

**WAVING GOODBYE TO POST-PLEA INDECISION: THE  
ABILITY TO WAIVE A DEFENDANT’S RIGHT TO SUPPRESS  
PLEA NEGOTIATION STATEMENTS  
UNITED STATES V. SYLVESTER, NO. 08-30586, 2009 WL 2974219  
(5TH CIR. SEPT. 18, 2009)**

Highlight

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In *United States v. Sylvester*, Donald Sylvester, appellant, appealed his conviction of multiple murder and narcotics felonies.<sup>1</sup> After a warrant was issued for appellant’s arrest, he voluntarily surrendered.<sup>2</sup> The prosecutors told him that they would seek life imprisonment instead of capital punishment in return for a full confession that could be used against him at trial.<sup>3</sup> Appellant voluntarily waived objection to the admission of incriminating statements at trial in the event that plea negotiations failed.<sup>4</sup>

Shortly after meeting, appellant changed his mind and went to trial.<sup>5</sup> At trial, the court denied appellant’s motions to suppress statements made during the plea negotiations under Federal Rule of Evidence 410 and Federal Rule of Criminal Procedure 11(f).<sup>6</sup> The issue before the Fifth Circuit was “whether the government may use a defendant’s statements made in the course of plea negotiations in its case-in-chief, when the defendant, as a condition to engaging in negotiations with the government, knowingly and voluntarily waived all rights to object to such use.”<sup>7</sup>

The court primarily relied on *United States v. Mezzanatto*, which upheld a waiver that allowed the government to use plea negotiation statements to impeach a defendant at trial.<sup>8</sup> In its reasoning, the court extended the *Mezzanatto* rationales to those of statements entered in the prosecution’s case-in-chief.<sup>9</sup> First, the court presumed that “legal rights generally, and evidentiary provisions specifically, are subject to waiver by voluntary agreement of the parties.”<sup>10</sup>

Next, the court examined potential rationales for overriding this

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<sup>1</sup> See *United States v. Sylvester*, No. 08-30586, 2009 WL 2974219, at \*1 (5th Cir. Sept. 18, 2009).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See *id.*

<sup>7</sup> *Id.* at \*2.

<sup>8</sup> See *id.*

<sup>9</sup> See *id.*

<sup>10</sup> *Id.*

presumption.<sup>11</sup> The court flatly rejected the idea that waivers hurt the integrity of the justice system and also found that a waiver does not go against Rule 410's goal of encouraging voluntary settlement.<sup>12</sup> It felt that the best way to "encourage settlement is to permit the interested parties to enter into knowing and voluntary negotiations without any arbitrary limits in their bargaining chips."<sup>13</sup> Last, the court rejected the idea that waivers invite prosecutorial overreaching and abuse, reasoning that the plea bargaining process already exerts pressure and loaded decisions on defendants and "courts cannot infer abuse of prosecutorial bargaining power."<sup>14</sup> Overall, the court believed that a case-in-chief waiver would not undermine the plea-bargaining process, would not take away the incentive for a defendant to negotiate, and would not override the presumption of validity.<sup>15</sup> The court held that the statements were properly admitted, making it valid for the government to admit statements during plea negotiations when the defendant has voluntarily waived all rights to object to this use.<sup>16</sup>

The decision appears to be an inevitable extension of *Mezzanatto* as a majority of the Supreme Court has already acknowledged that waivers are valid under a broader scope than that of the waiver found in *Mezzanatto*.<sup>17</sup> The prosecution has been given a new bargaining chip that a defendant must now take seriously. A defendant must be more cautious and sure of the decision to engage in plea-bargaining that involves a waiver, as he is essentially waiving his right to change his mind.

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<sup>11</sup> *See id.*

<sup>12</sup> *See id.* at \*3.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *See id.* at \*3-\*6.

<sup>16</sup> *See id.* at \*6-\*7.

<sup>17</sup> *See id.* at \*1.