Sixth Amendment — Confrontation Clause — Samia v. United States

The Sixth Amendment Confrontation Clause promotes "the protection of innocence,"[1] due process, and fair trials by extending to criminal defendants the right to cross-examine witnesses that bear testimony against them.[2] To preserve this right in the context of joint trials, the Supreme Court in *Bruton v. United States*[3] determined that incriminating testimonial confessions by nontestifying codefendants violate a defendant's confrontation right and thus must be excluded from trial.[4] However, the Court continues to debate the appropriate ambit of the confrontation rule of exclusion. Last Term, in *Samia v. United States*,[5] the Supreme Court held that, at joint trials, the Confrontation Clause is not violated when a court admits into evidence the confession of a nontestifying codefendant so long as the confession does not directly inculpate the defendant and is accompanied by a proper limiting instruction.[6] The legal standard articulated by the Court abridges the Confrontation Clause entitlement by constricting the rights of criminal defendants in the context of codefendant confessions at joint trials. The Court's reasoning, rhetoric, and legal standard in this doctrinal space have fluctuated between two ends of a spectrum — rights enforcing versus rights constrictive. However, in adopting a rights-constrictive interpretation of the *Bruton* exclusionary rule in *Samia*, the Court declined to give greater weight to key precedent and failed to promote the protective ideals embedded within the Confrontation Clause.

In 2008, Adam Samia joined the security team of a multinational criminal organization led by Paul LeRoux.[7] In 2011, LeRoux directed Joseph Hunter, another security team member, to see to the murder of Catherine Lee, a real estate agent based in the Philippines.[8] Hunter subsequently tasked Samia, who then recruited Carl Stillwell, with committing the murder.[9] In January 2012, Samia traveled to the Philippines to conduct work for LeRoux's organization, and in February, Lee was found murdered.[10] LeRoux was arrested by the U.S. Drug Enforcement Administration (DEA) in September 2012,[11] Hunter was arrested in a

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[1] *See* Akhil Reed Amar, *Foreword: Sixth Amendment First Principles*, 84 GEO. L.J. 641, 642 (1996).

[2] Pointer v. Texas, 380 U.S. 400, 404 (1965) (quoting Kirby v. United States, 174 U.S. 47, 55–56 (1899); Alford v. United States, 282 U.S. 687, 692 (1931)).

[3] 391 U.S. 123 (1968).

[4] *Id.* at 126.

[5] 143 S. Ct. 2004 (2023).

[6] *Id.* at 2018.

[7] The Government's Motions in Limine at 2–3, United States v. Samia, No. 13-cr-00521 (S.D.N.Y. July 31, 2017).

[8] *Id.* at 2, 6.

[9] *Id.*

[10] *Id.* at 7–8.

[11] United States v. Hunter, 32 F.4th 22, 26 (2d Cir. 2022).

DEA sting operation in 2013,[12] and Stillwell and Samia were arrested in 2015.[13] Following his arrest, Stillwell waived his *Miranda*[14] rights and subsequently gave a post-arrest statement where he confessed to driving the van in which Lee was murdered but claimed that Samia shot Lee.[15] Hunter, Stillwell, and Samia were indicted and jointly tried on five counts in the Southern District of New York.[16]

Before trial commenced, the government moved to admit Stillwell's post-arrest statement at trial.[17] Because Stillwell's statement directly named Samia,[18] the government offered to submit a redacted version of the statement in addition to a limiting instruction directing the jury not to consider the post-arrest statement against Samia.[19] While it granted the government's motion, the district court required that additional modifications be made to the statement in an effort to ensure conformity with *Bruton*.[20]

At trial, the government alleged that Hunter directed Stillwell and Samia to kill Lee and that the two men carried out the murder.[21] Samia maintained his innocence while Hunter and Stillwell admitted to being involved in the murder of Lee,[22] but did not admit to shooting Lee.[23] Additionally, a DEA agent provided testimony about Stillwell's confession at trial.[24] The agent shared, among other key details, that Stillwell had 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 driving."[25] In April 2018, the jury found the defendants guilty on all counts.[26] The district court denied post-trial motions filed by the defendants for post-verdict acquittal and in the alternative for a new trial, and they were sentenced to life imprisonment.[27] The defendants appealed to the Second Circuit.[28] On appeal, Samia argued that the district court's decision to

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12 The Government's Motions in Limine, *supra* note 7, at 10.

