been
4 presented to you.

5 I want to take head on why Mr. Zuno is different.
6 I know the easy thing to do is say life. But why he is
7 different and why you ought to say that and why it would be
8 unjust for you to say that.

9 Mr. Zuno -- in no particular order. I am just
10 going to throw out a lot of things. One, he never fled
11 after the offense, unlike many, if not all of the others.

12 Two, he knowingly came to this country to face
13 these very charges. There is a declaration that he was
14 told by counsel that he would likely be indicted on this
15 case, and he said he wanted to face the charges and come
16 here. Explain it how you want, but that makes him
17 different.

18 Relatively modest lifestyle. Certainly no
19 indication of spoils or significant gains and contrary to
20 the others. The businesses he had in large part he lost.
21 He didn't have excess money to keep them up. He worked.
22 His wife worked. No fancy jewelry. No fancy car. No
23 fancy anything. He aided in helping solve economic and
24 social problems in a small rural community of Mascota. No
25 question about that. He did that. The others didn't help

1 their community and their people.

2 Despite the innuendos to the contrary, hearsay, no
3 substantiation, he has lived an exemplary life. The
4 probation officer gives him a salient factor score of ten,
5 the highest that you can get, unlike the others. No prior
6 convictions, no prior commitments, no recent commitments,
7 no probation, no drugs, no anything. He is different.

8 No real motive for this defendant. Nobody puts a
9 dollar in his pocket. Not a dollar in his pocket. There
10 is nothing before you on this trial that says he got
11 anything. In the testimony, even in the probation report,
12 what the government tells the probation officer, they talk
13 about operation Padrino and Buffalo and Zacatecas and South
14 America to United States cocaine and Mexico, South America
15 cocaine.

16 Lots of transactions. Not one of them is Mr. Zuno
17 even mentioned by any government witness. A host of other
18 defendants, not Mr. Zuno. No gain of any kind. All these
19 planes and cars and millions of dollars in Anaheim, drugs
20 in Arizona, not the slightest connection to Mr. Zuno of any
21 kind. He is different.

22 In addition, cooperation with law enforcement,
23 legitimate cooperation. He came up here and spoke to Jaime
24 Kuykendall when he was asked and he told the truth about
25 what he was asked about: The house. The others didn't

1 cooperate that way.

2 Next way he is different: He cooperated with this
3 judicial system. He was in front of Judge Takasugi on a
4 perjury case, a made up perjury case I might add, to hold
5 him. He came and appeared twice. Now they explain that
6 away. But the man is sixty. If he goes to jail on a
7 couple of counts, that's a life sentence, pretty near a
8 life sentence. That was significant. He could have been
9 held any time he came up here. He cooperated with the
10 system, the others didn't.

11 Where he is different again is, that in the
12 opinion of the head of the DEA in Guadalajara, the man who
13 put him on the short list, he said as late as '86, the head
14 of Guadalajara, the man that was in charge of Camarena,
15 this man was not a drug dealer, he was not a member of the
16 Guadalajara drug cartel, and to the best of his knowledge,
17 he had no involvement of any kind in the kidnapping.
18 That's Kuykendall, senior, the DEA guy. Makes him
19 different.

20 Art Rodriguez comes up, a friend, no other DEA
21 friend comes up for any of these defendants. The DEA
22 officer for a long period of time talks of Mr. Zuno's good
23 character and non involvement in narcotics.

24 In this case, unlike the others, there are no
25 forensics of any kind. No hair, no this, no that. There

1 is not a photo, Judge. There is Lopez-Romero. And you
2 know, whatever was reported in the paper, we couldn't talk
3 to the jury. I don't know how it came out and why it did.
4 Maybe I didn't do good enough. But there was seven to five
5 after the first verdict. Now, I don't know what happened.
6 I don't know what happened. I don't know if that's
7 correct, but there is not one photo of this man with any of
8 the bad guys. You got Lopez-Romero, six, seven years
9 later.

