SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* MEZZANATTO

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 93–1340. Argued November 2, 1994—Decided January 18, 1995

Respondent was convicted on federal drug charges after being cross-examined, over his counsel's objection, about inconsistent statements that he had made during an earlier plea discussion. The Ninth Circuit reversed, holding that respondent's agreement that any statements he made in the plea discussion could be used at trial for impeachment purposes was unenforceable under Federal Rule of Evidence 410 and Federal Rule of Criminal Procedure 11(e)(6) (Rules or plea-statement Rules), which exclude from admission into evidence against a criminal defendant statements made during plea bargaining.

Held: An agreement to waive the plea-statement Rules' exclusionary provisions is valid and enforceable absent some affirmative indication that the defendant entered the agreement unknowingly or involuntarily. Pp. 3–15.

(a) Contrary to the Ninth Circuit's conclusion, the Rules' failure to include an express waiver-enabling clause does not demonstrate Congress' intent to preclude waiver agreements such as respondent's. Rather, the Rules were enacted against a background presumption that legal rights generally, and evidentiary provisions specifically, are subject to waiver by voluntary agreement of the parties. See, *e.g., Ricketts* v. *Adamson,* 483 U. S. 1, 10; *Sac and Fox Indians of Mississippi in Iowa* v. *Sac and Fox Indians of Mississippi in Oklahoma,* 220 U. S. 481, 488–489. *Crosby* v. *United States,* 506 U. S. ___, ___, and *Smith* v. *United States,* 360 U. S. 1, 9, distinguished. Respondent bears the responsibility of identifying some affirmative basis for concluding that the Rules depart from the presumption of waivability. Pp. 3–8.

(b) The three potential bases offered by respondent for concluding that the Rules are not consonant with the presumption of waivability—(a) that the Rules establish a ``guarantee [to] fair procedure'' that cannot be waived, (b) that waiver is fundamentally inconsistent with the Rules' goal of encouraging voluntary settlement, and (c) that waiver agreements should be forbidden because they invite prosecutorial overreaching and abuse—are not persuasive. Instead of the *per se* rejection of waiver adopted by the Ninth Circuit, the appropriate approach is to permit case-by-case inquiries into whether waiver agreements are the product of fraud or coercion. Here, respondent conferred with his lawyer after the prosecutor proposed waiver as a condition of proceeding with the plea discussion, and he has never complained that he entered into the waiver agreement at issue unknowingly or involuntarily. Pp. 8–15.

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998 F. 2d 1452, reversed.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, GINSBURG, and BREYER, JJ., joined. GINSBURG, J., filed a concurring statement, in which O'CONNOR and BREYER, JJ., joined. SOUTER, J., filed a dissenting opinion, in which STEVENS, J., joined.