IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-50246

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ANTONIETTA COVARRUBIA and
DANNY ZUNIGA,

Defendants-Appellants.

Appeal from the United States District Court
for the Western District of Texas
(SA 92 CR 296 8)

(April 14, 1995)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Antonietta Covarrubia and Danny Zuniga were convicted by a jury of one count each of conspiracy to distribute and to possess with intent to distribute over 100 kilograms of marijuana in violation of 21 U.S.C. §§ 841(a)(1) and 846. They raise several evidentiary points of error on appeal. We affirm.

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

I. FACTUAL AND PROCEDURAL BACKGROUND

On January 23, 1993, the defendants were named in Count One of a four-count superseding grand jury indictment that charged them with conspiring to distribute and to possess with the intent to distribute over 100 kilograms of marijuana. Also indicted were Carlos Zuniga (defendant Zuniga's cousin), Orlando Zuniga (also defendant Zuniga's cousin), Juan Sierra, Pedro Rodriquez, Richard Huizar, Gonzalo Covarrubia (defendant Covarrubia's husband), and Richard Moreno.

The conspiracy in which the defendants allegedly participated transported marijuana from the Rio Grande Valley to Boston, Massachusetts. The alleged head of the conspiracy was Carlos Zuniga.[1] Pedro Rodriquez, an indicted co-conspirator, testified that he worked for Carols Zuniga as a drug courier. He testified that on numerous occasions, he picked up automobiles loaded with marijuana from Covarrubia's home and that Covarrubia and her husband sometimes assisted in packaging and loading of the marijuana into the vehicles. Rodriquez also testified that Carlos Zuniga paid Covarrubia $10.00 per pound of marijuana stored at her home. Carlos Zuniga also paid Covarrubia to cook meals for the workers who packaged and loaded the marijuana.

From Covarrubia's home, Carlos Zuniga's drug couriers-- defendant Zuniga, Richard Valle, Joe Valle, Richard Moreno, Rick Huizar, and Rodriquez-- would transport the marijuana to defendant Zuniga's residence in San Antonio. From San Antonio,

[1] Carlos Zuniga is presently a fugitive.

the marijuana was transported via automobiles to Boston. Marijuana was transported in this manner from the Covarrubia's home six or eight times per month, in amounts ranging from twenty-five to ninety pounds per automobile. In addition to being a courier, defendant Zuniga also assisted in the packaging and loading of marijuana, as well as coordinating courier trips and helping to arrange purchases of marijuana for shipment.

During the three week trial, the government produced seventy-four witnesses, including Joe Valle, Richard Valle, and Paul Hampton, whose testimony is alleged to be tainted by prejudicial error. Two of these three witnesses-- Joe Valle and Richard Valle-- testified for the government pursuant to a plea bargain. The jury acquitted Moreno and Gonzalo Covarrubia. Orlando Zuniga was granted a mistrial. The defendants at bar were found guilty. Zuniga was sentenced to 150 months of imprisonment and Covarrubia was sentenced to 121 months of imprisonment.

On appeal, Covarrubia and Zuniga raise two identical points of error: (1) the district court erred in admitting testimony from Joe Valle regarding a perceived threat he received from defendant Zuniga; and (2) the district court erred in admitting into evidence two charts compiled by the government which summarized telephone activity among the conspirators. Zuniga raises two additional points of error: (1) the district court erred in refusing to allow defense counsel to make an offer of proof with regard to prior bad acts of witness Richard Valle; and

(2) the district court erred in refusing to unseal, for defense inspection, a Rule 35 motion which had been filed by the government on behalf of witness Joe Valle. Covarrubia raises one additional point of error: that the district court erred in refusing to allow her to offer surrebuttal testimony to discredit witness Paul Hampton. Finding these arguments to be without merit, we affirm.

