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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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KANSAS *v.* VENTRIS

CERTIORARI TO THE SUPREME COURT OF KANSAS

No. 07–1356. Argued January 21, 2009—Decided April 29, 2009

Respondent Donnie Ray Ventris and Rhonda Theel were charged with murder and other crimes. Prior to trial, an informant planted in Ventris's cell heard him admit to shooting and robbing the victim, but Ventris testified at trial that Theel committed the crimes. When the State sought to call the informant to testify to his contradictory statement, Ventris objected. The State conceded that Ventris's Sixth Amendment right to counsel had likely been violated, but argued that the statement was admissible for impeachment purposes. The trial court allowed the testimony. The jury convicted Ventris of aggravated burglary and aggravated robbery. Reversing, the Kansas Supreme Court held that the informant's statements were not admissible for any reason, including impeachment.

Held: Ventris's statement to the informant, concededly elicited in violation of the Sixth Amendment, was admissible to impeach his inconsistent testimony at trial. Pp. 3–7.

(a) Whether a confession that was not admissible in the prosecution's case in chief nonetheless can be admitted for impeachment purposes depends on the nature of the constitutional guarantee violated. The Fifth Amendment guarantee against compelled self-incrimination is violated by introducing a coerced confession at trial, whether by way of impeachment or otherwise. *New Jersey* v. *Portash*, 440 U. S. 450, 458–459. But for the Fourth Amendment guarantee against unreasonable searches or seizures, where exclusion comes by way of deterrent sanction rather than to avoid violation of the substantive guarantee, admissibility is determined by an exclusionary-rule balancing test. See *Walder* v. *United States*, 347 U. S. 62, 65. The same is true for violations of the Fifth and Sixth Amendment prophylactic rules forbidding certain pretrial police conduct. See, *e.g., Harris* v. *New York*, 401 U. S. 222, 225–226. The core

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of the Sixth Amendment right to counsel is a trial right, but the right covers pretrial interrogations to ensure that police manipulation does not deprive the defendant of " 'effective representation by counsel at the only stage when legal aid and advice would help him.' " *Massiah* v. *United States*, 377 U. S. 201, 204. This right to be free of uncounseled interrogation is infringed at the time of the interrogation, not when it is admitted into evidence. It is that deprivation that demands the remedy of exclusion from the prosecution's case in chief. Pp. 3–6.

(b) The interests safeguarded by excluding tainted evidence for impeachment purposes are "outweighed by the need to prevent perjury and to assure the integrity of the trial process." *Stone* v. *Powell*, 428 U. S. 465, 488. Once the defendant testifies inconsistently, denying the prosecution "the traditional truth-testing devices of the adversary process," *Harris, supra*, at 225, is a high price to pay for vindicating the right to counsel at the prior stage. On the other hand, preventing impeachment use of statements taken in violation of *Massiah* would add little appreciable deterrence for officers, who have an incentive to comply with the Constitution, since statements lawfully obtained can be used for all purposes, not simply impeachment. In every other context, this Court has held that tainted evidence is admissible for impeachment. See, *e.g., Oregon* v. *Hass*, 420 U. S. 714, 723. No distinction here alters that balance. Pp. 6–7.

285 Kan. 595, 176 P. 3d 920, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, SOUTER, THOMAS, BREYER, and ALITO, JJ., joined. STEVENS, J., filed a dissenting opinion, in which GINSBURG, J., joined.