13 *Id.*

14 Miranda v. Arizona, 384 U.S. 436 (1966).

15 *Samia*, 143 S. Ct. at 2010.

16 *Hunter*, 32 F.4th at 25–26. Samia and Stillwell were charged with five counts, while Hunter was charged with four of those five counts. *Id.* at 27 n.11.

17 The Government's Motions in Limine, *supra* note 7, at 1, 11, 37.

18 *See* Joint Appendix at 21, *Samia*, 143 S. Ct. 2004 (No. 22-196), 2023 WL 2718297.

19 The Government's Motions in Limine, *supra* note 7, at 37. The government redacted Stillwell's statement by replacing Samia's name with neutral nouns and pronouns in most, but not all, instances. Joint Appendix, *supra* note 18, at 21.

20 *Samia*, 143 S. Ct. at 2010–11. The district court required the government to further redact Stillwell's statement to eliminate plural pronouns and lingering references to Samia by name or nickname. Joint Appendix, *supra* note 18, at 23–25.

21 *Hunter*, 32 F.4th at 27.

22 *Id.*

23 *See* The Government's Motions in Limine, *supra* note 7, at 11.

24 *Samia*, 143 S. Ct. at 2011.

25 *Id.* (quoting Joint Appendix, *supra* note 18, at 76).

26 *Hunter*, 32 F.4th at 27.

27 United States v. Hunter, No. 18-3074, 2022 WL 1166623, at *1, *6 (2d Cir. Apr. 20, 2022).

28 *Id.* at *1.

admit Stillwell's confession at trial violated his Sixth Amendment right of confrontation even though the statement was modified.[29]

The Second Circuit affirmed the district court's decision regarding Stillwell's confession.[30] The panel noted that, per *Bruton*, the Confrontation Clause is violated when an incriminating confession by a nontestifying codefendant is admitted at trial and the defendant is not given an opportunity to cross-examine.[31] However, according to the court, *Bruton* is not violated when the admitted statement uses "neutral language to replace explicit identification"[32] of the nonconfessing defendant and the redaction is conducted in a manner that is "non-obvious."[33] And because the DEA agent used neutral terms such as "the other person" when recounting Stillwell's statement at trial,[34] the court determined that Stillwell's altered confession did not "explicit[ly]" identify Samia and that the jury could have concluded that someone other than Samia was Stillwell's coconspirator.[35] Thus, the Second Circuit determined that the district court did not err in admitting Stillwell's modified confession.[36] Samia appealed the Second Circuit's decision to the Supreme Court. The Supreme Court granted certiorari to determine whether the admission of Stillwell's modified confession violated Samia's constitutional rights under the Confrontation Clause.[37]

The Supreme Court affirmed.[38] Writing for the Court, Justice Thomas determined that Samia's confrontation right was not violated. The Court held that admission of a nontestifying codefendant's confession at a joint trial does not violate the Confrontation Clause if the confession does not directly inculpate the defendant and is accompanied by a proper limiting instruction.[39] The Court determined that a confession is not directly inculpatory when it is redacted to replace the defendant's name with a neutral reference such as "other person."[40]

The Court began its analysis with a review of what it characterized as longstanding historical evidentiary practices.[41] It asserted that, in the United States, there is an enduring practice — at least as a matter of evidentiary law — of allowing the admission of a nontestifying codefendant's confession at a joint trial so long as jurors are instructed to

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29 *Id.* at *5.

30 *Id.* at *5–6, *8. The Second Circuit vacated some of the convictions and remanded. *Id.* at *8.

31 *Id.* at *5 (citing Bruton v. United States, 391 U.S. 123, 126 (1968)).

32 *Id.*

33 *Id.* (quoting United States v. Lyle, 919 F.3d 716, 733 (2d Cir. 2019)).

34 *Id.* (quoting Joint Appendix, *supra* note 18, at 75).

35 *Id.* (alteration in original) (quoting United States v. Jass, 569 F.3d 47, 61 (2d Cir. 2009)).

36 *Id.* at *6.

37 *Samia*, 143 S. Ct. at 2010.

38 *See id.*

39 *Id.* at 2018.

40 *Id.* at 2017.

