



# The Supreme Court Confronts the Scope of The Confrontation Clause

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## KEY TAKEAWAYS

- The Supreme Court clarifies that the government may introduce a non-testifying codefendant's confession at trial so long as the confession is redacted with neutral references.
- Prosecutors and trial courts will have an easier time introducing redacted codefendant confessions at trial.
- Limiting instructions in joint trials will play a key and heightened role for defense counsel.

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## SUMMARY

The Sixth Amendment's Confrontation Clause guarantees defendants in criminal cases the right to be "confronted with the witnesses against" them. This week, in *Samia v. United States*, the Supreme Court of the United States addressed the scope of that guarantee when the government seeks to introduce a non-testifying codefendant's confession at trial.

Imagine that two criminal defendants, Jack and Jane, are arrested for robbing a bank. Jack immediately confesses to the robbery and names Jane as his coconspirator. But Jane maintains her innocence. The government tries the two together and reads Jack's confession to the jury, which explicitly names Jane as an accomplice. Jack refuses to testify at trial so that Jane cannot cross-examine him. But the court instructs the jury that it can use the confession only as evidence against Jack, not Jane. Are Jane's rights under the Sixth Amendment's Confrontation Clause violated? Over 50 years ago, in *Bruton v. United States*, the Supreme Court said "yes."

In *Samia*, the Supreme Court confronted a different type of codefendant confession: one that replaced the defendant's name with a neutral reference. The case arose when two men were tried together for their roles in a murder-for-hire scheme and later convicted and sentenced to life in prison. During their joint trial, the government replaced one defendant's name with the "other person." Thus, the confession did not explicitly name the defendant on its face—even though other evidence and statements at trial appeared to link the defendant to the confession. The Court held that such redacted confessions, which do not implicate a defendant on their face, do not violate the Confrontation Clause, thus making it easier for the government to introduce codefendant confessions at joint trials.

## THE *BRUTON*, *RICHARDSON*, *GRAY* TRILOGY

Evidence is often admitted at a trial for one purpose but not another. In those instances, a court will typically give a limiting instruction: instructing the jury to consider the evidence for only the proper purpose. The basic presumption at the heart of this system is that jurors follow those instructions. That presumption was put to the test over the last several decades in a trilogy of cases addressing the scope of the Confrontation Clause when the government introduces a non-testifying codefendant's confession at trial that implicates a non-confessing defendant.

To start, in *Bruton v. United States*, a codefendant confessed that he and George Bruton committed an armed postal robbery. The confession as introduced at trial explicitly named Bruton as an accomplice. The Supreme Court held that this confession violated Bruton's Confrontation Clause rights—even though the trial court gave a limiting instruction to not use the confession against Bruton. In doing so, the Court rejected the usual presumption that jurors follow their instructions: It underscored that there are certain contexts, like a codefendant confession, where the risk of prejudice to the defendant is so great that the court could not ignore the human limitations of juries to follow instructions.

Later, in *Richardson v. Marsh*, the Court addressed whether a codefendant confession that was altered to omit any reference to another person violated the *Bruton* rule. There, Clarissa Marsh and her codefendant were tried together for assault and murder. Marsh's codefendant confessed to the crimes. At trial, the government introduced the confession but omitted all references to Marsh or anyone else. But after the confession was introduced, Marsh volunteered several facts that seemed to implicate her in the confession and crime. The Court held that Marsh's Confrontation Clause rights were not violated under *Bruton* because the confession "was not incriminating on its face, and became so only when linked with evidence introduced later at trial."

Rounding out the trilogy was *Gray v. Maryland*. In *Gray*, the government introduced a codefendant confession that replaced all references to Gray with the words "deleted" or "deletion." The Court held that this altered confession was inadmissible under *Bruton*. According to the Court, substituting a defendant's name for blank spaces, the word "deleted," a symbol, or other similarly obvious alterations are the functional equivalent of the unredacted statement in *Bruton*. Further, the Court suggested that the use of shortened first names, nicknames, and unique descriptions would also fall within *Bruton*'s scope.

For over two decades, this trilogy left unaddressed one final but common scenario: What if the confession is altered to replace the defendant's name with a neutral reference (like, "other person"), but the government also introduces evidence at trial that implicitly connects the defendant to the confession? This brings us to *Samia*.

