Swanton v. Commissioner, 92 T. C. 1029 (1989)

A witness who reads trial transcripts in violation of a sequestration order may have their testimony stricken, as it risks tailoring to previous testimony.

Summary

In Swanton v. Commissioner, the Tax Court addressed the violation of a sequestration order under Rule 145 when Norman F. Swanton, a key witness, read trial transcripts. The case involved deductions from coal partnerships, with Swanton's testimony crucial to the issue of profit motive. The court found that Swanton's reading of the transcripts violated the order, potentially tainting his testimony. As a sanction, the court struck Swanton's direct testimony, except for his background information, emphasizing the importance of maintaining the integrity of the evidentiary record and the consequences of violating sequestration orders.

Facts

The case involved the tax treatment of losses from coal partnerships promoted by Swanton Corp. Norman F. Swanton, the corporation's president and CEO, was a key witness. During the trial, respondent moved to exclude witnesses under Rule 145. Swanton was not present during this motion but later testified after reading the trial transcripts, which included testimony from other witnesses.

Procedural History

The trial began in New York in February 1988, with subsequent sessions in Buffalo in March 1988. Respondent moved to exclude witnesses, which was granted. The trial was postponed due to a Department of Justice investigation and resumed in February 1989. After Swanton testified and admitted to reading prior transcripts, respondent moved to strike his testimony. The court heard arguments on this motion in April 1989.

Issue(s)

1. Whether Norman F. Swanton violated the court's sequestration order by reading trial transcripts.
2. If a violation occurred, whether Swanton's testimony should be stricken as a sanction.

Holding

1. Yes, because Swanton read trial transcripts, which is equivalent to hearing testimony and thus violated the sequestration order.
2. Yes, because the violation prejudiced the respondent and the integrity of the evidentiary record, the court struck Swanton's direct testimony, except for his background information.

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Court’s Reasoning

The court reasoned that Rule 145 aims to prevent witnesses from tailoring their testimony to that of prior witnesses. Reading transcripts poses the same risk as hearing testimony, potentially allowing a witness to alter their testimony to align with or contradict previous statements. The court rejected Swanton’s claim of exemption under Rule 145(a)(3), finding he was not essential to the presentation of the case beyond his role as a fact witness. The court emphasized that even unintentional violations undermine the evidentiary record’s integrity. The potential for prejudice was evident in Swanton’s testimony, particularly on key issues like the partnerships’ profit motive and the nature of partnership notes. The court concluded that striking Swanton’s direct testimony was necessary to maintain the trial’s fairness, except for his background information, which was deemed untainted.

Practical Implications

This decision underscores the strict enforcement of sequestration orders in maintaining trial integrity. Attorneys must ensure all witnesses, especially key ones, comply with such orders to avoid sanctions like testimony exclusion. The ruling highlights that reading transcripts is equivalent to hearing testimony, broadening the scope of what constitutes a violation. This case may influence how courts handle similar violations, potentially leading to stricter enforcement of sequestration rules. Practitioners should be cautious in managing witness preparation to avoid inadvertently violating court orders, which could significantly impact their case’s outcome.

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