41 *Id.* at 2012–13.

disregard the admission when assessing the guilt of the nonconfessing defendant.[42] Additionally, the Court claimed that our legal system has historically recognized the presumption that juries can be trusted to adhere to instructions provided by judges.[43]

The Court then traced the progression of Confrontation Clause doctrine and concluded that, taken together, the "Court's precedents distinguish between confessions that directly implicate a defendant and those that do so indirectly."[44] The Court first discussed *Bruton*, which Justice Thomas cast as articulating a narrow exception to the general presumption that juries adhere to their instructions.[45] In that case, the Court held that the Confrontation Clause is violated when a nontestifying codefendant's facially incriminating confession is admitted in a joint trial, even if it is accompanied by a proper limiting instruction.[46] Next, the Court discussed *Richardson v. Marsh*.[47] The Court interpreted that case as refusing to extend *Bruton* to a confession that was redacted to omit all references to the defendant and that became incriminating only when considered in conjunction with evidence introduced later at trial.[48] Lastly, the Court discussed *Gray v. Maryland*,[49] where the Court held that a confession by a nontestifying codefendant is inadmissible under *Bruton* when the defendant's name is replaced with blanks or the word "delete" given that such modifications are plainly identifiable and directly refer to the defendant.[50]

The Court concluded that, per this collective precedent, *Bruton* applies only to incriminating statements that are "directly accusatory."[51] The Court determined that Stillwell's confession was not directly accusatory because it was altered so as to not name Samia, employed a "neutral reference[]" to the coconspirator, and was redacted in a nonobvious manner.[52]

Concurring in part and concurring in the judgment, Justice Barrett criticized the majority for using a strained historical analysis to support its holding.[53] She argued that the majority overstated the relevance of the limited case law it drew on, which came largely from the late nineteenth and early twentieth centuries, to interpret the meaning of the Confrontation Clause at the time of the Founding.[54] Further, she

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[42] *Id.* at 2012.
[43] *Id.* at 2013.
[44] *Id.* at 2017.
[45] *Id.* at 2014 (quoting Richardson v. Marsh, 481 U.S. 200, 207, 211 (1987)).
[46] *See* Bruton v. United States, 391 U.S. 123, 126 (1968).
[47] 481 U.S. 200 (1987); *Samia*, 143 S. Ct. at 2015–16 (citing *Richardson*, 481 U.S. at 203, 208).
[48] *Samia*, 143 S. Ct. at 2015–16 (citing *Richardson*, 481 U.S. at 203, 208).
[49] 523 U.S. 185 (1998).
[50] *Samia*, 143 S. Ct. at 2016 (citing *Gray*, 523 U.S. at 192–94).
[51] *Id.* at 2017 (quoting *Gray*, 523 U.S. at 194).
[52] *Id.*
[53] *See id.* at 2019 (Barrett, J., concurring in part and concurring in the judgment).
[54] *See id.*

criticized the majority for failing to disclose that there is limited and inconclusive evidence as to how courts addressed confessions by codefendants in the Founding era.[55] Finally, Justice Barrett argued that the cases the majority cited to support its claims regarding long-standing evidentiary practices[56] did not speak to the effectiveness of limiting jury instructions or to the necessity of redacting the names of nonconfessing defendants in confessions, nor did they make reference to the constitutional right at issue.[57]

Writing in dissent, joined by Justices Sotomayor and Jackson, Justice Kagan argued that the majority applied the law to the facts of the case in a manner that distorted the core purpose of *Bruton*.[58] Justice Kagan acknowledged that the precedent roughly drew a distinction between directly and indirectly incriminating confessions.[59] However, in her view, a confession is directly inculpatory under *Bruton* if it has the effect of incriminating a nonconfessing defendant.[60] Thus, by focusing on the form of redaction rather than the inculpatory impact of the confession, the majority "ma[de] nonsense of the *Bruton* rule."[61] Moreover, Justice Kagan argued that a limiting instruction does not cure the constitutional problem that arises when an incriminating confession is admitted as evidence at a joint trial.[62] She concluded that any reasonable juror would have been able to infer that Samia was "the other person" referenced in Stillwell's confession based on information they had from the start of the trial.[63] Thus, Stillwell's confession should have been inadmissible given its directly inculpatory effect.[64]

