

IN THE COURT OF COMMON PLEAS OF YORK COUNTY,  
PENNSYLVANIA

COMMONWEALTH : No. 753 C. A. 1999  
VS. :  
: 1) Criminal Homicide  
: (Murder 1st)  
NOEL M. MONTALVO a/k/a : 2) Criminal Conspiracy  
EDWIN SILVO OTERO : Homicide ( 2 cts.)  
: 3) Burglary  
: 4) Criminal Homicide  
: (Murder 1st)  
[Sentence]

York, Pa., Monday, April 14, 200

Before the Honorable Sheryl A. Diney, Judge

APPEARANCES:

THOMAS H. KELLEY, Esquire  
First Assistant District Attorney  
For the Commonwealth

FRANCIS S. CUTRUZZULA, Esquire  
For the Defendant

ALSO PRESENT:

RAYDA RIVERA,  
Certified Court Interpreter

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ATTORNEY KELLEY: The Commonwealth calls the case Commonwealth of Pennsylvania versus Noel Matos Montalvo, 753 Criminal Action 1999. The Defendant was charged with criminal homicide, criminal conspiracy to

commit criminal homicide, and burglary.

During the last term of Criminal Court, Your Honor, the Defendant was convicted of first degree murder for the murder of Miriam Ascencio and second degree murder for Nelson Lugo.

THE COURT: No, he was convicted of first degree murder for Nelson Lugo.

ATTORNEY KELLEY: I was under the impression it was a first and a second, Your Honor.

THE COURT: No, two firsts, one with the death penalty and one with life.

ATTORNEY CUTRUZZULA: No, Judge, I respectfully disagree. It was second degree because there was no -- when I checked off the jury sheet, it was second degree murder with respect to Mr. Lugo because that wasn't considered for the death penalty. It was only one death sentence recommended.

THE COURT: You're right. My apologies.

ATTORNEY KELLEY: Your Honor, I believe the Defendant was also convicted of criminal conspiracy to commit criminal homicide as well as burglary.

After a sentencing phase before Your Honor, the Defendant was sentenced to death for the death of Miriam Ascencio. This is the time scheduled by the Court for purposes of imposition of sentence for the Defendant. The Commonwealth is prepared to go forward.

We also have a written statement from the victim's son. I'll provide that to the Court as well as a copy to Defendant. I note that the initial statement was in Spanish. Ms. Rivera has translated that into

English, as the third page of the victim impact statement that I provided the Court.

THE COURT: Is Mr. Ascencio present?

ATTORNEY KELLEY: He is not, Your Honor. He could not take off from work today.

THE COURT: Okay. Attorney Cutruzzula, will you bring your client forward, please.

ATTORNEY CUTRUZZULA: Yes, Your Honor. Good morning, Your Honor.

THE COURT: Good morning. Let me first address you, Mr. Cutruzzula, for the statement you made in The York Daily Record following the trial of this case, and I quote:

"It's a sad day for justice in Pennsylvania," he said. "I believe a minority cannot get a fair trial in a rural community. A person who is a minority who is tried in front of an all-white jury just does not have a fair shot in this county."

We, first of all, say that this is an insult to the jury who sat and heard this case. That is an insult to the citizens of, what I consider, a great county. That is an insult to me, personally, because I have devoted almost 30 years to this profession; the last 28, 29 years working in York County to assure that people have fair trials. Finally, that is an insult to the jury who sat and heard this case after eight days of testimony, almost eight days of testimony.

You come into this county, you're here for eight days, you do not get the verdict that you want, or you think the jury should return, and you make a statement like this, that your client did not have a fair trial because this was an all-white jury who heard this

case. That is an insult to everybody who works in the justice system in this county, and it is not true.

Now, I'll hear anything you or your client wish to say before I impose sentence.

ATTORNEY CUTRUZZULA: Judge, I just want to address the statement that was purportedly said from me by the press.

I didn't indicate that anything that Your Honor did or anything that the justice system did was unfair. I made a comment with respect to what was told to me by other counsel with respect to the conversations with the jurors; and when I heard that the jurors had made up their mind after the FBI agent testified, obviously they didn't follow the rules of law or your instructions.

And I don't believe that's an accurate quote, but that was somewhat of a comment that I made based on the fact that when we asked the jurors to listen to the whole case -- the case wasn't over after Agent Edge testified; but, basically, after the two or three jurors spoke to co-counsel, that's what they said.

I think it was my reaction to that, not to the Court with respect to any improper rulings or anything. Judge. I tried a wonderful case before Your Honor. You made fair and honorable rulings; and I would submit, if you will review the records, I would say if I made ten objections, you sustained nine of them.

There was nothing in terms of the law or anything improper from the Court. That was not my suggestion, nor was that the intention of my quote. It just seemed from the feedback that we got from the jury, and I didn't speak to them. Judge --

THE COURT: Two or three jurors. You didn't speak to them, Mr. Cutruzzula, and you heard from

other attorneys who may have spoken to them.

