

2023 SUPPLEMENT TO
CRIMINAL PROCEDURE
PRINCIPLES, POLICIES
AND PERSPECTIVES

Eighth Edition



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PREFACE

This 2023 Update Memo contains a summary of an important criminal procedure case decided by the United States Supreme Court since publication of the Eighth Edition of the casebook.

Please note: selected federal statutes, which previously were included as an appendix to the annual Supplement, are now found in an appendix to the casebook itself. Also, the Federal Rules of Criminal Procedure no longer are included as an appendix to the Supplement. Instead, the relevant Rules are included within the text of the casebook itself.

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CHAPTER 16

THE TRIAL PROCESS

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C. RIGHT TO BE CONFRONTED WITH PROSECUTION WITNESSES

2. RIGHT TO HAVE A CO-DEFENDANT'S CONFESSION EXCLUDED

Page 1350, add new Note 5:

5. *A brutal interpretation of Bruton?* Justice Thomas joined Justice Scalia's dissent in *Gray* to condemn "[t]he Court's extension of *Bruton* to name-redacted confessions 'as a class.'" Twenty-five years later, their views prevailed in Thomas's majority opinion that drew distinctions within the class of name-redacted confessions.

In *Samia v. United States*, 599 U. S. ___, 143 S.Ct. __, __ L.2d __, 2023 WL 4139001 (2023), federal agents arrested three men—Adam Samia, Joseph Hunter, and Carl Stillwell—for an assortment of crimes related to the murder-for-hire of a real estate broker, Catherine Lee. They were tried jointly in the Southern District of New York. The government sought to rely on Stillwell's confession that he was at the location (a van) when Lee was murdered but that Samia had fired the fatal shot.

This posed a *Bruton* issue for Samia because Stillwell was not slated to testify (and hence no chance for confrontation) and the confession implicated Samia. So, the prosecution proposed that a DEA agent would testify about the content of the confession in a manner that did not refer to Samia by name and avoided any clear signs of redaction. At trial, the agent recounted how Stillwell had admitted to "a time when the *other person* he was with pulled the trigger on that woman in a van that he and Mr. Stillwell was driving." The agent continued to use the "other person" reference for someone Stillwell had traveled with, lived with, and possessed a specific kind of firearm. The trial judge instructed the jury, both before the agent's testimony and just before jury deliberations, that the evidence about Stillwell's confession was admissible only as to Stillwell, not Samia or Hunter. All three defendants were convicted after trial.

On appeal, Samia raised a Confrontation Clause claim, maintaining that the agent's testimony, in conjunction with other evidence at trial, made it easy for the jury to infer that Samia was the "other person" alluded to in Stillwell's confession. The Second Circuit rejected this argument, citing the courtroom practice of using a neutral noun or pronoun in lieu of a defendant's name in admitting a nontestifying defendant's confession. The Supreme Court granted a writ of certiorari to review the case and, in a 6-3 decision, ultimately found no Confrontation Clause violation.

In his majority opinion, Justice Thomas offered several justifications for the result. For one thing, he underscored how, as conveyed in court, Stillwell's confession did not "directly implicate" Samia, and Supreme Court precedent fails to "provide[s] license to flyspeck trial transcripts in search of evidence that could give rise to a collateral inference that a defendant had been named in an altered confession." For another, Thomas noted that the confession by Stillwell was "not obviously redacted," along the lines of *Gray v. Maryland* [p. 1342], because "the neutral references to some 'other person' were not akin to an obvious blank or the word 'deleted.'" And perhaps most importantly, Thomas highlighted the value of jury instructions and "the presumption that jurors follow limiting instructions."

At bottom, *Samia* represents a twist on the factual scenario in *Gray*. As legal scholar Jeffrey Bellin has noted, in *Gray* “the prosecution introduced a codefendant’s confession that, in a token effort to comply with *Bruton*, substituted blank spaces for the defendant’s name” and the Supreme Court was “unimpressed.” In Bellin’s view, *Samia* suggests “that all that was missing from *Gray* was slightly more robust redaction.” Jeffrey Bellin, *Divided Court Finds Generic Redactions Sufficient to Admit Confessions of Non-testifying Codefendants*, SCOTUSblog, June 23, 2023. According to Bellin,

Samia rounds out a trilogy of cases addressing frequent redaction scenarios. The first, *Bruton*, deals with scenarios in which a confession explicitly names a codefendant. The second, *Gray*, addresses what to do when the codefendant is implicitly named via obvious redaction. In *Samia*, the court took up a third scenario: when a redacted confession includes a neutral reference (“other person”), but the jury can nevertheless discern that to be the codefendant. * * * the court offered an easy-to-apply answer in this third scenario: no *Bruton* violation. The answer will make trials easier for prosecutors and trial judges and, by definitively answering the last remaining *Bruton*-redaction questions, for the Supreme Court too. That the answer is clear does not mean it is not controversial.

What do you think? Do you see a significant difference between *Bruton*’s explicit use of the codefendant’s name (and thus a constitutional violation), *Gray*’s blank spaces (also a constitutional violation), and *Samia*’s more neutral reference to “other person” (no constitutional problem)? Justice Kagan notably wrote in her *Samia* dissent that she did not see “a lick of difference.” Rather, Kagan contended, “the agent’s testimony about the confession pointed the finger straight at Samia, no less than if the agent had used Samia’s name or called him ‘deleted.’”

On a more fundamental level, is the *Samia* majority relying too heavily on the capacity of jury instructions to safeguard against unwelcome inferences? Going forward, prosecutors may follow the path forged by *Samia* to introduce a nontestifying co-defendant’s confession in a joint trial, and defendants will largely only have jury instructions, as opposed to the power of confrontation, as a shield to protect themselves.