In a separate dissent, Justice Jackson argued that precedent required the Court to presume that Samia's confrontation rights would be threatened if Stillwell's confession were admitted, and thus, the confession should have been excluded at trial.[65] She asserted that the majority mischaracterized the constitutional standard at issue.[66] In her view, *Bruton* and its progeny established a "baseline confrontation rule of exclusion" and recognized narrow exceptions to this default rule.[67] However, the majority flipped the constitutional standard by treating

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[55] *See id.*

[56] The majority cited to early federal and state cases including *Sparf v. United States*, 156 U.S. 51 (1895); *United States v. Ball*, 163 U.S. 662 (1896); *State v. Workman*, 15 S.C. 540 (1881); and *Jones v. Commonwealth*, 72 Va. (31 Gratt.) 836 (1878). *Samia*, 143 S. Ct. at 2013 (majority opinion).

[57] *Samia*, 143 S. Ct. at 2019 (Barrett, J., concurring in part and concurring in the judgment).

[58] *See id.* at 2023 (Kagan, J., dissenting).

[59] *Id.*

[60] *See id.* at 2022–23.

[61] *Id.* at 2023.

[62] *Id.* at 2024–25 (quoting Bruton v. United States, 391 U.S. 123, 137 (1968)).

[63] *Id.* at 2022–23.

[64] *Id.* at 2023.

[65] *Id.* at 2026 (Jackson, J., dissenting).

[66] *Id.* at 2025–26.

[67] *Id.* at 2026.

Bruton's rule of exclusion as a narrow exception and establishing the default presumption that a nontestifying codefendant's inculpatory statement is admissible if it is accompanied by a limiting instruction.[68]

The majority's holding abridges the confrontation rights of criminal defendants in the context of codefendant confessions at joint trials.[69] It does so by heightening the difficulty of barring the admission at trial of confessions that do not "directly" implicate the defendant but that may be nonetheless prejudicial.[70] Support for the majority's holding can indeed be found in existing precedent, namely *Richardson*.[71] However, the Court failed to seize an opportunity to staunchly promote the protective ideals embedded within the Confrontation Clause. It instead arrived at a rights-constrictive interpretation of the confrontation rule of exclusion by declining to give greater weight to key precedent, namely *Bruton* and *Gray*.

The primary precedents that the Court drew upon to articulate its legal standard are *Bruton*, *Richardson*, and *Gray*.[72] These cases reflect a tug-of-war between two different ends of a spectrum — one that embraces rationales and legal standards that are more rights enforcing and another that does not. First, in *Bruton*, at a joint trial, the court admitted the confession of a nontestifying codefendant that named the petitioner as an accomplice in an armed postal robbery.[73] The Supreme Court held that admitting a confession of a nontestifying codefendant that "powerfully incriminat[es]" a defendant violates the Confrontation Clause even when the confession is accompanied by a limiting instruction.[74] In that case, the codefendant's confession was powerfully incriminating because it expressly named the defendant.[75] However, critically, the Court in *Bruton* did not assert that a confession must "expressly" or "directly" name the defendant in order to be powerfully incriminating.[76] Furthermore, the Court devoted much of its analysis to repudiating the presumption that juries can be relied upon to disregard extrajudicial statements that implicate a codefendant at a joint trial.[77] By focusing on the inculpatory effect of codefendant confessions and the risk of prejudice, *Bruton* established a rights-enforcing confrontation rule of exclusion.

Then, in *Richardson*, a trial court admitted a nontestifying codefendant's confession that had been redacted to eliminate all references to

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[68] *Id.* at 2025–26.
[69] *Id.* at 2025 (Kagan, J., dissenting).
[70] *See id.*
[71] *See* Richardson v. Marsh, 481 U.S. 200 (1987).
[72] *Samia*, 143 S. Ct. at 2014–17.
[73] Bruton v. United States, 391 U.S. 123, 124 (1968).
[74] *Id.* at 126, 135–37.
[75] *Id.* at 124 n.1.
[76] *See Samia*, 143 S. Ct. at 2021 (Kagan, J., dissenting).
[77] *See Bruton*, 391 U.S. at 126–37 (citing, inter alia, Delli Paoli v. United States, 352 U.S. 232, 239 (1957)).

