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Recent Developments: State v. Gray: Redacted Confession of a Nontestifying Codefendant Does Not Violate a Defendants's Sixth Amendment Rights

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State v. Gray

The Court of Appeals of Maryland in *State v. Gray*, 344 Md. 417, 687 A.2d 660 (1997), held that a nontestifying codefendant's confession does not violate a defendant's Sixth Amendment right to confront his accusers when the names of others implicated in the crime are deleted, and when the jury is instructed to consider the confession only with respect to the guilt of the confessing codefendant. In its five to two opinion, the court placed great faith in the ability of juries to dichotomize evidence and to draw no impermissible conclusions from the deleted inferences.

Stacey Williams was beaten by a group of six men and died as a result of his injuries. Incident to an investigation, Anthony Bell ("Bell") was arrested and confessed to the murder, implicating himself, Jacquin Vanlandingham ("Jacquin"), and Kevin Dominic Gray ("Gray"). The court denied Gray's motions to sever his trial from Bell's or in the alternative to exclude Bell's confession from evidence. The trial court ordered the redaction of Jacquin's and Gray's names from the confession and instructed the jury to consider the evidence only against Bell. Although there was conflicting evidence regarding Gray's exact location at the time of the incident, the jury convicted Gray of involuntary manslaughter. The court sentenced him to ten years imprisonment.

Gray appealed and argued that

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By Marianna Ikonou

the redacted confession was a violation of his Sixth Amendment right to cross-examine his accusers. The Court of Special Appeals of Maryland agreed and reversed the lower court. The Court of Appeals of Maryland granted certiorari.

Citing the Sixth Amendment, the court began its analysis by noting that in criminal trials, both federal and state, a defendant has the right to confront his or her accusers. *Gray*, 344 Md. at 420, 687 A.2d at 662 (citing U.S. CONST. amend. VI). The ability to confront implies the right to cross-examine. *Id.* (citing *Pointer v. Texas*, 380 U.S. 400, 406-07 (1965)). Next, the court summarized the history of Supreme Court jurisprudence on the issue of admitting a nontestifying codefendant's confession. *Gray* at 420-27, 687 A.2d at 662-666.

Initially, the Supreme Court held that it is possible for a jury to follow instructions, and limit a confession solely to the determination of the guilt of the confessing codefendant. *Id.* at 421, 687 A.2d at 662-63 (citing *Bruton*

v. United States, 391 U.S. 123 at 126 (1968)). In *Bruton*, the Court departed from this view holding that, notwithstanding a jury instruction, a confession of a nontestifying codefendant implicating a defendant by name violates the defendant's right to cross-examine the witness. *Gray* at 421, 687 A.2d at 663 (citing *Bruton*, 391 U.S. at 126). The *Bruton* ruling, the court continued, illustrated the Court's concern that despite instructions "such a non-admissible declaration cannot be wiped from the brains of the jurors." *Gray* at 421, 687 A.2d at 663, (quoting *Paoli v. United States*, 352 U.S. 232, 247-48 (1957)). While acknowledging the judicial economy joint trials afford, the probative value of a confession and the integrity of the jury system, the *Bruton* Court held that jury instructions are not an "adequate substitute" for the constitutional right to cross-examination. *Gray* at 422-23, 687 A.2d at 663.

The practice of redacting the names of others implicated in the confession was challenged in *Richardson v. Marsh*, 481 U.S. 200 (1987). *Gray* at 423, 687 A.2d at 663. *Marsh* limited *Bruton* and held it to be a "narrow exception" to the presumption that juries will follow instructions accurately. *Gray* at 424-425, 687 A.2d at 664. There is a distinction, the Court held, between confessions directly implicating codefendants and confessions where

a codefendant's guilt is inferred. *Id.* at 426, 687 A.2d at 665, (citing *Marsh*, 481 U.S. at 208). In the latter case, an instruction can be adequate to dissuade juries from making the inference. *Id.* at 426, 687 A.2d at 665 (citing *Marsh* 481 U.S. at 208). In addition, the *Marsh* Court held that judicial economy and the advantage of consistent verdicts in joint trials warrant the admissibility of confessions where a codefendant is not named. *Gray* at 426, 687 A.2d at 665 (citing *Marsh* 481 U.S. at 208-210).

Marsh, however, did not rule on the issue of the admissibility of a confession where the codefendants' names are redacted. *Gray* at 426, 687 A.2d at 665. Currently, the Maryland court continued, there is a considerable split among the circuits regarding the issue reserved in *Marsh*. *Gray* at 426, 687 A.2d at 665. Some courts have held that if a codefendant's confession tends to incriminate a defendant, when used in light of other evidence presented, it creates a substantial risk that the jury will improperly use the confession to determine the defendant's culpability. *Id.* at 427, 687 A.2d at 665. Other jurisdictions have held that a confession is admissible if it does not implicate the defendant by name, or if the defendant's name is deleted from the confession. *Id.* at 427, 687 A.2d at 665-666.

The Maryland court rejected both approaches holding that the former undermined the long held presumption that juries will follow

instructions faithfully. *Id.* at 427-428, 687 A.2d at 666. The latter approach is equally flawed, the court stated, because in some cases, notwithstanding instructions, juries might still conclude that the deleted name is that of the defendant. *Id.* at 428, 687 A.2d at 666. Sometimes the inferential step that juries must make to link the defendant is so small that it is effectively nonexistent. *Id.* at 428, 687 A.2d at 666.

In suggesting a third approach, the Court of Appeals of Maryland first reaffirmed the presumption that juries will follow instructions and will resist impermissible inferences. *Id.* at 429, 687 A.2d at 667. There are those cases, however, where such inference is so compelling that jurors will be unable to follow the court's instruction. *Id.* at 429, 687 A.2d at 666-67 (citing *United States v. Pendegraph*, 791 F.2d 1462 (11th Cir. 1991) (though the codefendant's confession was redacted, the jury could infer that the defendant was the accomplice simply because there was no other possibility)). Therefore, the court concluded, in order to overcome the presumption that jurors will ignore or will be unable to follow court instructions, the urge to make the unauthorized deduction must be "compelling, inevitable and subject to little or no debate." *Id.* at 430, 687 A.2d at 667.

Turning to the facts of the instant case, the court reviewed Bell's confession and noted that he identified three of the six participants. *Id.* at 431, 687 A.2d at 667-

668. Although the jury could have inferred from the testimony that one of the three unidentified persons was Gray, Bell's confession did not compel such an inference. *Id.* at 432, 687 A.2d at 668. Therefore, the strong presumption that the jury will follow the court's instructions was not overcome and a *Bruton* violation did not occur. *Id.* at 434, 687 A.2d at 669. The defense's argument that the jury might make the inference was insufficient. *Id.*

All dangers of hearsay are present in a nontestifying codefendant's confession: (1) erroneous memory; (2) faulty perception; (3) insincerity; and (4) ambiguity. The judicial economy afforded by joint trials in an overburdened legal system is nevertheless critical. The Court of Appeals of Maryland in *Gray* thoughtfully balanced all conflicting interests and arrived at the best holding possible under the circumstances.