II. ANALYSIS

A. Prosecutorial Misconduct

Both defendants argue that the district court erred in allowing the prosecutor to elicit testimony from Joe Valle concerning certain actions taken by defendant Zuniga which Valle perceived to be a threat. Because neither Covarrubia nor Zuniga made a timely objection to the prosecutor's conduct, we review only for plain error. United States v. Calverley, 37 F.3d 160, 162 (5th Cir. 1994) (en banc); United States v. Rodriguez, 15 F.3d 408, 414-15 (5th Cir. 1994); FED. R. CRIM. P. 52(b). Plain error is that which is "clear" or "obvious" under the law as it existed at the time of trial. United States v. Olano, 113 S. Ct. 1770, 1777 (1993). In addition, to be reviewable, plain error must affect the defendant's substantial rights. Calverley, 37 F.3d at 164. In most cases, an error which affects substantial rights is one in which the error affected the outcome

of the proceeding. Olano, 113 S. Ct. at 1778.[2] The burden of persuading the court that the error affected the outcome rests with the defendant. Calverley, 37 F.3d at 164.

Even assuming plain error is found, an appellate court is not required, but may, in its discretion, correct the error. Id.; see also Olano, 113 S. Ct. at 1778 (explaining that Rule 52(b) of the Federal Rules of Criminal Procedure "is permissive, not mandatory."). In United States v. Atkinson, 297 U.S. 157 (1936), the Supreme Court explained that plain forfeited errors affecting substantial rights should be corrected on appeal only if they "seriously affect the fairness, integrity, or public reputation of judicial proceedings." Id. at 160; Olano, 113 S. Ct. at 1779. Thus, "a plain error affecting substantial rights does not, without more, satisfy the Atkinson standard." Olano, 113 S. Ct. at 1779. The appellate court must determine whether the facts of the particular case warrant remediation. Calverley, 37 F.3d at 164.

In the case at bar, Joe Valle testified on direct that he had received $5,000 from the government for his assistance with the prosecution. On cross-examination, the following exchange took place:

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[2] As we noted in Calverley, the Olano court declined to address whether error which affects substantial rights is always synonymous with error which affects outcome. The Court stated that "[t]here may be a special category of forfeited errors that can be corrected regardless of their effect on the outcome" as well as a subset "of errors that should be presumed prejudicial." Olano, 113 S. Ct. at 1778; see also Calverley, 37 F.3d at 164 n.28.

Q: When's the last time you got money [from the government]?
A: The last time I got money was last night.
Q: How much?
A: Fifteen hundred dollars.
Q: Weren't you asked the question yesterday before you offered testimony, "Are you expecting any more money?" Weren't you asked that, sir?
A: I don't remember.
Q: I remember.
A: But I was not expecting any money at all.
Q: But you just happened to get another $1500 last night?
A: Yeah, but I'll tell you why I got it.
Q: Just a moment. Did you testify yesterday, sir, under oath and in front of this Jury that you did not expect to get any more money beyond the $5,000?
A: No, I don't think I said-- I didn't say that; no, I didn't.

On redirect, the government elicited the following testimony from Valle:

Q: Yes, sir. Would you please tell us where you were living prior to this weekend?
A: 2318 Martin Luther King.
Q: Can you tell me if your name, if you know, appeared on a witness list in this case?
A: Yes, sir, it did. It appeared on there I was going to be a witnesses [sic]; yes, sir.
Q: Can you tell me if you were required or felt you were required to move from your home on Martin Luther King?
A: Yes, sir; I felt that I needed to move my family and myself out almost immediately.
Q: Can you tell us what made you think you suddenly had to move from your home on Martin Luther King?

In response to this last question, Valle testified that defendant Zuniga had appeared at his house two days in a row and that Valle had told his stepdaughter to tell Zuniga that Valle was not at home. On the second visit, Zuniga appeared to be angry, and upon his departure, he unscrewed a lightbulb on Valle's front porch. Later that night, an anonymous caller phoned the Valle home ten or fifteen times and immediately hung up. Valle testified that he told the government about these

incidents and told them that "I was very concerned for my safety and my family . . . and I didn't feel safe being there [in the house]." Valle moved his family into a motel and testified that he had "no idea I would receive any money [from the government] at all. I was just told to keep my food receipts and I would be reimbursed on Monday."

