

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

NORA GUEVARA TRIANA,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Whether the Eighth Circuit Court's failure to follow this Court's precedence in *U.S. v. Griffin*, 502 U.S. 46 (1991) and *Turner v. U.S.*, 396 U.S. 398 (1970), when it treated a special verdict form as a general verdict and allowed a conviction to stand on a theory of the case without sufficient evidence, violated Petitioner's right to a fair trial.
2. Whether the Eighth Circuit's Opinion denied Petitioner her right to a fair trial by requiring that Petitioner make an additional showing to support her offer of her complete recorded statement under the Rule of Completeness (Fed. R. Evid. 106) after the trial court had already acknowledged that the full statement should be admitted if the Government played portions of it at trial.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Nora Guevara Triana (“Guevara”) respectfully petitions for Writ of Certiorari to review the Opinion of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

Appendix A contains the Eighth Circuit’s opinion in *U. S. v. Triana*, 79 F.4th 896 (8th Cir. Aug. 15, 2023).

JURISDICTION

The district court had jurisdiction of this criminal case under 18 U.S.C. § 3231. The United States Court of Appeals for the Eighth Circuit had jurisdiction over the appeal under 28 U.S.C. § 1291.

On August 31, 2021, following a 5-day trial, a jury returned a verdict of guilty against Petitioner. On August 15, 2023, the Eighth Circuit affirmed the verdict and rulings of the district court. (App. A). Petitioner’s request for rehearing was denied on September 19, 2023. (App. B).

This Court has jurisdiction of this appeal under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment of the United States Constitution states:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

“The right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment.” *Estelle v. Williams*, 425 U.S. 501 (1976)

STATEMENT OF THE CASE

I. Material Facts of the Case

Guevara is the biological grandmother and stood in loco parentis to the two boys involved in this case. Upon Guevara's suggestion, co-defendant Tanner Leichleiter removed the two minor children from Guevara's home, where her daughter (the boys' mother) also lived. Guevara was arrested and gave a recorded interview to law enforcement. Leichleiter and the children were later detained during a traffic stop in Kansas.

Guevara was indicted on a single count of kidnapping. At trial she argued that she acted with consent and could not be prosecuted as she stood in loco parentis. The Government argued that although she did not directly participate in the removal of the children, Guevara was guilty of kidnapping under an aiding and abetting theory.

According to the jury instructions proffered by the Government and approved by the trial court over objection, the jury was advised that Guevara was charged with kidnapping **and** aiding and abetting kidnapping. The jury was provided with a special verdict form that asked the jury to render a verdict on kidnapping or aiding and abetting. The jury returned a verdict on kidnapping and not on aiding and abetting. There was insufficient evidence to support a verdict on "kidnapping" when isolated from "aiding and abetting". Despite the jury's clear determination on the special verdict form, the Circuit affirmed the conviction, finding that since the jury could have returned a

verdict on the aiding and abetting theory, the verdict was justified. The Circuit's decision was based on a misreading of precedent from this Court.

Before the Government moved to offer portions of Guevara's recorded police interview at trial, the trial court indicated that if the Government persisted in only offering portions of the interview, the remaining interview would need to be provided to the jury. (TR, Vol 3., 524:15-525:1; 525:23-526:1). Following the court's statement, the Government proceeded to only offer portions of the recording and those portions were admitted. When Guevara attempted to offer the full recording, in accordance with the trial court's prior determination that the full recording would need to be presented to protect against a misrepresentation of the conversation, the trial court denied the offer. (App. A, pp. 2-3, 9). The Circuit holding that Guevara failed to make an adequate showing to trigger the rule of completeness ignores the determination already made and articulated by the trial court that the full statement was necessary to avoid a misinterpretation.

II. Findings of the Courts Below

Guevara argued that there was insufficient evidence to convict her of kidnapping when that charge was separated from "aiding and abetting". The Circuit agreed that there was insufficient evidence that Guevara committed the offense of kidnapping, but affirmed the conviction by claiming that the jury must have found her guilty of aiding and abetting. (App. A, p. 8-9). By affirming the decision, the Circuit ignored the problem the jury instructions

and verdict form created by treating kidnapping and aiding and abetting as separate charges and in providing the jury with a special verdict form separating out the two theories of recovery. (App. A, p. 8).

In its decision, the Circuit affirmed the denial of Guevara's request under the Rule of Completeness set forth in Fed. R. Evid. 106 to admit the entirety of her recorded statement to law enforcement. The Circuit held that Guevara failed to satisfy her burden of showing a violation of Rule 106 or how the district court's refusal to play the entire recording deprived her of a fair trial, despite the fact that the trial court had already articulated a need to present with the jury with the complete interview in the event the Government only offered portions. (App. A, p. 10).

REASONS FOR GRANTING THE WRIT

- 1. Special verdict form made it clear on what grounds the jury found guilt and the evidence was insufficient to support that verdict**

The Eighth Circuit's decision misread and/or misapplied clear and set precedent established by this Court. Although the jury found guilt on a special verdict form of a theory unsupported by the evidence and abandoned by the Government, the Circuit affirmed the conviction by speculating that the jury could have found Guevara guilty of aiding and abetting, a theory rejected by the jury in the special verdict form. (App A, p. 9).

The issue of how to determine if there was sufficient evidence to support the jury's verdict turns on whether the verdict form was a general verdict form or a special verdict form.

