

Recent Case Report

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People v. Hartsch

(2010) 49 Cal.4th 232

Issue

Did officers violate a murder suspect's Sixth Amendment rights when they put him in a cell with his accomplice and secretly recorded their conversation about the crime?

Facts

After a night of partying and drug use, Cisco Hartsch and Frank Castaneda decided to go target shooting in an orange grove in Riverside County. When they arrived, they noticed a truck parked in the grove. The truck appeared to be unoccupied, and Hartsch told Castaneda he was going to steal it. But as he approached he saw a man and a woman asleep in the vehicle. Just then, the man awoke and Hartsch pulled out a .22-caliber pistol and fired several shots at him. As the woman screamed, Hartsch returned to the car and notified Castaneda that the two people in the truck were "not dead yet." So he reloaded his gun, walked back to the truck, and continued firing. All told, he shot the man seven times, and the woman 13 times. Both were killed. While driving back home, Hartsch told Castaneda that he should not worry about the killings because "it's not like they were important. Nobody cared about them."

The bodies were discovered later that morning. At the scene, investigators found shoe prints around the truck; they were size 9½ with a "chevron pattern" that was consistent with Nike tennis shoes.

The next day, Castaneda saw Hartsch driving a car with Angelica Delgado, the 14-year old sister of Castaneda's girlfriend. When Hartsch stopped to talk, he told Castaneda that he and Angelica were going to the orange groves to have sex. Four days later, Angelica's body was discovered in an orchard in Riverside. She had been shot five times in the head; embedded bullet fragments were "in the .22-caliber range." At the scene, investigators found shoe prints leading to and from the body. The shoes were size 9½, and the shoe prints indicated they were probably Nike's with a chevron pattern.

In the course of the investigation, the following occurred:

- Castaneda fled to Texas but was arrested by a state trooper during a traffic stop when he was unable to produce the vehicle registration.
- Investigators learned that Angelica had received a phone call from Hartsch shortly before she disappeared. When they went to Hartsch's house to talk with him, they noticed several shoe prints in the yard; they were similar to those found near Angelica's body.
- Hartsch told the investigators that he had two pairs of Nike tennis shoes: one black, one white.
- Hartsch's employer told investigators that when Hartsch arrived for work a few hours after the orange grove murders, he was wearing white tennis shoes.
- While executing a search warrant at Hartsch's home, investigators found a pair of black Nike tennis shoes, size 9½; the shoeprints did not match those found at the two murder scenes.

- Castaneda's girlfriend notified investigators that Castaneda had told her that Hartsch had killed the couple in the orange grove.
- Investigators flew to Texas and interviewed Castaneda in jail. He confirmed that Hartsch had committed the orange grove murders.
- A firearms expert determined that all three murder victims were shot with the same .22-caliber handgun.
- Semen was found in Angelica's vagina. A comparison with Hartsch's DNA revealed there was only a one in one billion chance that the semen came from anyone other than Hartsch.
- Hartsch admitted to investigators that he had driven to the orange grove with Castaneda on the night of the murders, but claimed he had been drunk and was unable to remember what had happened. He eventually admitted that "it was possible" he had "shot up a car in the groves without realizing anyone was in it."
- Hartsch was charged with three counts of murder, and was housed in the Riverside County Jail.

After waiving extradition, Castaneda was taken back to Riverside County where he, too, was housed in the county jail. An investigator testified that he had initially instructed jail officials to keep Castaneda and Hartsch separated. But he later decided to put them together in a cell that had been wired for sound. He testified that his plan "was to see if [Hartsch] would make any incriminating statements," and to see if Castaneda would make any inconsistent statements.

In the course of a recorded conversation, Hartsch told Castaneda that the investigators "got the wrong shoes" and that his mother had thrown out the white Nikes he had been wearing on the night of the orange grove murders. Hartsch also asked Castaneda to call a mutual friend and "tell him to get the fuckin' rid of that shit," which Castaneda interpreted to mean his 22-caliber handgun. Hartsch said he wasn't worried about the murder charges because "there was no evidence." When Castaneda disagreed, Hartsch "spoke about getting rid of the gun," saying it was "the only thing they can use."

At trial, a recording of the conversation was played to the jury. Hartsch was convicted of all three murders, and was sentenced to death.

Discussion

On appeal to the California Supreme Court, Hartsch contended that his conversation with Castaneda should have been suppressed because it was obtained in violation of the Sixth Amendment. The court disagreed.

In 1964, the United States Supreme Court ruled in the landmark case of *Massiah v. U.S.*¹ that a Sixth Amendment violation occurs if an undercover officer or police agent "deliberately elicits" information from a suspect about a crime with which he had been charged. Over the years, the courts have consistently interpreted the term "deliberately elicit" broadly to include merely engaging the suspect in a conversation about a charged crime. Furthermore, in 2008 the Supreme Court ruled that a suspect becomes "charged" when he is arraigned on criminal charges in court.² Consequently, the conversation

¹ (1964) 377 U.S. 201.

² See *Rothgery v. Gillespie County* (2008) 554 US 191, __ ["[A] criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel."].

between Hartsch and Castaneda would have violated *Massiah* if, at the time it occurred, Castaneda had been a police agent.

Although Castaneda had not agreed to work as a police agent, it is settled that the agency requirement will be satisfied if officers gave the person an incentive to elicit incriminating statements from the suspect, especially if the officers then arranged for them to be alone together.³ Citing this principle, Hartsch argued that the investigators had, in fact, given Castaneda a motive to elicit incriminating information because, according to Castaneda's testimony, one of the investigators told him that he might be charged as an accessory in the orange grove murders, that "it would be in his interest to cooperate with the police," and that "my door is always open."

The court ruled, however, that this was insufficient evidence of an implied agreement, saying "[t]he mere fact that Castaneda decided to cooperate with the police did not transform him into a police agent."⁴ Moreover, as the court pointed out, "Castaneda was unaware of the taping arrangement. There is no evidence the police ever prompted him to obtain statements from defendant. He was given no instructions regarding the meeting in the cell or even advance notice that it would take place."

For these reasons, the court ruled that Hartsch's statement was obtained lawfully. It then affirmed his murder convictions and death sentence. POV

³ See *United States v. Henry* (1980) 447 U.S. 264, 274 [the agents had created "a situation likely to induce Henry to make incriminating statements"]; *People v. Whitt* (1984) 36 Cal.3d 724, 742 ["[T]he critical inquiry is whether the state has created a situation likely to provide it with incriminating statements from an accused."]; *In re Neely* (1993) 6 Cal.4th 901, 917-18 [a deputy told the informant that he "was seeking specific information from [the defendant] as to the whereabouts of the murder weapon," and the deputy "encouraged and instructed [the informant] as to the means by which [he] could procure this information from [the defendant]"].

⁴ See *People v. Whitt* (1984) 36 Cal.3d 724, 744 ["The detectives' offer to speak to the prosecutor on [the informant's] behalf raises a serious concern as to whether the state gave [the informant] an incentive to extract further statements from Whitt."]; *People v. Memro* (1995) 11 Cal.4th 786, 828 [informant was promised safe housing "after he obtained defendant's statements"].