Thompson v. Commissioner, 92 T. C. 486 (1989)

A clear and intentional violation of a court's witness exclusion order warrants the sanction of precluding the witness from testifying.

Summary

In Thompson v. Commissioner, a consolidated fraud case, the Tax Court upheld a witness exclusion order under Rule 145. Despite this, counsel for petitioners St. Augustine Trawlers, Inc. and Velton O'Neal provided prospective witness Fred Kent with trial transcripts of other witnesses, violating the order. The court found this to be a deliberate violation and, to protect the integrity of the trial and the record, imposed the sanction of preventing Kent from testifying. The decision emphasizes the court's authority to enforce its orders and the importance of maintaining the purity of witness testimony in fraud cases, where credibility is central.

Facts

At the start of the trial in a consolidated fraud case involving unreported income, the Tax Court invoked Rule 145, excluding witnesses from the courtroom. The case centered on allegations of unreported cash income from St. Augustine Trawlers, Inc. to its shareholders, Jerry Thompson and Velton O'Neal. Fred Kent, an attorney representing O'Neal in related matters, was listed as a witness by O'Neal and Trawlers but was not subpoenaed for the initial trial sessions. Despite clear instructions from the court, counsel for O'Neal and Trawlers provided Kent with transcripts of testimony from four other witnesses, including key figures whose credibility was at issue.

Procedural History

The trial commenced in Jacksonville, Florida, and lasted eight days. Respondent moved to exclude witnesses at the trial's start, and the motion was granted without objection. After the initial session, a second session was scheduled in Jacksonville to hear Kent's testimony, but he was not subpoenaed and did not appear. Subsequently, O'Neal and Trawlers' counsel provided Kent with trial transcripts, leading to a motion to modify the exclusion order. The Tax Court denied the motion and sanctioned the violation by precluding Kent from testifying.

Issue(s)

1. Whether providing a prospective witness with transcripts of prior testimony violated the court's witness exclusion order under Rule 145.
2. Whether the violation of the court's exclusion order was intentional.
3. What sanction, if any, should be imposed for the violation of the exclusion order.

Holding

© 2025 SCOTUSreports.com. All rights reserved.

1. Yes, because providing transcripts to a prospective witness undermines the purpose of the exclusion order and allows the witness to tailor their testimony.
2. Yes, because counsel's actions were deliberate, especially after being advised that the initial provision of transcripts was a violation.
3. The appropriate sanction is to preclude Fred Kent from testifying at the further trial session of the case, to protect the integrity of the trial and the record.

Court's Reasoning

The court applied Rule 145, which aims to prevent witnesses from tailoring their testimony to that of prior witnesses. It emphasized that providing a prospective witness with transcripts of testimony is as harmful, if not more so, than having the witness hear the testimony in court, as it allows for thorough review and potential alteration of testimony. The court found the violation intentional, particularly after counsel continued to provide transcripts to Kent despite being advised of the violation. The court considered alternative sanctions but determined that precluding Kent from testifying was necessary to uphold the court's authority, protect the record, and maintain the integrity of the trial, especially in a fraud case where credibility is central. The court referenced *Miller v. Universal City Studios, Inc.* and *Weeks Dredging & Contracting, Inc. v. United States* to support its reasoning.

Practical Implications

This decision reinforces the importance of adhering to court orders regarding witness exclusion in trials, particularly in cases involving fraud where witness credibility is crucial. It serves as a reminder to attorneys to be vigilant about not disclosing prior testimony to prospective witnesses, as such actions can lead to severe sanctions, including the exclusion of key testimony. The ruling may influence how attorneys prepare witnesses and manage trial strategies, ensuring compliance with court orders to avoid compromising their cases. Subsequent cases may cite Thompson v. Commissioner to argue for similar sanctions in instances of deliberate violation of witness exclusion orders. This case also underscores the court's discretion in choosing sanctions that protect the judicial process's integrity.

© 2025 SCOTUSreports.com. All rights reserved.