10 Judge, you have a lot of letters. I don't know if
11 the others had a lot of letters. I wasn't there at the
12 sentencing. But from a variety of people, from regular
13 folks on the streets, to professors, to doctors, to deans
14 of schools, to ordinary citizens, from court personnel,
15 saying this is an honest man, this is a moral man, this is
16 a good citizen, this is a man devoted to his community,
17 this is a legitimate businessman.

18 He has been in jail since October of '89, Judge.
19 When the government -- and he is sorry about what happened.

20 We know what the jury said. We know there are
21 certain restraints, but when the government says in their
22 memo to you that what this is about is greed, he is
23 different than the others.

24 All these millions of dollars, he is not getting
25 any of it. No showing he is a politician. We put him up

1 on the stand so they could cross-examine him. His crime is
2 his brother-in-law was the president 15 years ago. There
3 is no showing of any contact with any put -- Lopez-Romero
4 to the side -- any contact with any political official of
5 any kind. No intermediary of any kind. What motive, what
6 dollar goes in his pocket?

7 Take away Cervantes, that was as close as they
8 came, and they are afraid to put him on because he is not
9 real. There is not a dollar in his pocket. What is his
10 motive? He is not a politician. He is living in
11 Mascota. Takes four hours to get there in a car on a bumpy
12 car ride. He is not in office. No showing he is tied into
13 anybody in office.

14 So where is the greed? He is different. There is
15 no showing of greed. He had a business. He had to make
16 legitimate commercial loans. He closed his business. He
17 couldn't keep it going.

18 Now, in the government's opposition to Mr. Zuno's
19 sentencing memo, just a lot of innuendoes. They talk about
20 a watch being put on his plane. He must be a bad man.
21 They looked at his plane. There were no drugs in it. What
22 better evidence that he is not involved in drugs? They
23 checked his plane, there are no drugs in it. He is never
24 charged with any crime. They put on second and third
25 degree hearsay. They talk about him being the target of

1 the DEA cause of Kuykendall's slip of paper.

2 Mr. Kuykendall came up here and testified this man
3 is not a member of the Cartel. This man was not involved
4 in the kidnapping.

5 They talk about a book that's 15 years old and has
6 hearsay. We think you should disregard the things in that
7 sentencing memorandum.

8 Your Honor, you've heard the case. You denied our
9 new trial motion. You heard all the evidence. I know you,
10 as fast as I get out about Cervantes not being here, I know
11 the reply. But I just say to you: This is the most
12 telling thing I can say, so when we all go to bed tonight
13 we are feeling good about what we did. Most telling
14 thing -- I am doing this from memory, and if I misstate, I
15 misstate, and I apologize, cause I don't have the earlier
16 probation report.

17 My memory of the earlier probation report says, in
18 effect, in the statement from the government, "Give him
19 life, cause he attended meetings one, two, three, four; and
20 he is a bad man."

21 This probation report, no mention of those four
22 meetings. We now got four other meetings in significant
23 part contradictory. We no longer got the first fellow. We
24 got two people as despicable as you can imagine, saying,
25 the government saying, "Well, here is four other meetings.

1 One, two, three, four." Same report, only we got four new
2 meetings that are contradictory with a new person.

3 You could have sentenced him to life before. You
4 had the courage to say, "Hell, no. I am not going to do it.
5 Doesn't feel right. There is some error here."

6 Now, they give you a new trial, jury convicted, I
7 will give you that, but we got four new meetings with new
8 people and they say these are the four meetings. And if
9 you gave us a new trial, I know you didn't, if you gave us
10 one, at the next trial we would probably get four other
11 meetings.

12 Now I'm saying this is an extraordinary case. The
13 presentation by the government has been extraordinary.
14 Putting on two separate cases. One in large part
15 contradicts the other. The man's been in jail for a long
16 time. I know it's a terrible offense. But we are suppose
17 to look at the man and society. You are never going to see
18 him again if you let him go with time served or you permit
19 him to go whenever the parole office wants to let him go.

20 You know there is going to be no other crime.
21 There has been no crime in his life. There is no
22 conviction of any kind.

