

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Torres

No. No. 20-50092, United States Court of Appeals for the Fifth Circuit (May 19, 2021)

SUMMARY

In *United States v. Torres*, the Fifth Circuit held that a district court violated the defendant's Sixth Amendment right to counsel by barring all communication with his attorney during a 13-hour overnight recess in the middle of his direct examination. Applying *Geders v. United States*, the court found that such a ban during an overnight recess is presumptively prejudicial and constitutes a denial of counsel at a critical stage, requiring reversal even under plain error review. The case underscores the rule that a trial court may not prohibit a testifying defendant from consulting with counsel during an overnight recess, as it implicates the defendant's right to unrestricted access to advice on trial-related matters.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	James E. Graves, Jr.; Catharina Haynes; Don R. Willett
JURISDICTION	Federal
DECIDED	May 19, 2021
DOCKET	No. 20-50092
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from conviction and sentence for conspiracy to possess with intent to distribute methamphetamine
STANDARD OF REVIEW	Plain error review (preservation disputed); the court found that even under plain error, reversal was required.
PRECEDENTIAL VALUE	Published
PARTIES	Bryan Torres v. United States of America

TOPICS

- criminal procedure
- sixth amendment
- right to counsel
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court violated Torres's Sixth Amendment right to the assistance of counsel by barring all communication with his attorney during an overnight recess declared in the middle of his direct examination.
2. Whether the district court violated Torres's Sixth Amendment right to confrontation by limiting cross-examination of a government witness.
3. Whether the district court erred in applying a four-level aggravating role adjustment under U.S.S.G. § 3B1.1(a).

HOLDINGS

1. The district court's order barring Torres from all communication with his attorney during a 13-hour overnight recess violated his Sixth Amendment right to the assistance of counsel under *Geders v. United States*.

KEY QUOTATIONS

“Court: You may not speak to him. Now that he’s started his testimony, you may not consult with him anymore, [counsel], period. You cannot [a]ffect his testimony in any way from this point forward until he’s finished off the—off the stand. So, no, you may not discuss anything with him at all at this point.” (at 2)

“We conclude that Torres was deprived of his Sixth Amendment right to the assistance of counsel when he was barred from all communication with his attorney during an overnight recess at trial.” (at 1)

“a fair trial necessarily includes the assistance and guidance of his counsel during an overnight recess.” (at 7)

FACTUAL BACKGROUND

The case arose from a narcotics trafficking investigation of the Latin Kings gang. Torres was a methamphetamine supplier for the target. During trial, after Torres began testifying on direct examination, the district court declared an overnight recess and ordered that Torres not speak to anyone about his testimony, including his attorney. The recess lasted approximately 13 hours. The next day, direct examination resumed, and Torres was later found guilty.

PROCEDURAL HISTORY

Torres was convicted by a jury in the United States District Court for the Western District of Texas and sentenced to 240 months' imprisonment. He appealed, arguing that the district court violated his Sixth Amendment right to counsel by barring communication with his attorney during an overnight recess, that his confrontation right was violated, and that the sentencing role adjustment was erroneous.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

for further proceedings

CASES CITED

- *Geders v. United States*, 425 U.S. 80 (1976)
- *Perry v. Leeke*, 488 U.S. 272 (1989)
- *United States v. Johnson*, 267 F.3d 376 (5th Cir. 2001)
- *United States v. Pleitez*, 876 F.3d 150 (5th Cir. 2017)
- *Burdine v. Johnson*, 262 F.3d 336 (5th Cir. 2001)
- *United States v. Cronin*, 466 U.S. 648 (1984)
- *Strickland v. Washington*, 466 U.S. 668 (1984)
- *Mickens v. Taylor*, 535 U.S. 162 (2002)
- *Puckett v. United States*, 556 U.S. 129 (2009)
- *United States v. Marcus*, 560 U.S. 258 (2010)
- *United States v. Escalante-Reyes*, 689 F.3d 415 (5th Cir. 2012)