Before you make a statement like this, which I submit borders on unethical conduct, certainly here in Pennsylvania and had that been a York County attorney making that statement, I would be compelled to report him to the disciplinary committee.

ATTORNEY CUTRUZZULA: Well, Judge, I understand that and I understand your feelings, but that's not the entire quote and that's not all I said to the press with reference to this case.

THE COURT: Nonetheless, it's what you said to the press. I'm offended by that. I think this jury who sat in this case is offended by that, if any of them read it, and I think the people here in York County ought to be offended by that quote.

ATTORNEY CUTRUZZULA: The people in York County should be offended that jurors actually admit that they only listen to half the case.

This was a death penalty case, and they came back with as much emotion as people with a cheeseburger. They go walking out of the building with containers of food from their lunch.

Maybe I overreacted and maybe the things that I said to the press may not have been the proper thing to do at that point in time. I also witnessed a jury walk in and sentence a man to death without even the slightest hesitation, and then to hear that they stopped considering the case after Agent Edge testified.

THE COURT: That's what you heard the other lawyers --

ATTORNEY CUTRUZZULA: Who spoke to the jurors.

THE COURT: Mr. Cutruzzula, I don't think that occurred in this case.

ATTORNEY CUTRUZZULA: Fine, Judge.

THE COURT: While they may have walked out of here, I'm sure they were glad this case was over; but, nonetheless, I saw no emotion from your client either.

Now, I'll hear anything you wish to say with respect to sentencing, although I'm obligated to impose the mandatory sentences in Pennsylvania.

ATTORNEY CUTRUZZULA: Obviously, Judge, I have nothing further.

THE COURT: Does your client have anything he wishes to say?

THE DEFENDANT: This is an unjust sentence, of which I am innocent, and I wasn't given the opportunity to testify so that the jury could hear what happened the 19th of April, 1998.

And I do say that the only person that has anything to do with this and is responsible for these two deaths is my brother Milton Manuel Montalvo, and I -- that day, the 19th of April, 1998, I was at home sleeping. It was impossible for me to commit a crime when I was at home, and Patricia Ascencio knew I was at home asleep on April the 19th of 1998.

When she left at 2:00 a.m. in the morning the 19th of April, 1998, I wasn't given the opportunity to have my wife testify and myself to say what happened on the 19th of April.

And when my brother arrived in 1998 at that time in the morning, the words he said to me, Noel, you

have to leave, and I asked him why and he said, because I caught Miriam and I slapped her and I gave the other one a punch.

And my wife and I asked him what does that have to do with us, and he said because she knows you violated your parole in Puerto Rico and she said she was gonna go in the morning to go to the police and tell them your story so that they would send you back to Puerto Rico, and that's the reason why I left.

And precisely that same week, I was gonna go to Miami; and the reason I went to his home is so that they would leave me two or three days until I could get my check from Fypon. My brother said he was gonna take me there so I could stay for two or three days; and that day when we arrived in the morning and he had drops of blood and he told me he had only fought with this fellow, I'm the truth, I'm the truth, I'm the truth.

On the 25th of December, 1998, in Miami, Florida, on Christmas, he confessed to my wife what he had done. That's why I wanted my wife to testify. That was the only reason that we left. We were deceived by him; because if he had told me he had murdered Miriam and the man that was with her, I would have moved from the apartment.

I know what kind of a great problem I would have if I had left with him. If I had left with him, it would have been conspiracy, and my worse thing would have been to leave my apartment because I don't want any problems in my life.

Your Honor, looking at you in your eyes, I am innocent, Your Honor. My six daughters are waiting for me in Puerto Rico. I am innocent.

And I wanted to testify that day, and for what reason I wasn't allowed to; and even if he had told me the truth, I wouldn't have moved. And my same words, the worse thing would have been to leave my apartment. I

don't want any problems in my life.

Miriam brought me to Pennsylvania. She helped me a lot. She saw me grow from adolescent, and her son and I are very good friends. What reason would I have to take her life? She's not my wife. She was my brother's wife, and the man that was with her was her lover.

But that had nothing to do with me, and that I would never participate in such a crime. And if he had told me, I can assure you even though it's my brother, I would have told the police in Puerto Rico because my probation is from 1987 for only six years, that's all.

I can tell you one in a thousand times, Your Honor, looking at you in your eyes, I have never seen a Judge with the mercy you have, and I'm telling you we went to Miami. He lived awhile with us, and then we moved.

And one day Minolo [sic], the fellow that helped us get the apartment, found my wife at the store and told her Milton has been arrested, but he had already told my wife the story the 25th of December, 1998, and my wife said to me, he told me that at Christmas.

That's the words I have to tell you. I think it was an unjust trial and I should have the opportunity to testify and that my brother should be brought and that he should sit and put his hands over his heart and tell the truth, tell the truth because he knows. I'm not saying that he's the one that told my wife.

At that time if in the morning he arrived with drops of blood and he only said he had fought with the fellow, but if he had told me I had killed Miriam and the man that was with her, I can assure you on my children's lives that I would not move because I know the consequences and I know the kind of problems that await



me.