23 If we look at this man and his life, there is no
24 purpose. Nobody out there on the street is going to think,
25 "My, God, I can go kill somebody. If I get Judge Rafeedie,

1 I can get out of here." You are known as tough. No
2 tougher than in here. So nobody is going to get any wrong
3 ideas if there is any degree of leniency by this Court. I
4 am saying it's easy not to be lenient. But it is not
5 right. It's not fair. It's not called for. I know I
6 can't reargue the evidence.

7 But, Judge, they said give him life and they give
8 you four different meetings than they gave you before.
9 That's not right.

10 I ask Your Honor with all humility to have
11 compassion in this case, to have understanding in this case
12 of what has happened. Whatever happens in this judicial
13 proceedings as it makes its way forward; but right now I am
14 saying: Send the man home. Send the man home.

15 If not, I say please consider permitting the
16 parole office to decide at any time they feel it
17 appropriate to send him home based on everything you have
18 heard.

19 Thank you, Your Honor.

20 THE COURT: Does your client wish to address the
21 Court regarding his sentencing?

22 DEFENDANT ZUNO: Yes, of course.

23 Your Honor, ever since the beginning of through
24 the media, ever since the first time we learned through the
25 media of the kidnapping and then the murder, the torture

1 and the murder of Special Agent from the DEA Camarena, I
2 openly voiced, came out against that terrible crime.

3 First of all, because of what he personally
4 suffered, beginning with the kidnapping and then the
5 torture and then his own death.

6 And after that because of the suffering his family
7 and his very close friends had to go through because of his
8 disappearance.

9 I have always believed because this is what my
10 mother and my father taught all of us, all of my brothers
11 and sisters and myself. I have always believed in total
12 and absolute respect for life and liberty.

13 Speaking of liberty as every kind of liberty. But
14 specifically of the freedom to believe, the freedom to
15 think, and the freedom to get together with everyone, every
16 kind of freedom that there is.

17 I told you from the very beginning that I am
18 absolutely innocent of all of these charges, and I will
19 continue to fight this until I am allowed to return to
20 Mexico with my name made very clean and clear.

21 When Judge Takasugi allowed me to go out on bail,
22 I did so and I returned to this country when he called me
23 back because I believe in justice.

24 I believe in my own integrity as a man because I
25 have never committed a crime.

1 And I returned here due to my sense of
2 responsibility for the whole of society.

3 Your Honor, as I said, I will continue to fight
4 until the end so that my name may be cleared.

5 Thank you very much.

6 THE COURT: Did you wish to be heard, Counsel?

7 MR. CARLTON: Yes, Your Honor.

8 Your Honor is fully conversant with all of the
9 evidence in this case having sat through three trials, two
10 in which defendant Zuno was involved. And I won't belabor
11 the Court by repeating all of that evidence. Nor will I
12 address all of the various items that Mr. Medvene has
13 referred to in his oral presentation. All of those items
14 have been discussed and addressed in the government's
15 sentencing memoranda.

16 His continual statements that the testimony of
17 Hector Cervantes in the last trial was inconsistent with
18 the testimony presented in the most recent trial is also
19 not true. The government has refuted each and every one of
20 those allegations in its response to defendant Zuno's
21 motion for new trial based upon the weight of the evidence.
22 I won't address that either right now.

23 Throughout this case, from the moment he was first
24 brought into this court until today, Ruben Zuno-Arce, his
25 lawyers, have cast himself as the victim of this case.

1 That position mocks this Court and the very system of
2 justice that has given him a fair trial.

3 He was not picked out of a hat and indicted willy
4 nilly. He was indicted when the time came that evidence
5 showing probable cause that he had committed the crime was
6 available to the Grand Jury.

7 From that moment on, even before that moment, he
8 had available to him a battery of attorneys to assure that
9 he was availed of every right to which he was entitled
10 under the United States Constitution and to plead every
11 argument in his defense at every step of the way. As Your
12 Honor is well aware, they have assiduously pursued their
13 duties every step of the way.

14 It was in part because of the effectiveness of his
15 representation and the rights that he has been afforded in
16 this Court that he was granted a second trial. And at
17 every step of the way it was the government's burden to
18 prove his guilt beyond a reasonable doubt, and the
19 government has done that more than once.