Prosecutorial misconduct will result in reversal only if the misconduct "casts serious doubt upon the correctness of the jury's verdict." United States v. Carter, 953 F.2d 1449, 1457 (5th Cir.), cert. denied sub nom., Hammack v. United States, 112 S. Ct. 2980 (1992). It "must be so pronounced and persistent that it permeates the entire atmosphere of the trial." United States v. Blevins, 555 F.2d 1236, 1240 (5th Cir. 1977), cert. denied, 434 U.S. 1016 (1978). Thus, our initial task is to examine the prosecutor's actions and determine whether they are properly characterized as "misconduct."

In attempting to characterize the prosecutor's acts in this case as "misconduct," the defendants rely primarily on two Seventh Circuit cases, Clark v. Duckworth, 906 F.2d 1174 (7th Cir. 1990) and Dudley v. Duckworth, 854 F.2d 967 (7th Cir. 1988), cert. denied, 490 U.S. 1011 (1989). In Clark, the Seventh Circuit held that a habeas petitioner's Fourteenth Amendment due process rights were violated when the prosecutor asked a leading question which led a witness (a state prisoner) to state that he would not testify due to threats from fellow prisoners. The court concluded that "[t]his testimony may have led the jury to

believe that Clark, ultimately, was behind the threats, despite the fact that the government presented no evidence to support this implication." Id. at 1177.

In Dudley, the Seventh Circuit also determined that a habeas petitioner's Fourteenth Amendment due process rights were violated when the prosecutor used leading questions to elicit testimony regarding anonymous phone calls which made the witness nervous. The court concluded that "[the] threat testimony could only reflect adversely on the petitioner even though the threats were not traced to him or his codefendants, except by innuendo." Id. at 971. The court then balanced the prejudicial effect of the testimony against its necessity, and determined that the government's proffered necessity-- to explain the witness' nervous demeanor-- did not outweigh the prejudicial effect. Id. at 972.

As an initial matter, we note that neither Clark nor Dudley is binding authority upon this court. Furthermore, the material facts of these two cases are clearly distinguishable from the case at hand. First, in both Clark and Dudley, evidence of the threats was elicited by the prosecution and there was no apparent motivation to elicit such evidence other than to prejudice the defendant. In this case, by contrast, it was *defense* counsel who opened the door and placed the threat in issue by trying to impeach Valle's prior testimony regarding receipt of government money. When Valle attempted to explain how receipt of the $1,500 was consistent with his earlier testimony, defense counsel cut

him off. On cross-examination, the prosecutor attempted to rebuild Valle's credibility by permitting Valle to explain why the $1,500 had been paid, which also explained why he did not testify about the $1,500 earlier. Second, in this case, the threat evidence was not only relevant to rebut defense counsel's attempted impeachment, but also because, unlike Clark or Dudley, there was evidence that the threat was made by Zuniga. It is well-settled that Rule 404(b) of the Federal Rules of Evidence permits evidence of a threat to be admitted to show a defendant's consciousness of guilt, provided, of course, that the jury could rationally infer that the threat emanated from the defendant. See United States v. Gatto, 995 F.2d 449, 454-55, 455 n.11 (3d Cir.), cert. denied, 114 S. Ct. 391 (1993). Valle testified that Zuniga was angered when Valle's stepdaughter told Zuniga, for the second time, that Valle was not at home. Valle also testified that, after Zuniga left, Valle discovered that his front porch light had been unscrewed. Later that same evening, someone phoned Valle's home several times and hung up. Under these circumstances, a rational jury could infer that these actions were taken by Zuniga in an attempt to intimidate prevent Valle from testifying. Accordingly, we conclude that the prosecutor did not engage in misconduct by eliciting testimony from Valle regarding this perceived threat. In any event, even assuming arguendo that it was improper to elicit this testimony, the overwhelming evidence of Covarrubia's and Zuniga's guilt dwarf any prejudicial effect this testimony may have had. Thus, the

jury's verdict is deserving of confidence and the defendants have not met their burden of establishing plain error.

