

# Recent Case Report

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## Kansas v. Ventris

(2009) \_\_ U.S. \_\_ [2009 WL 1138842]

### Issue

If officers obtain a statement from a suspect in violation of the Sixth Amendment, may prosecutors use the statement to impeach him at his trial if he testifies and gives an inconsistent story?

### Facts

Donnie Ray Ventris and his girlfriend Rhonda Theel were arrested and charged with murdering a man during a robbery in Kansas. Prior to trial, officers planted an informant in Ventris's cell. Although the officers had instructed the informant to just "keep his ear open and listen" for incriminating statements, he did more than just listen—he asked Ventris if he had something serious "weighing in on his mind." In response, Ventris said he had "shot this man in his head and in his chest," and had taken "his keys, his wallet, about \$350 and a vehicle."

At trial, prosecutors conceded that the informant's conduct constituted a violation of Ventris's Sixth Amendment right to counsel, which meant they were not permitted to use his statement to prove he was guilty. But in the course of the trial Ventris testified in his own defense and "blamed the robbery and shooting on Theel." Because this testimony was inconsistent with the statement Ventris had made to the informant, the trial judge permitted prosecutors to impeach Ventris by presenting testimony of the informant that Ventris admitted he was the shooter.

Ventris was convicted, but the Kansas Supreme Court reversed the conviction, ruling that statements obtained in violation of the Sixth Amendment cannot be utilized by prosecutors for *any* purpose. The state appealed to the United States Supreme Court.

### Discussion

In the landmark case of *Massiah v. United States*,<sup>1</sup> the Supreme Court ruled that a Sixth Amendment violation results when a jailhouse informant "deliberately elicits" an incriminating statement from an inmate about a crime with which the inmate had been charged. The Court subsequently pointed out in *Kuhlman v. Wilson* that a Sixth Amendment violation does not result if the informant merely acts as an "ear" or "listening post" and merely reports back on what the suspect had said. As the Court explained, "[A] defendant does not make out a violation of [the Sixth Amendment] simply by showing that an informant, either through prior arrangement or voluntarily, reported his incriminating statements to the police. Rather, the defendant must demonstrate that the police and their informant took some action, beyond merely listening, that was designed deliberately to elicit incriminating remarks."<sup>2</sup>

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<sup>1</sup> (1964) 377 U.S. 201

<sup>2</sup> (1986) 477 US 436, 459.

As noted, Kansas prosecutors believed that the informant's comment to Ventris went beyond "merely listening." Thus, they conceded that Ventris's statement was obtained in violation of the Sixth Amendment and that it was properly suppressed for the purpose of proving guilt. (The Court seemed to question the wisdom of this concession when it said, "Without affirming that this concession was necessary [citing *Kuhlman*], we accept it as the law of the case.")

The issue, then, was whether the statement should also have been suppressed for impeachment purposes. As noted, the Kansas Supreme Court said yes, but the United States Supreme Court disagreed for essentially two reasons. First, because a statement obtained in violation of the Sixth Amendment is inadmissible to prove the suspect's guilt, a rule that permits the admission of the statement for impeachment purposes hardly provides officers with an incentive to violate the law themselves or instruct their informants to do so. Said the Court, "Officers have significant incentive to ensure that they and their informants comply with the Constitution's demands, since statements lawfully obtained can be used for all purposes rather than simply for impeachment."

Second, suppressing a statement for impeachment encourages perjury and undermines "the integrity of the trial process." As the Court explained, "Once the defendant testifies in a way that contradicts prior statements, denying the prosecution use of the traditional truth-testing devices of the adversary process is a high price to pay for vindication of the right to counsel at the prior stage."

Accordingly, the Court ruled the admission was properly used to impeach Ventris at his trial. POV