

NOV 26 2007

Zamora v. Adams, No. 03-57074CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

REINHARDT, Circuit Judge, dissenting

In *Idaho v. Wright*, 497 U.S. 805 (1990), the Supreme Court adopted an exceptionally high standard for determining when an out-of-court statement bears the “particularized guarantees of trustworthiness” required for admission under the Confrontation Clause test set forth in *Ohio v. Roberts*, 448 U.S. 56, 66 (1980). Under this standard, if a defendant is to be denied the right of cross-examination, the party seeking admission of a statement must demonstrate that “the declarant’s truthfulness is *so clear* from the surrounding circumstances that the test of cross-examination would be of marginal utility” *Wright*, 497 U.S. at 820 (emphasis added). The record before the state court in this case fails to establish that the witness’s truthfulness was “so clear” that cross-examination would have been of only “marginal utility.” Three of the six reasons relied on by the state court are wrong as a matter of law. Three were based on facts that the state court clearly misperceived. As to the latter, contrary to the state court’s finding: 1) the witness wavered in recounting the events of the crime; 2) he had a strong motive to fabricate the identifications; and 3) he was already at risk of gang violence. Cross-examination indeed might have been of far more than marginal utility. Because Zamora’s constitutional right to confront the witness against him was

unquestionably violated, I dissent.