B. Summary Charts

Covarrubia and Zuniga next challenge the district court's admission into evidence of two summary charts prepared by the government. These charts appear in the form of flow charts, with several boxes joined together by arrows indicating the number of calls which flowed between the conspirators. Inside each box is a conspirator's name and various phone numbers believed to be under the conspirator's control. These phone numbers included residential phones, pay phones, and numerous beepers.

Pursuant to Rule 1006 of the Federal Rules of Evidence, summary charts are admissible when the writings or records upon which they are based is so voluminous that an in-court examination would be inconvenient. FED. R. EVID. 1006.[3] Covarrubia and Zuniga argue that the charts should not have been admitted because they were not based on competent evidence before the jury. See United States v. Winn, 948 F.2d 145, 159 (5th Cir. 1991), cert. denied, 112 S. Ct. 1599 (1992); Gordon v. United

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[3] Rule 1006 states:

> The contents of voluminous writings, recordings, or photographs which cannot be conveniently examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

FED. R. EVID. 1006.

States, 438 F.2d 858, 876 (5th Cir.) ("When summaries are used . . . the court must ascertain with certainty that they are based upon and fairly represent competent evidence already before the jury."), cert. denied, 404 U.S. 828 (1971). Specifically, they claim that there is a discrepancy between the individual listed as "owning" certain telephone lines in the official telephone logs (which were introduced into evidence) and the individual listed as "owning" those same lines in the government's charts. They point to the testimony of Joseph Vigil, an Internal Revenue Service Special Agent who prepared the charts, in which Vigil admitted that he "used other information we gained during our investigation to assist me in preparing the chart the way it's prepared." Vigil also testified that "[a]ll of the relationships between the phone numbers, they all come from these records solely." Upon further questioning from the prosecutor, however, Vigil admitted that, in assigning individual responsibility for certain phone numbers

> [t]here are a few numbers [in each box] that are not in the individual's name [in the official telephone logs introduced into evidence] that's in the box, and we determined through other information and some of the evidence that's already been put into evidence here, statements made by other individuals that these phones were actually being used by the people who are indicated in the box.

Thus, certain information contained in the charts-- namely, which individuals were believed to control which telephone numbers-- was not contained in the telephone logs which were introduced into evidence by the government.

A district court's decision to allow the use of summary charts is reviewed only for an abuse of discretion. Winn, 948 F.2d at 157. Even if there has been an abuse of discretion, however, the error may be harmless. United States v. Capote-Capote, 946 F.2d 1100, 1105 (5th Cir. 1991), cert. denied, 112 S. Ct. 2278 (1992); United States v. Howard, 774 F.2d 838, 844 (5th Cir. 1985).

In this case, admitting summary charts which were based, at least in part, on evidence not properly before the jury was an abuse of discretion. Nonetheless, we believe that the error did not influence the jury's verdict. See United States v. Quintero, 872 F.2d 107, 111 (5th Cir. 1989), cert. denied, 496 U.S. 905 (1990). As to Covarrubia, the only phone number ascribed to her on the two charts, (512)585-2182, was later proved by competent evidence to be her home phone number. Thus, it is clear that the summary did not mislead the jury. In addition, in order to prove its case against these defendants, the government had to prove, beyond a reasonable doubt, that: (1) a conspiracy to possess marijuana with an intent to distribute existed; (2) that the defendants knew of the conspiracy; and (3) that the defendants voluntarily joined the conspiracy. United States v. Hernandez-Palacios, 838 F.2d 1346, 1348 (5th Cir. 1988). The evidence introduced at trial was more than sufficient to prove these elements as to each defendant. Thus, the admission of the summary charts, although in error, was harmless.