20 Two juries, 24 people, have found that this man,
21 Rubin Zuno-Arce, is guilty beyond a reasonable doubt of the
22 crimes with which he was charged.

23 So let's not hear any more about how Ruben
24 Zuno-Arce has been victimized. The real victims in this
25 case are Enrique Camarena and his loved ones. The real

1 victims include the Drug Enforcement Administration and its
2 agents overseas and the people who cooperate with it, and
3 the victims include people who are devoted to stopping the
4 flow of drugs in to this country from its southern border.

5 It's time to remember what Ruben Zuno-Arce's
6 guilty of. He belonged to one of the most powerful drug
7 Cartels in history. And the goal, the purpose of that
8 Cartel, was to distribute vast amounts of drugs and to make
9 vast amounts of money. And when the DEA interfered with
10 that, Ruben Zuno-Arce and his co-conspirators plotted to
11 retaliate.

12 And as you know, the plot involved kidnapping and
13 murdering the DEA Agent Camarena. But that wasn't the only
14 goal of this plan. The goal was to disrupt the DEA's
15 operations in Mexico. The disruption of this country's
16 entire drug interdiction efforts in that country, so that
17 the Cartel could go back to business as usual, to
18 distributing their drugs and making their money.

19 Zuno was at the center of that conspiracy. He was
20 at the planning meeting. He was at Lope de Vega while
21 Agent Camarena was being interrogated and tortured there.
22 This is a horrifying crime that was carried out in the most
23 cold blooded manner, and that is what must never be
24 forgotten.

25 He has carried his wrong doings even into this

1 courthouse. He lied to the Grand Jury and was indicted for
2 perjury in that case. He has lied about his reputation in
3 Mexico, which was the material submitted to the Court shows
4 was not spotless as he would have this Court believe. He
5 has lied on the witness stand in his testimony.

6 Ruben Zuno-Arce is not the victim here. He is a
7 criminal. He is an accomplice to the kidnapping and murder
8 of a fellow human being and an agent of the Drug
9 Enforcement Administration, Enrique Camarena. And his
10 sentence should reflect the gravity of his crime.

11 The only just sentence is the maximum sentence
12 available and that is life imprisonment.

13 THE COURT: All right. Counsel, you and your
14 client attend the lectern. The Court will pronounce
15 judgment at this time.

16 MR. MEDVENE: May I make one last request, Your
17 Honor --

18 THE COURT: Yes.

19 MR. MEDVENE: -- which I had forgotten.

20 Two things, if there were any -- there was at
21 least one document that there was some reference in the
22 probation officer's report was given to the Court that we
23 didn't have an opportunity to see or comment upon. I would
24 ask that whatever it is be taken out of the file and Your
25 Honor not consider it or that we be given an opportunity to

1 comment on it. It's a letter from Mr. Rubio.

2 THE COURT: I have not seen or read it.

3 MR. MEDVENE: All right, Your Honor.

4 The last thing, Your Honor, if there is any
5 sentence that you consider 4205(b).

6 THE COURT: All right. You mentioned that
7 already.

8 MR. MEDVENE: Yes, sir.

9 THE COURT: Well, much of your argument, Mr.
10 Medvene, goes to the question of whether or not the
11 evidence, as you view it, is inconsistent with the finding
12 of guilt on the part of the defendant.

13 The Court is not able to treat Mr. Zuno as though
14 he were not guilty of the crime. The jury has found him
15 guilty. As counsel has said, two juries have found him to
16 be guilty; but the evidence that was presented and believed
17 by this jury was very clear and straight forward evidence
18 by these two witnesses who placed him at these meetings,
19 who attributed statements to him at these meetings, and
20 this evidence is believed.

21 The Court now is not able to go back and say,
22 "Well, it should not have been believed," or the finding of
23 guilt by the jury is inconsistent with some of the points
24 that you made here earlier today, but which you also had
25 ample opportunity to argue to the jury, and did so very

1 effectively, not in terms of the results. But I think you
2 presented that case as well as it could be presented. And
3 made an exceptionally good argument on behalf of the
4 defendant.