the defendant.[78] The confession became incriminating only when linked with the defendant's own testimony provided later at trial.[79] Writing for the Court, Justice Scalia held that the Confrontation Clause is not violated when a nontestifying codefendant's confession is redacted to omit any reference to the defendant and is admitted along with a limiting instruction.[80] The rhetoric of this opinion diverged markedly from that of *Bruton*. First, unlike in *Bruton*, the Court in *Richardson* expressed less skepticism toward a jury's ability to follow a judge's instructions and disregard incriminating confessions by codefendants at joint trials.[81] And it characterized *Bruton* as a "narrow exception" to the presumption that jurors follow their instructions.[82] Second, the Court in *Richardson* "dr[ew] a distinction of constitutional magnitude between those confessions that directly identify the defendant" and those that do so indirectly, whereas the Court's rationale in *Bruton* applied "without exception to all inadmissible confessions that are 'powerfully incriminating.'"[83] When balancing the competing interests, the Court in *Richardson* arguably placed greater weight on the interests of efficiency in criminal proceedings,[84] while the Court in *Bruton* placed more weight on fair process and reducing the risk of harm to defendants.[85] In essence, *Richardson* intended to limit the scope of *Bruton*.[86]

But then in *Gray*, the Court switched gears once more. In this case, the Court held that *Bruton*'s protective rule applied to a confession that masked the identity of a defendant by replacing their name with blanks and the word "delete."[87] Writing for the Court, Justice Breyer conceded that *Richardson* limited the scope of *Bruton.*[88] But the opinion reined in the expansive implications of *Richardson* by not carrying forward some of that case's sweeping dicta. For example, the Court declined to

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78 Richardson v. Marsh, 481 U.S. 200, 203–04 (1987).

79 *Id.* at 208.

80 *Id.* at 211.

81 *Compare id.* at 206 (citing Francis v. Franklin, 471 U.S. 307, 325 n.9 (1985)) (describing the presumption as an "almost invariable assumption of the law"), *with Bruton*, 391 U.S. at 135–36 ("[T]here are some contexts in which the risk that the jury will not, or cannot follow instructions is so great . . . . Such a context is presented here, where the powerfully incriminating extrajudicial statements of a codefendant, who stands accused side-by-side with the defendant, are deliberately spread before the jury in a joint trial.").

82 *Richardson*, 481 U.S. at 207.

83 *Id.* at 211–12 (Stevens, J., dissenting) (quoting *Bruton*, 391 U.S. at 135).

84 *Id.* at 209–10 (majority opinion).

85 *Compare, e.g.*, *id.* at 210 ("The other way of assuring compliance with an expansive *Bruton* rule would be to forgo use of codefendant confessions. That price also is too high, since confessions 'are more than merely "desirable"; they are essential to society's compelling interest in finding, convicting, and punishing those who violate the law.'" (quoting Moran v. Burbine, 475 U.S. 412, 426 (1986))), *with Bruton*, 391 U.S. at 135 ("We secure greater speed, economy and convenience in the administration of the law at the price of fundamental principles of constitutional liberty." (quoting People v. Fisher, 164 N.E. 336, 341 (N.Y. 1928))).

86 Gray v. Maryland, 523 U.S. 185, 189 (1998).

87 *Id.* at 197.

88 *Id.* at 189.

describe *Bruton* as a "narrow exception" to the presumption that juries follow instructions.[89] Instead, the Court characterized *Richardson* as placing "outside the scope of *Bruton*'s rule . . . statements that incriminate inferentially . . . only when linked with evidence introduced later at trial."[90] Furthermore, while the Court in *Gray* used the term "directly accusatory" to describe the confession at issue,[91] it did so primarily to distinguish the confession in *Gray* from that in *Richardson* and to illuminate why the confession at issue had a "powerfully incriminating" effect that "create[d] a special[] and vital[] need for cross-examination."[92] It did not do so to draw a weight-bearing and formalistic doctrinal distinction between directly versus indirectly accusatory confessions.[93]

In *Samia*, the Court gathered bits from *Richardson* to feed a revival of the premise that *Bruton*'s rule of exclusion is a "narrow exception" that applies to a smaller universe of confessions. That premise is relied upon in *Richardson*.[94] But critically, it is excluded from *Bruton* and *Gray*,[95] two opinions that bookend *Richardson*. Although the Court must consider *Richardson*, the Court declined to account for *Gray*'s efforts to push the pendulum back towards the rights-promotive end of the spectrum.[96] Moreover, by leaning primarily on *Richardson,* the Court did not in fact holistically account for all three cases as a collective precedent and refused to extend two out of three precedents (*Bruton* and *Gray*) to their full logical conclusion.[97]