C. Surrebuttal Evidence

Covarrubia's final argument is that the district court erred in failing to allow her to present surrebuttal evidence to impeach government witness Paul Hampton. Hampton testified that he purchased approximately 100 to 150 pounds of marijuana from Covarrubia in 1989 and 1990 and that Covarrubia was actively involved in the conspiracy. On cross-examination, Hampton testified that he had heard about an incident in which Covarrubia's home was burglarized by rival drug dealers who reportedly "stuck jalapeno's up Toni [Covarrubia]." Covarrubia then asked the district court for permission to take the stand in surrebuttal for the purpose of impeaching Hampton. In her offer of proof, Covarrubia informed the court that she would testify that she recognized Hampton as one of the assailants involved in the burglary who had assaulted her. She also stated that the information regarding the jalapeno peppers was "information that was only known to a couple of people, her doctor being one of them." The district court denied Covarrubia's request for surrebuttal, specifically finding: (1) that her proffered testimony was not material to the ultimate issue in the case; and (2) that Hampton's testimony did not raise new issues which necessitated providing Covarrubia a rebuttal opportunity.

The decision to deny surrebuttal falls within the sound discretion of the district court and we will reverse its decision only for an abuse of discretion. United States v. Alford, 999

F.2d 818, 821 (5th Cir. 1993). Surrebuttal is proper when: (1) the rebuttal testimony raises a new issue which broadens the scope of the government's case; and (2) the proffered surrebuttal is not tangential, but capable of discrediting the rebuttal testimony. United States v. Moody, 903 F.2d 321, 331 (5th Cir. 1990).

Hampton's rebuttal testimony was that he had purchased marijuana from Covarrubia and that Covarrubia was actively involved in a conspiracy to possess with an intent to distribute marijuana. Such testimony did not raise a new issue, but merely lent support to the government's contention that Covarrubia was involved in the conspiracy for which she was indicted. Hampton's testimony regarding the burglary and assault of Covarrubia did not raise a new issue which required surrebuttal. It was, at most, tangential to the government's proof. Covarrubia's proffered surrebuttal-- that Hampton had participated in the assault and burglary-- may have impeached his testimony that he had merely "heard" about the incident, but it would not have discredited the essence of his testimony that Covarrubia participated in the conspiracy. Accordingly, the district court did not abuse its discretion in denying Covarrubia's proffered surrebuttal testimony.

D. Offer of Proof

Prior to cross-examination of government witness Richard Valle, Zuniga's counsel notified the court that he "intend[ed] to

cross-examine Mr. Valle on the point of his rape charge. . . . I think it's quite relevant, the fact, Your Honor, of his history that he was charged with rape of his stepdaughter in his present relationship with her, and I'd like permission to cross-examine him on that point, so I'm asking permission to do so." Prior to trial, the district court had granted the government's motion in limine to disallow questioning by defense counsel regarding prior bad acts of government witnesses until the court had made a finding that such acts were admissible under Rule 404(b) of the Federal Rules of Evidence.[4] Based upon this order, the district court sustained the prosecutor's objection and ordered Zuniga's counsel not to cross-examine Valle about the charge. Immediately after the court sustained the prosecution's objection, Zuniga's counsel asked "for permission to make a bill of exceptions outside the presence of the Jury for the record." The district court responded, "No, sir. I never do that in federal court."

As an initial matter, we note that bills of exception have been abolished in federal court since 1946. See United States v. Sheridan, 329 U.S. 379, 393 n.24 (1946). Nonetheless, Zuniga argues that his motion for a bill of exceptions was "a short-hand

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[4] Rule 404(b) reads in relevant part:

> **(b) Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident . . . .

FED. R. EVID. 404(b).

expression among Texas lawyers" for an offer of proof which should have been allowed pursuant to Rule 103(a)(2) of the Federal Rules of Evidence[5] in order to preserve this point of error on appeal. Specifically, Zuniga's brief states, "[h]obbled by the handicap of not being able to specify the exact harm by failing to allow the cross examination, defendant Danny Zuniga contends that defense counsel was deprived of the opportunity to raise a legitimate error on appeal." We disagree.

Under the plain language of Rule 103(a)(2), Zuniga's point of error has been preserved for appellate review because the evidence desired to be introduced-- Valle's rape charge-- was "apparent from the context within which questions were asked." FED. R. EVID. 103(a)(2); see also United States v. Ballis, 28 F.3d 1399, 1406 (5th Cir. 1994) (noting that a formal offer is not required to preserve error).

