

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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 UNITED STATES OF AMERICA, : 09-CR-466(BMC)
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 -against- : United States Courthouse
 : Brooklyn, New York
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 JOAQUIN GUZMAN LOERA, : Thursday, January 31, 2019
 : 9:30 a.m.
 Defendant. :
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TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
SIDEBAR CONFERENCE EXCERPTS
BEFORE THE HONORABLE BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE

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

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A P P E A R A N C E S: (Continued.)

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(Sidebar conference held on the record in the presence of the Court and counsel, out of the hearing of the jury.)

MR. BALAREZO: Your Honor, we would like to know who the juror is because we think there's some considerations that this juror is making that are improper, but we would like to know who the juror is. I think Mr. Guzman is entitled to that.

MS. PARLOVECCHIO: I don't think that the identity of the juror is material. I think there have been arguments made during trial by defense counsel that the defendant couldn't have means which may be one of the reasons why this has become a question in the juror's mind. I think the Court's proposal is entirely proper and I think, the Government, submits we should move forward as the Court proposes.

THE COURT: Look. If you insist on that, I'm not going to tell you who it is but what I will do is the parties have a right to attend my questioning of the juror and then you'll see who it is.

MR. LICHTMAN: Judge, can I interrupt?

I apologize. I don't want to cause this juror any more stress than any of the jurors.

THE COURT: That's why I said a private meeting.

MR. LICHTMAN: And I agree with the private meeting

and I don't think what the defense said about wealth for the defendant or anybody else has any relevance to this situation where I am right now.

THE COURT: It's mutually excludable. We agree on that it may not be considered by a juror. I have to make sure that this juror understands that and accepts it.

MR. LICHTMAN: And if he or she can follow your instruction this is a moot, dead, issue. Instead of us sitting in and watching and making her more stressed, I would ask that we get the identity so we can avoid that just so we know who we're dealing with. I don't see the downside of that.

THE COURT: Because then it gives the parties another consideration that shouldn't come into play here. The strategic consideration of which way do they think this juror might lean anyway and how much are they willing to forgive. What I might do is do the private interrogation, and then if you have any concern about, you know, my conclusion as to whether the juror can put it aside, you can read the transcript. We'll get it for you immediately and it will be short and you can look at it and then make a decision. But I don't want to get into who is this a good juror for and, therefore, should we object. That's not the issue. The issue is: Can the juror put it aside?

MR. LICHTMAN: Can I ask if it's an alternate or

regular juror?

THE COURT: It is not an alternate.

MR. LICHTMAN: Okay. That's fine, Judge. Listen, that's your decision. That's your decision.

THE COURT: Let's address the other problems.

(Sidebar discussion concludes.)

(the following occurred in the judge's robing room.)

(Juror enters the room.)

THE COURT: Have a seat.

JUROR: Thank you.

THE COURT: I understand from Ms. Clarke that you have a question about how the defendant's attorneys are being paid for, that you think that might be important in the deliberations. Is that right?

THE JUROR: Yes, that was the question I put to her.

THE COURT: Okay.

THE JUROR: I had a second, but I didn't think it tell you. My second question was if the decision on the defense's presentation was the defendant's. Like, how they handled closing their argument, not closing, but presenting their case.

THE COURT: Okay. Let me answer both your questions.

THE JUROR: Okay.

THE COURT: First of all, there is no evidence in the record as to how the defendant's attorneys are being paid for or compensated, so we're not going to know that.

THE JUROR: Okay.

THE COURT: But, more importantly, we shouldn't know that because the case only has to be decided on the evidence of who did what and what happened when. That's what the jury

has to decide. I'm not saying your question is illogical, it's perfectly logical, but it's impermissible under the law, and I need to know from you that you can put it aside and not speculate about whether the defendant is paying for his attorneys, whether they're volunteers, whether they're publicly appointed. You need to put that out of your mind. Are you able to do that?

THE JUROR: Yes, I've heard the evidence, and if that's what I'm basing my decision on, I'm good with that.

THE COURT: You have no doubt about that?

THE JUROR: I have no doubt about that.

THE COURT: Okay. Now, as to your second question. It's a similar answer, you know, the case has to be decided just based on the evidence that was presented to you, not on considerations outside the courtroom. So you shouldn't worry about whose decision was it to present the case one way or another.

I'll tell you, as a practical matter, defendants confer with their lawyers and a joint decision is reached as to how to proceed. Generally, I don't really know. I mean, the simple answer to your question is, I don't know what happened between the defendant and his attorneys because I'm not allowed to know nor are you.

THE JUROR: Okay.

THE COURT: Okay. And so, I've got to have

assurance that you can put that out of your mind as well?

THE JUROR: Yes, you have that assurance.

THE COURT: Any doubt about that at all?

THE JUROR: No.

THE COURT: Okay. And the last thing I want to say is, please don't discuss this just like I've been saying don't discuss the case amongst yourselves, don't discuss this interview with any of the other jurors.

THE JUROR: I won't.

THE COURT: Thanks very much.

THE JUROR: I'll see you in the courtroom.

THE COURT: Yes. See you in a bit.

(Juror exits from the robing room.)

THE COURT: Okay. You can read that back.

(Robing room conference concludes.)

(Continued on the next page.)

(The following occurred in the hallway outside the courtroom between the Court and the Juror.)

THE COURT: Hi, how are you.

THE JUROR: Hi how are you?

THE COURT: Quick question, you know, we got a call from your employer early on saying you're badly needed at work and they gave a date of January 28th. I wanted to make sure, are you under undue pressure to get back to work? Is your job in jeopardy?

THE JUROR: No, no because my manager said that around this time of year it's actually a little slow, but, you know, because I've been away for so long, like, he's he was under all this pressure about how long is this going to go on because since I'm not working there, like, he's wondering why he would continue to pay me when I'm not there working, so.

THE COURT: Okay. But are you okay staying for this, or is it going to cause you a real hardship?

THE JUROR: No. I don't think it's giving me problems right now aside from what my manager is going through.

THE COURT: Okay. It's giving him problems but not you problems?

THE JUROR: Yeah, the only problems I'm getting is, you know, from all the other guys, you know, the Fridays that I've been there them asking me all of these questions about

what I've been doing.

THE COURT: Which you haven't been answering?

THE JUROR: Right.

THE COURT: Okay. You tell me if that's a real hardship for you to miss more work than, you know, I'll consider letting you did, but if you think you can stick with it until the end, I'd like you to do that. Can you?

THE JUROR: I believe I can do it.

THE COURT: Okay. You're confident in that.

THE JUROR: I am.

THE COURT: Okay. Don't tell the other jurors, please, that we had this conversation, but go back in and we'll be with you in just a couple of minutes.

(Sidebar discussion concludes.)

(End of excerpts.)