

C.A. Upholds Police Use of Murder Defendant's Girlfriend To Tape Phone Calls, Says She Was Not Agent

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Telephone calls between a murder defendant and his girlfriend, which she taped at the suggestion of police, were properly admitted in evidence against him, the Fourth District Court of Appeal ruled yesterday.

The court affirmed the conviction of Luis Martin, part-owner of a downtown Los Angeles produce market, for the murder of one of his employees, Jose Ramon.

Prosecutors theorized that Martin, who hired Ramon to work at Value Produce, killed him because he told Martin's wife and/or fellow employees about Martin's affair with Celia Camolinga.

Alternatively, they suggested that Martin killed the employee after learning that Camolinga had a boyfriend in Mexico and that Ramon—whose girlfriend was a friend of Camolinga—knew about it and didn't tell him.

Ramon's body was found on a foggy road in Chino on Nov. 25, 1998. Martin's cell phone records showed that he had placed a call from the area around the time of the murder, then made further calls from points west over the next hour, concluding with a call from Calabasas.

Camolinga lives in Calabasas and confirmed that Martin came to her apartment around the time of the last cell phone call. Martin was arrested about two weeks later and was held to answer following a preliminary hearing.

After the preliminary hearing, Martin called Camolinga, who recorded several hours of conversations in which he made statements incriminating himself in the killings of Ramon and of Raul Cosio, Camolinga's Mexican boyfriend, who was murdered in Mexico City in June 1999.

Prosecutors used the tapes to establish that Martin was a danger to Camolinga and that he had left the country without court permission around the time of the Cosio murder. His \$1 million bond was revoked.

Defense attorney Donald Marks moved to keep the tapes out of the trial under *Massiah v. United States* (1964) 377 U.S. 201. The case holds that the constitutional right to counsel is violated if police officers or other government agents interrogate a defendant who is represented by a lawyer.

Marks argued that Camolinga was acting as a government agent when she taped the conversations. But Camolinga testified that it was she who went to the police, because she feared for her safety and that of her daughters after Cosio was killed, and that she herself decided what questions to ask Martin.

San Bernardino Superior Court Judge Shahla Sabet agreed with prosecutors, who contended that because the police did not initiate the contact, and limited their role to supplying the recording equipment and telling Camolinga how to use it, she was not acting as an agent of the government.

Martin was convicted of first degree murder and sentenced to 35 years to life in prison.

Justice Thomas Hollenhorst, writing for the Court of Appeal, said the trial judge was correct in denying the motion to suppress.

Under *Massiah* and its progeny, Hollenhorst explained, it is a Sixth Amendment violation for the police to “knowingly circumvent” the defendant’s right to counsel by arranging to have the defendant’s conversations taped by an agent. But the mere fact that the police “facilitated communication” between a witness and a defendant is not sufficient to make the witness a police agent, the jurist explained.

The circumstances of the conversations, the justice said, distinguish them from those in which the courts have found *Massiah* violations. He noted that there was no evidence Camolinga was receiving instructions from the police, she was not paid to obtain the statements, and the defendant was out on bail and initiated contact with Camolinga.

Besides, the justice said, it was reasonable to conclude that Camolinga’s motive for taping the calls was to protect herself, and not merely to incriminate Martin.

The case is *People v. Martin*, E028833.