Zuniga next argues that the district court's decision to exclude the evidence under Rule 404(b) was an abuse of discretion. See United States v. McAfee, 8 F.3d 1010, 1017 (5th

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[5] Rule 103(a) states:

> **(a) Effect of erroneous ruling.** Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and . . .
>
> **(2) Offer of proof.** In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

FED. R. EVID. 103(a)(2).

Cir. 1993); FED. R. EVID. 608(b). Specifically, he contends that the evidence of Valle's rape charge was relevant to impeach Valle's credibility pursuant to Rule 608(b) of the Federal Rules of Evidence.[6] We disagree. Zuniga made no effort, either at trial or in his appellate brief, to establish how a rape charge against Valle is "probative of [Valle's] truthfulness or untruthfulness." FED. R. EVID. 608(b). Accordingly, it was not an abuse of discretion for the district court to exclude this evidence.

E. Sealed Rule 35 Motion

Zuniga's final argument is that the district court erred in refusing to order the Rule 35 paperwork of government witness Joe Valle be provided to defense counsel for purposes of cross-examination. During direct examination, Valle testified that he had been convicted of possession with an intent to distribute marijuana, had received a ten month term of imprisonment, but had

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[6] Rule 608(b) states in relevant part:

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified. . . .

FED. R. EVID. 608(b).

only served three months. After direct, the government told the court:

> I understand that . . . a Rule 35 motion was filed reducing [Valle's sentence] from ten months to three months. That order is under seal, so I don't have that order. . . . It is my understanding that he received a reduced sentence from ten months to three months, which he's testified already.

Defense counsel then asked the district court "to unseal the Rule 35 [motion] so that we can impeach him with the materials contained therein on that Rule 35." The district court denied the request but granted defense counsel's request to include a copy of the Rule 35 motion in the appellate record. Zuniga argues that the district court's failure to unseal the government's Rule 35 motion violated his due process rights.

The government has a duty to disclose any evidence favorable to the accused that is material to guilt or punishment. Brady v. Maryland, 373 U.S. 83, 86 (1963). A promise of leniency made to a key witness in return for his testimony is impeachment evidence to which a defendant is entitled. Giglio v. United States, 405 U.S. 150, 154-55 (1972). However, if the disclosure of the evidence would not alter the outcome of the proceeding, the error is harmless. United States v. Garcia, 917 F.2d 1370, 1375 (5th Cir. 1990).

In the case at hand, the government informed Zuniga that a Rule 35 motion had been filed on behalf of Valle. A Rule 35 motion is designed to reduce a sentence "to reflect a defendant's subsequent, substantial assistance in the investigation or prosecution of another person who has committed an offense . . .

." FED. R. CRIM. P. 35(b). Thus, it was clear from the government's disclosure of the existence of the Rule 35 motion that Valle had granted "substantial assistance" to the prosecution. Indeed, during cross-examination, defense counsel elicited, in great detail, the extent of Valle's cooperation with the prosecution, including Valle's reduction in sentence.[7]

Valle's testimony demonstrates that the defense was able thoroughly to examine Valle regarding his reduction in sentence and other benefits he received from the government in exchange for his testimony. Thus, the district court's decision to keep the Rule 35 motion under seal did not hamper Zuniga's ability to impeach Valle or present his defense. Accordingly, Zuniga has not demonstrated a due process violation.

III. CONCLUSION

For the foregoing reasons, the judgment of the district court is in all respects AFFIRMED.

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[7] The following exchange occurred between defense counsel and Valle:

> Q: All right. That was for you, you got your sentence reduced on a Rule 35. That's a reduction of sentence, that's correct, isn't it?
> A: I don't know about that, I just know I got the reduction in the sentence. I don't know about no rules or nothing.
> Q: That was in return for--
> A: -- For the information.
> Q: Telling the Government stories about these people.
> A: Telling the Government the truth about what happened, yes.