5 Defendant stands before me now having been found
6 guilty of these crimes. It is my obligation and
7 responsibility as a judge to sentence the defendant having
8 in mind the gravity of the crime which was enormously
9 heinous in terms of what happened to that American agent.
10 It is a crime of enormous proportion. That is to say, it
11 is the type of crime that calls for a very severe sanction.

12 The defendant is viewed as having been convicted.
13 The Court treats him as having been convicted of these
14 crimes. I cannot ameliorate that, the guilt of the
15 defendant, by looking at some of these other factors that
16 you have mentioned which suggests that the verdict of the
17 jury was inconsistent. That is one factor to keep in mind.

18 A second factor is that the sentences imposed upon
19 other defendants in this case who were less culpable than
20 the evidence at the trial showed this defendant to be, that
21 is the evidence in trial showed Mr. Zuno to be one of the
22 moving forces in the conspiracy to kidnap and murder Mr.
23 Camarena.

24 You cannot ask the Court to disregard that
25 evidence. If the evidence is believed, it suggests that

1 Mr. Zuno is one of the more culpable of the people who have
2 been brought to this trial before now.

3 Some of the defendants in the other cases received
4 sentences greater than life imprisonment. There were at
5 least two defendants that received life imprisonment plus
6 240 years, which is a true life sentence.

7 By that I mean, their minimum eligibility for
8 parole is something like sixty years under those sentences.

9 So having in mind the sentences imposed on other
10 defendants in this case, the Court's absolute confidence
11 that Mr. Zuno received a fair trial in this case. I have
12 given him a second trial in the case because I was not
13 satisfied in the first case that that verdict should stand,
14 not because of any deficiency in the evidence presented at
15 that trial. The evidence there, if believed, was
16 sufficient to support the conviction of Mr. Zuno in the
17 first trial.

18 The Court's judgment is this in this case: With
19 respect to Counts Six and Seven of the Seventh Superseding
20 Indictment, it is the judgment of the Court that this
21 defendant be committed to the custody of the Attorney
22 General of the United States or his authorized
23 representative to serve a term of imprisonment for a term
24 of life. And on Counts Three and Four a term of ten years.

25 The defendant shall be eligible for parole under

1 Title 18, United States Code, Section 4205(a) upon serving
2 at least one-third of such term.

3 The sentences I impose on Counts Three, Four, Six
4 and Seven shall run concurrently with each other.

5 It is the further order of the Court that the
6 defendant shall pay the special assessment of \$50 on each
7 count, for a total \$200, under Title 18, United States
8 Code, 3013(a). That sum to be paid to the United States.

9 MR. MEDVENE: Would Your Honor consider
10 recommending Terminal Island to the Bureau of Prisons. It
11 would be close for the attorneys and close for his family
12 and --

13 THE COURT: That seems to differ from the request
14 that was made in the papers. That was a request to
15 Washington. I make no recommendation regarding the
16 placement of confinement for the reason that it is not
17 binding on the Bureau of Prisons. And this defendant will
18 be classified like any other inmate and placed where the
19 Bureau of Prisons given their resources and restrictions
20 will find it appropriate.

21 One moment. I want to advise Mr. Zuno that he has
22 a right to appeal from the judgment of this Court, verdict
23 of the jury; and that in order to preserve your right to
24 appeal, you must file a notice of appeal within ten days,
25 in writing, and it must be filed with this Court.

1 Within ten days from this date, a written notice
2 of appeal must be filed with this Court. If you fail to
3 file a notice, you may lose your right to appeal.

4 You are entitled to be represented by counsel on
5 appeal. If you are unable financially to employ your
6 counsel, the Court would, upon your request appoint counsel
7 to represent you.

8 A transcript of the trial, you're entitled to have
9 a transcript of all proceedings that have taken place in
10 this trial for use in your appeal.

11 Counsel, do you intend to file a notice of appeal?

12 MR. MEDVENE: Yes, Your Honor.

13 (Proceedings adjourned)

14 * * * * *

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

17
18
19 Mary Tucker

6.28.93

20 MARY TUCKER, CSR

DATE

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