Considerations of the nature of the right at issue, what is necessary to effectuate that right, and the stakes for criminal defendants should direct the pendulum towards the rights-enforcing end of the spectrum. Confrontation is not merely an evidentiary practice, but a constitutional guarantee embedded with protections for defendants. In criminal prosecutions, the Confrontation Clause secures the right of "the accused . . . to be confronted with the witnesses against him."[98] The right to cross-examine one who bears testimony against a defendant has long been

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[89] *See, e.g.*, *id.* at 189–91.

[90] *Id.* at 195–96 (quoting *Richardson*, 481 U.S. at 208).

[91] *Id.* at 194.

[92] *Id.* (quoting Bruton v. United States, 391 U.S. 123, 135 (1968)).

[93] *Samia*, 143 S. Ct. at 2023 (Kagan, J., dissenting) ("In holding that *Bruton*'s protections extend beyond confessions with names to confessions with blanks, *Gray* explained that what should matter is not a confession's form but its effects.").

[94] *Richardson*, 481 U.S. at 208.

[95] *See generally Gray*, 523 U.S. 185; *Bruton*, 391 U.S. 123.

[96] *See* Benjamin E. Rosenberg, *The Future of Codefendant Confessions*, 30 SETON HALL L. REV. 516, 516–17, 528 (2000); Richard F. Dzubin, Casenote, *The Extension of the Bruton Rule at the Expense of Judicial Efficiency in* Gray v. Maryland, 33 U. RICH. L. REV. 227, 255–56 (1999).

[97] *See generally* Barry Friedman, *The Wages of Stealth Overruling (with Particular Attention to* Miranda v. Arizona*)*, 99 GEO. L.J. 1, 9–10 (2010) (describing the Court's failure to extend precedent to its full logical conclusion as a form of "stealth overruling," *id.* at 9).

[98] U.S. CONST. amend. VI.

recognized as part and parcel of this right.[99] The Confrontation Clause bars the admission of a wide range of testimonial statements[100] "of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination."[101] The Supreme Court has recognized that confrontation is a "fundamental right" that is essential for "the due protection of life and liberty" and safeguarding "the kind of fair trial which is this country's constitutional goal."[102] The Clause is one of several provisions within the Sixth Amendment that "preserve[] and advance[] the adversary system" and constitutionalize the right of the accused to defend themselves.[103] In pursuit of these objectives, the Confrontation Clause establishes an entitlement and the confrontation rule of exclusion bars admission of "hearsay [that] would circumvent the fair trial protections the Sixth Amendment affords."[104] Thus, an exclusionary rule is integral to effectuating the confrontation right and its corresponding ideals.[105]

However, in *Samia*, the Court refused to extend the exclusionary rule to Stillwell's confession because it was not directly incriminating[106] and fell "outside the narrow exception [*Bruton*] created."[107] *Bruton*'s rule of exclusion reflects a presumption that limiting instructions are unable to eradicate the prejudicial effects of codefendant confessions at joint trials.[108] This presumption may be "narrow" in the sense that it diverges from the Court's general presumption that jurors follow their instructions.[109] However, as Justice Jackson asserted in her dissent, this presumption does not dominate in this context, where *Bruton*'s exclusionary rule is intended to serve as the default or "baseline confrontation rule of exclusion."[110] The Court inverted this presumption[111] from one of presumptive exclusion to one of presumptive admittance barring the defense's ability to demonstrate that a confession is "directly inculpat[ory]" because it directly refers to the defendant in some manner.[112]

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99 Pointer v. Texas, 380 U.S. 400, 404 (1965); *see also* Crawford v. Washington, 541 U.S. 36, 53–54 (2004); Mattox v. United States, 156 U.S. 237, 242–43 (1895).

100 *See* Davis v. Washington, 547 U.S. 813, 821–22 (2006); *Crawford*, 541 U.S. at 51–52.

101 *Crawford*, 541 U.S. at 54.

102 *Pointer*, 380 U.S. at 404–05 (quoting Kirby v. United States, 174 U.S. 47, 56 (1899)).

103 Randolph N. Jonakait, *Restoring the Confrontation Clause to the Sixth Amendment*, 35 UCLA L. REV. 557, 582–84 (1988).

