

Recent Case

U.S. v. Mir

(4th Cir. 2008) __ F.3d __ [2008 WL 1947829]

Issue

Did federal agents violate Mir's Sixth Amendment rights when, after he was indicted on immigration fraud charges, they arranged to have two witnesses elicit statements from him about his efforts to get them to lie about his illegal immigration activities?

Facts

Federal agents were investigating allegations that Mir, an attorney, had been falsely certifying that certain clients had been offered jobs in the United States. In the course of the investigation, they received a letter from an attorney who said that he would be representing Mir on the matter. Three months later, Mir was indicted on several counts of immigration fraud.

Sometime after that, agents learned the Mir had been asking some of his immigration clients to lie to investigators and the grand jury about the false certificates. So the agents launched an investigation into witness tampering and, in the process, spoke with two of the clients who agreed to assist them. The clients subsequently had conversations with Mir who made incriminating statements about witness tampering and immigration fraud.

During Mir's trial on both charges the judge ruled that prosecutors could use his statements to prove witness tampering but not fraud. Consequently, prosecutors deleted from the transcripts and recordings everything that Mir said pertaining to the fraud counts. He was found guilty of fraud, but acquitted of witness tampering.

Discussion

The issue in this case arises when officers are investigating the activities of someone who is already facing criminal charges, and there is a connection between those charges and the crime under investi-

gation. That problem results from the case of *Massiah v. U.S.* in which the Supreme Court ruled that officers may not themselves, or through police agents, deliberately elicit incriminating statements from suspects about crimes with which they have been charged.¹

It would therefore appear there was no *Massiah* violation as to Mir's statements about witness tampering because he had not been charged with that crime. And although he made incriminating statements about immigration fraud, those statements were not used against him.

Nevertheless, he argued that the questions about witness tampering violated *Massiah* because there was a direct connection between the two crimes. This argument was based on several cases in which the courts ruled that the Sixth Amendment prohibits questioning about uncharged crimes that were inextricably intertwined or even just closely related to charged crimes.

But these rulings were nullified in 2001 when the United States Supreme Court ruled in *Texas v. Cobb* that a Sixth Amendment violation does not result merely because the charged and uncharged crimes were closely related.³ Accordingly, the court ruled there the "evidence of witness tampering was properly obtained and introduced against Mir." POV

¹ See *Massiah v. United States* (1964) 377 U.S. 201; *Moran v. Burbine* (1986) 475 U.S. 412, 428.