

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 174237

LC No. 93-8250-FC

ANTONIO GONZALES,

Defendant-Appellant.

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

No. 174239

LC No. 93-8251-FC

RAYMOND SAENZ, JR.,

Defendant-Appellant.

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

No. 175104

LC No. 93-8249-FC

ALICE GONZALES,

Defendant-Appellant.

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Before: O'Connell, P.J., and Saad and W.J. Giovan,\* JJ.

\* Circuit judge, sitting on the Court of Appeals by assignment.

GIOVAN, J. (dissenting).

In my view, defendants' motions for separate trials should have been granted, at least as between the Saenz brothers and Mr. and Mrs. Gonzales. During the motion the attorney for defendant Raymond Saenz stated that his client intended to testify; that he would claim that he was asked by Antonio Gonzales to move the van without any indication of the presence of the drugs, and that he had been set up by Antonio. Counsel also represented that he had been told that Antonio would testify against Raymond.

Mr. and Mrs. Gonzales both testified at the hearing that the Saenz brothers physically attacked them while being transported from the jail, that the brothers declared that they were not going to "take the fall" for the Gonzaleses and that they intended to testify against them.

Counsel for Rickey Saenz stated that he had filed an affidavit from Rickey stating he intended to testify, that he had nothing to do with the drugs and that the "other defendants are the sole persons involved."

There was nothing ambiguous or uncertain about these showings made by the defendants during the motion for severance. It could hardly have been more clear that they intended to accuse each other as being exclusively guilty.

The promise of the pretrial motion materialized during the trial. Raymond Saenz testified that he had no knowledge of the drugs in the van. He said that on the morning in question Antonio called him from jail and asked him to move the van out of the storage facility. He further stated that after being denied access to the facility, Antonio called him again, and Raymond then went to the jail to obtain a note with Antonio's signature that allowed access to the van. He used keys from Antonio's key ring to unlock both the storage unit and the van. He was arrested immediately after opening the van door without having seen any of the contraband. The effect of this testimony was to charge Antonio Gonzales with exclusive possession and knowledge of the drugs.

Mr. Gonzales, on the other hand, called one witness, a deputy sheriff, who testified that the jail records did not show Raymond visiting Antonio at the relevant time and that jail policy would not permit a person to pass a note to an inmate in order to get it signed.

The court's opinion characterizes that testimony, and Antonio's defense, as a mere collateral attack on Raymond Saenz's credibility. That it was something quite different is evident from the argument of Antonio's counsel to the jury:

One of the witnesses suggested that someone obtained the signature from Antonio while incarcerated. Lieutenant Huff testified on the 16<sup>th</sup>, there was no one there to visit him, number one. And no one's going to go running to Antonio or any other inmate to get a signature unless it's important like on a check or an important

document, not a raggedy old piece of paper. And they don't send messages back and forth. That's the policy. And even if someone did, who was it? What was said to Antonio to obtain the signature? Was it spoken in his language?

Lieutenant Huff also said that phone calls can be made from the jail so long as they're collect, County's not going to pay for them. Now, Raymond Saenz wants us to believe that this [sic] his step-father, Antonio, set him up, called at his home in Flint from the jail twice, and instructed him to get the van out of the storage unit in Flint.

I suggest, ladies and gentlemen, that testimony is false and made with one purpose in mind. That's to save his own neck, much like he attempted to do when he was busted at the Flint Storage unit on the 16<sup>th</sup>. Dump it on good old soft-hearted stepdad. How difficult would it have been for Raymond Saenz to come in here to court if his story were true and produce to you September 1993 long distance phone bills, which would have indicated two calls from the jail to his home? He didn't do it. It was a simple task and he didn't do it because Antonio didn't call him.

Raymond, to the exclusion of Antonio, knew of the existence of drugs in Flint because he put them there two to three days earlier, 72 hours earlier, and he admitted that to the police. His testimony is different today. He knew the trail was hot and he wanted to move that stuff out of there.

\* \* \*

For all I know, that signature is forged. There's been no indication that that's Antonio's signature.

\* \* \*

The keys to the van are the keys to the storage unit, the keys to the car to get him to Flint. It's hog wash. He had his own set of keys to the Flint storage unit and the only set. \* \* \* I suggest that Antonio knew nothing about the drugs in Flint and Raymond acted totally independent of Antonio Gonzales.

\* \* \*

The evidence that has been demonstrated by the prosecution supports the fact that there existed an individual effort by Raymond, not a conspiratorial effort. Raymond acted entirely independent of anything Antonio did.

Antonio Gonzales' defense was no mere collateral attack on Raymond Saenz's credibility. The defense was that Raymond was *guilty* and that Antonio was not. Indeed, the zeal to get Raymond

convicted in order to exonerate Antonio was so strong that the argument went beyond the record to say that Raymond had admitted placing the drugs in the van.

In my view the defenses of Raymond Saenz and Antonio Gonzales were mutually exclusive under the authority extant at the time of trial, *People v Hurst*, 376 Mich 1; 135 NW2d 414 (1976), and under *People v Hana*, 447 Mich 325; 524 NW2d 682 (1994), decided thereafter. I would reverse and remand for separate trials, or a trial with separate juries.

/s/ William J. Giovan