104 *See* JAMES J. TOMKOVICZ, CONSTITUTIONAL EXCLUSION: THE RULES, RIGHTS, AND REMEDIES THAT STRIKE THE BALANCE BETWEEN FREEDOM AND ORDER 362 (2011).

105 *Id.* at 359.

106 *Samia*, 143 S. Ct. at 2017–18.

107 *Id.* at 2017 (quoting Richardson v. Marsh, 481 U.S 200, 208 (1987)).

108 *See* Bruton v. United States, 391 U.S. 123, 129 (1968) (quoting Krulewitch v. United States, 336 U.S. 440, 453 (1949)).

109 *See* David Alan Sklansky, *Evidentiary Instructions and the Jury as Other*, 65 STAN. L. REV. 407, 408 (2013) (discussing this general presumption).

110 *Samia*, 143 S. Ct. at 2026 (Jackson, J., dissenting).

111 *Id.*

112 *Id.* at 2017–18 (majority opinion).

By developing a more formalistic[113] boundary between what does and does not violate the Confrontation Clause and inverting the default presumption of exclusion, the Court raised the bar for when exclusion can be triggered.

As Justice Kagan explained in her dissent, confessions by a defendant's alleged accomplice that use neutral phrases such as "other person" to indirectly refer to a defendant may fit within the bounds of what this Court deems as permissive, but may powerfully incriminate the defendant.[114] Without exclusion, such confessions can deal a devastating blow to a defendant's portrayal of innocence,[115] and the lack of confrontation limits their ability to defend themself.[116] Thus, through its holding, this Court has eroded a key tool for preventing the deprivation of the protective ideals embedded within the Confrontation Clause.

The trajectory of the doctrine in *Samia* is noteworthy because it is akin to other areas of law where the Court has constricted the rights of defendants, shied away from its duty to serve as an effective check on the government's prosecutorial power,[117] and allowed the pendulum to gravitate toward rights-constrictive legal frameworks. Consider, for example, the Fourth Amendment exclusionary rule that was once viewed as "part and parcel" of the Fourth Amendment prohibition against unreasonable searches and seizures[118] but is now infrequently applied when there are Fourth Amendment violations.[119] The Court hollowed out this right by reframing the nature of the right[120] and carving out various exceptions to the rule.[121] Although the Court has not overruled *Bruton*,[122] the progression of the Fourth Amendment exclusionary rule warns that the Court is capable of further curtailing the confrontation right.

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[113] *See* Richardson v. Marsh, 481 U.S. 200, 212 (1987) (Stevens, J., dissenting) (arguing that the direct/indirect distinction can lead to "illogical result[s]" that "demean[] the values protected by the Confrontation Clause").

[114] *Samia*, 143 S. Ct. at 2021–23 (Kagan, J., dissenting).

[115] *See* Judith L. Ritter, *The X Files: Joint Trials, Redacted Confessions and Thirty Years of Sidestepping* Bruton, 42 VILL. L. REV. 855, 882–83 (1997).

[116] *See* Alfredo Garcia, *The Winding Path of* Bruton v. United States*: A Case of Doctrinal Inconsistency*, 26 AM. CRIM. L. REV. 401, 437 (1988).

[117] *See, e.g.*, Sharon Dolovich, *Canons of Evasion in Constitutional Criminal Law*, *in* THE NEW CRIMINAL JUSTICE THINKING 111, 111–16 (Alexandra Natapoff & Sharon Dolovich eds., 2017).

[118] Mapp v. Ohio, 367 U.S. 643, 651, 657 (1961).

[119] Tracey Maclin & Jennifer Rader, *No More Chipping Away: The Roberts Court Uses an Axe to Take Out the Fourth Amendment Exclusionary Rule*, 81 MISS. L.J. 1183, 1186–87 (2012).

[120] United States v. Calandra, 414 U.S. 338, 348 (1974) (asserting that the exclusionary rule is a "judicially created remedy" as opposed to a "constitutional right").

[121] *See, e.g.*, Herring v. United States, 555 U.S. 135, 147–48 (2009); Davis v. United States, 564 U.S. 229, 232, 238 (2011).

[122] *See Samia*, 143 S. Ct. at 2025 (Kagan, J., dissenting); *see also id.* at 2027 (Jackson, J., dissenting).