### SAMIA V. UNITED STATES

In 2012, an infamous crime lord named Paul LeRoux allegedly hired Adam Samia and Carl Stillwell to murder Catherine Lee, a local real-estate broker in the Philippines; LeRoux believed Lee had stolen money from him. Lee was later found dead, shot twice at close range. The U.S. Drug Enforcement Agency eventually arrested LeRoux, Samia, and Stillwell. Stillwell confessed, admitting that Lee was killed in a van; he claimed, however, that he had merely driven the van and that Samia was in fact the shooter. Samia maintained his innocence.

At trial, Stillwell refused to testify, so the government introduced testimony about Stillwell's confession through a DEA agent, replacing Samia's name with "other person." The DEA agent testified that Stillwell "described a time when the *other person* he was with pulled the trigger on that woman in a van that he and Mr. Stillwell was [sic] driving." Stillwell had also told investigators that he had traveled and lived with Samia and that Samia had a gun that matched the type of gun used to murder Lee; when these statements were introduced at trial, the references to Samia were also replaced with "other person." The district court instructed the jury that this testimony was admissible only as to Stillwell and not against Samia.

Samia argued that Stillwell's confession—even with the alterations and instructions—still violated the *Bruton* rule because the prosecution's statements and other evidence at trial allowed the jury to immediately infer that Samia was the "other person." In other words, although the confession *on its face* did not implicate Samia, the context at trial made it clear to the jury that Samia was "the other person" that Stillwell had implicated.

The Supreme Court disagreed, however, holding that the Confrontation Clause is “not violated by the admission of a non-testifying codefendant’s confession that did not directly inculcate the defendant and was subject to a proper limiting instruction.” In an opinion authored by Justice Clarence Thomas, the Court underscored that the longstanding practice in the United States is to admit a non-testifying codefendant’s confession so long as the jury is given a proper limiting instruction. This practice is, as the Court emphasized, consistent with the fundamental presumption in the law that jurors follow limiting instructions.

Canvassing the Court’s decisions in *Bruton*, *Richardson*, and *Gray*, the Court found that those cases “distinguish between confessions that directly implicate a defendant and those that do so indirectly.” None of those cases, according to the Court, “provides license to flyspeck trial transcripts in search of evidence that could give rise to a collateral inference that the defendant had been named in an altered confession.” Because Stillwell’s confession was redacted to avoid directly naming Samia (as in *Bruton*) and the neutral reference to some “other person” was not akin to blank spaces nor the word “deleted” (as in *Gray*), the confession was admissible and did not violate the Confrontation Clause.

On top of this, the Court also highlighted that adopting Samia’s rule would burden federal and state trial courts with extensive pretrial hearings: Courts would have to determine whether a jury could immediately infer from the Government’s case as it would be presented at trial that the neutral reference referred to the defendant. The upshot, the Court claimed, is that every case would have to be severed rather than jointly tried—even though the Court has consistently affirmed the benefits of joint trials.

In dissent, Justice Kagan (joined by Justices Sotomayor and Jackson) reasoned that in allowing the redacted confession in this context, “no matter how obvious the reference to the defendant,” the Court’s majority was “elevating form over substance” and undermining a “vital constitutional protection for the accused.” On behalf of a group of criminal procedure law professors, Winston & Strawn had filed an amicus brief in support of the petitioner: It argued that *Gray* allows for consideration of other evidence at trial and that this approach is consistent with the Court’s analysis in other Confrontation Clause contexts.

## WHAT THIS MEANS

The Supreme Court appears to have handed down its last word on the issue of when the introduction at trial of a non-testifying codefendant’s confession violates the Confrontation Clause. In a fundamental shift from the view of the Court in *Bruton*, the Court doubled-down on the effectiveness of jury instructions and the view that prejudicial effects can be overcome by appropriate instructions. As a result, *Samia*’s holding will certainly put a greater emphasis on the efficacy of jury instructions for defense counsel in joint codefendant trials.

In short, the *Samia* decision will make it easier for prosecutors to introduce codefendant confessions at trial and reduce the burden on trial courts to hold extensive pretrial hearings about confessions. On the other side of the ledger, however, is the real cost of denying defendants the right to meaningfully cross-examine their codefendants. Although the Supreme Court’s last word, the debate will surely carry on in the states. Indeed, states can protect a defendant’s rights beyond those recognized by the Supreme Court under the Confrontation Clause and may choose to adopt their own more-protective rules going forward

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