If my wife and I had left with him knowing what he had done, and the charge -- the charge if I had left with him would have been conspiracy, and I wasn't going to conspire with him with that kind of a case, such a grave case, and I would have denounced him to the police because I loved Miriam a lot.

She helped me come to Pennsylvania. She was in Puerto Rico on vacation and brought me here to Pennsylvania. My wife said four months, but it was really two months that we stayed with her and she found me a job at Fypon and I used to work 40 hours, 20 and 25 overtime a week.

I'm asking you, Your Honor, with all the respect you deserve, looking into your eyes, to bring my brother and have him tell the truth because my wife is going to go to the prison with her sister and with her father, and he's a General in the Dominican Republic and the whole family is in the military in the Dominican Republic and they're going to talk to him so that he can tell the truth.

I'm telling you, have consideration on me. It's not that the jury did something unjust. They were only -- they did not give me the opportunity to testify so that the jury could hear what happened on the 19th of April, 1998. I believe that the trial was incomplete.

THE COURT: Mr. Montalvo, you were given the opportunity to testify. You had conferences with your mother and your wife before deciding not to testify.

When you came back and I asked you questions the second time whether or not you wanted to testify, you were adamant in your answers that you did not want to testify. So you were given that opportunity.

So, what you say that you weren't given the opportunity to testify is totally untrue. You were given that opportunity and you decided after meetings with both your attorneys and your wife and your mother, you decided not to testify.

THE DEFENDANT: I can tell you, Your Honor, I asked my attorney what was the motive, the reason why I should not testify if I had nothing to hide, and he answered me there's no evidence against you, and I don't see the motive or the reason that you want to testify.

And I told him, I thought it would be good for me to testify so that the jury can hear what happened on the 19th of April, 1998, and he told me that it was not necessary for me to testify. And based on what he told me, I accepted it and not testify, but I wanted to testify.

THE COURT: Anything else he wants to say before I impose sentence?

THE DEFENDANT: No.

THE COURT: Do you understand, Mr. Montalvo, that there is a mandatory sentence on your conviction for first degree murder of death, and there's a mandatory sentence on your conviction of second degree murder of life in prison without parole?

THE DEFENDANT: Yes, Your Honor.

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O R D E R

The Defendant is before the Court for sentencing after having been convicted of the murder of Miriam Ascencio and Nelson Lugo and having been convicted of criminal conspiracy to commit criminal homicide and

burglary. The jury returned, following the guilty phase, with a sentence of death in the murder of Miriam Asencio, and there is a mandatory sentence of life in the murder of Nelson Lugo.

Accordingly, on Count No. 4, murder of the first degree in the murder of Nelson Lugo, a/k/a Manuel Santana, this Court sentences you to a term of life in imprisonment without parole. You shall pay the costs of prosecution and stand committed until this sentence be complied with.

On Count No. 1, murder of the first degree in the murder of Miriam Asencio, this Court sentences you to death by lethal injection at a time to be determined by the authorities of the Commonwealth of Pennsylvania. You shall pay the costs of prosecution, stand committed until this sentence be complied with. These sentences shall run concurrently with each other.

On Count No. 2, criminal conspiracy to commit criminal homicide in the deaths of Miriam Asencio and Nelson Lugo, the sentence of this Court is that the Defendant undergo imprisonment in a State Correctional Institution for a period of not less than 10 years nor more than 20 years, that he pay the costs and stand committed until this sentence be complied with.

On the count of burglary in Count 3, the sentence of this Court is that the Defendant undergo imprisonment in the State Correctional Institution for a period of not less than 10 years nor more than 20 years, that he pay the costs of prosecution and stand committed until this sentence be complied with.

As well, the sentences of death and life imprisonment shall be imposed as served in a State Correctional Institution facility. All sentences shall run concurrently with each other.

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THE COURT: Do you understand the sentence of this Court, Mr. Montalvo?

THE DEFENDANT: Yes.

THE COURT: Let me just say that because you have been sentenced to death, you have an automatic appeal to the Supreme Court of Pennsylvania. Only issues raised in the Lower Court may be raised on your appeal to the Supreme Court of Pennsylvania.

You have the right to have an attorney appointed to represent you free of charge if you cannot afford to keep Mr. Cutruzzula or Mr. Arcuri as your attorneys or you cannot afford another private counsel. If you have a Court-appointed counsel to represent you, all costs of Court appointment and of that attorney's services will be paid by the County of York.

In your appeal to the Supreme Court of Pennsylvania, there will be costs assessed in the compiling of a record as well as the submission of briefs and other necessary costs attendant to your appeal to the Supreme Court of Pennsylvania. If we have Court-appointed counsel appointed to represent you, those costs will be paid by the County of York.

Do you understand those rights?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Any questions at all?

THE DEFENDANT: No. I hope you live a thousand years so you can see me come out of the jail an innocent man. And while I have the money, I will pay my attorney to demonstrate my innocence and show you that I am innocent.

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O R D E R (cont.'d)

The Defendant is remanded to the York County Prison to await his transfer to the appropriate state correctional facility so that his sentence may be served.

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4/28/03