In *Turner v. U.S.*, 396 U.S. 398, 420 (1970) and *Griffin v. U.S.*, 502 U.S. 46, 56-57 (1991), this Court held that ***when utilizing a general verdict form***, if the “jury returns a guilty verdict on an indictment charging several acts in the conjunctive...the verdict stands if the evidence is sufficient with respect to any of the acts charged.” The conviction is upheld if it is impossible in such a situation to tell on what grounds the jury decided the defendant's guilt. See *U.S. v. Dreamer*, 88 F.3d 655 (8th Cir. 1996).

Conversely, when a Court can determine on what grounds the jury decided the defendant's guilt, like here when a special verdict form is used, a verdict not supported by the evidence cannot stand.

In this case the Eighth Circuit found that the jury was given a special verdict form which separated “kidnapping” and “aiding and abetting kidnapping” into two separate options. (App. A, p. 8). By returning a verdict on the “kidnapping” and not on “aiding and abetting” using the special verdict form, the jury's determination was clear. The jury found her guilty of kidnapping and not of “aiding and abetting”. The question then becomes whether the evidence was sufficient to support the verdict returned by the jury.

The Circuit engaged in literary gymnastics in its reasoning that the verdict must have meant that the jury found Guevara guilty of aiding and

abetting despite the special verdict form that clearly indicated otherwise. The Circuit acknowledged the trial court's error in providing the jury with a special verdict form then nullified its meaning. By doing so the Circuit ignored precedent set forth in *Turner* and *Griffin*.

Regardless of the Circuit's ruling, two facts remain: (1) the jury returned a verdict on "kidnapping" when that term was separated from "aiding and abetting" and (2) there was insufficient evidence to support any verdict on "kidnapping" against Guevara when separated from "aiding and abetting". The Circuit Opinion must not stand.

The special verdict form provided to the jury stated:

QUESTION 3: COUNT I

We, the jury, find defendant Nora Gilda Guevara Triana, _____ of the crime of kidnapping, as charged in Count I of the Indictment.

If you found the defendant, Nora Gilda Guevara Triana, guilty of **kidnapping**, please stop and have your foreperson sign and date this form below.

If, and only if, you found the defendant, Nora Gilda Guevara Triana, not guilty of the crime of kidnapping, please answer the following question:

QUESTION 4: COUNT I

We, the jury, find defendant Nora Gilda Guevara Triana, _____ of the **crime of aiding and abetting kidnapping**, as charged in Count I of the Indictment. (emphasis added).

The Circuit agreed that the jury was given a special verdict form. (App. A, p. 8). The jury found Guevara guilty of kidnapping by answering Question 3 “guilty”. The jury did not answer Question 4. Thus, when given the choice between two alternative theories, the jury unequivocally found Guevara guilty of “kidnapping” under Question 3, and not “aiding and abetting” under Question 4.

The question then shifts to whether there was sufficient evidence to support a verdict for “kidnapping”, independent of “aiding and abetting”. The evidence was insufficient to support the jury’s verdict of kidnapping. (App. A, p. 7). However, the Circuit Court held that although the jury answered the special verdict finding Guevara guilty of “kidnapping” and not “aiding and abetting”, the jury’s distinction was meaningless as Guevara *could* have been convicted of aiding and abetting. This finding is in direct contradiction to this Court’s precedence in *Turner* and *Griffin*, which hold that when it is clear from a verdict form under which theory the jury relied, the Court must determine if there was sufficient evidence to support that particular theory.

Guevara has been denied her right to a fair trial as the verdict returned by the jury was unsupported by the evidence.

2. Guevara was denied her right to a fair trial when the district court prohibited her from presenting excluded portions of a recorded statement which were admissible under Fed. R. Evid. 106

At trial, the government introduced excerpts from a recorded *Miranda* interview of Guevara. Prior to the admission of these statements by the government, a hearing outside the presence of the jury occurred in which the district court stated the following:

I have reviewed P21. P21 is the video where Defendant Guevara is having a discussion with the officer...It hasn't been offered yet and it hasn't been received. All right? If you listen to the entire statement, including all the clips that are provided to the Court, I think there would be a problem with context if some of those statements were not allowed to be in...So the reason I want to bring that up now, to get everyone prepared. You've already provided me the video as it was before so it shouldn't be a problem to play the whole thing, if – if that was the issue. (App, B, pp7-8).

The Government responded as follows:

“[W]e also have our exact copies that the Court has now available and the entire recording, and then we will – if we offer the version we have now and the entire recording be prepared to understand that we've opened the door.” (App. B, p. 8).

Prior to the Government's admission of the redacted portions of Guevara's recorded statement, the trial court advised the parties that the entire recording would need to be admitted, if requested by Guevara. Yet when Guevara sought to admit the entire recording (after the government's admission of the redacted recording), the district court denied her request.

The panel erred by requiring Guevara to make an additional showing despite the district court's preliminary ruling on the matter and the Government's concession. Under the rule of completeness, the jury should have received and heard the full statement, as articulated by the trial court, and it was a reversible error to keep it out.

For the reasons set forth, Guevara's petition should be granted and the decision by the Eighth Circuit should be reversed.

CONCLUSION

For the forgoing reasons, Guevara prays that this Court grant her Petition for Writ of Certiorari.

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