

## **Kansas v. Ventris**

**--- U.S. --- (2009)**

**Decided April 29, 2009**

**FACTS:** On January 7, 2004, Ventris and Theel conspired to shoot and kill Hicks. They were promptly arrested. Prior to Ventris's trial, "officers planted an informant in Ventris's holding cell, instructing him to "keep [his] ear open and listen" for incriminating statements." Ventris allegedly then confessed his involvement in the crime to the informant.

Ventris testified at trial and "blamed the robbery and shooting entirely on Theel." The prosecution sought to introduce his prior contradictory the statement via the informant; Ventris objected. The prosecution admitted that there might have been a violation of Ventris's Sixth Amendment right to counsel, " but nonetheless argued that the statement was admissible for impeachment purposes..."

The trial court allowed the statement to be introduced, but cautioned the jury to carefully consider "all testimony given in exchange for benefits from the State." The jury ultimately convicted Ventris of burglary and robbery, but not murder. Ventris appealed, and the Kansas Supreme Court reversed his conviction, finding that his "statements made to an undercover informant surreptitiously acting as an agent for the State are not admissible at trial for any reason, including the impeachment of the defendant's testimony."

Kansas applied for certiorari, which the U.S. Supreme Court granted.

**ISSUE:** May a defendant's voluntary statement, obtained in violation of their right to counsel, be admitted for impeachment purposes?

**HOLDING:** Yes

**DISCUSSION:** After a discussion on the admissibility of evidence excluded in the case in chief, the Court considered the deterrent effect on admitting, or not admitting, such evidence. The Court stated:

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. And the *ex ante* probability that evidence gained in violation of Massiah<sup>1</sup> would be of use for impeachment is exceedingly small. An investigator would have to anticipate both that the defendant would choose to testify at trial (an unusual occurrence to begin with) *and* that he would testify inconsistently despite the admissibility of his prior statement for impeachment. Not likely to happen—or at least not likely enough to risk squandering the

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

opportunity of using a properly obtained statement for the prosecution's case in chief.

The Court concluded that the statement "was admissible to challenge Ventris's inconsistent testimony at trial," and reversed the decision of the Kansas Supreme Court. The case was remanded to Kansas for further proceedings.

FULL TEXT OF OPINION: <http://www.supremecourtus.gov/opinions/08pdf/07-1356.pdf>