SUPREME COURT OF THE UNITED STATES

No. 96–8653

KEVIN D. GRAY, PETITIONER *v.* MARYLAND

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

[March 9, 1998]

JUSTICE BREYER delivered the opinion of the Court.

The issue in this case concerns the application of *Bruton* v. *United States*, 391 U. S. 123 (1968). *Bruton* involved two defendants accused of participating in the same crime and tried jointly before the same jury. One of the defendants had confessed. His confession named and incriminated the other defendant. The trial judge issued a limiting instruction, telling the jury that it should consider the confession as evidence only against the codefendant who had confessed and not against the defendant named in the confession. *Bruton* held that, despite the limiting instruction, the Constitution forbids the use of such a confession in the joint trial.

The case before us differs from *Bruton* in that the prosecution here redacted the codefendant's confession by substituting for the defendant's name in the confession a blank space or the word "deleted." We must decide whether these substitutions make a significant legal difference. We hold that they do not and that *Bruton*'s protective rule applies.

I

In 1993, Stacy Williams died after a severe beating. Anthony Bell gave a confession, to the Baltimore City police, in which he said that he (Bell), Kevin Gray, and Jacquin "Tank" Vanlandingham had participated in the beating that resulted in Williams' death. Vanlandingham later died. A Maryland grand jury indicted Bell and Gray for murder. The State of Maryland tried them jointly.

The trial judge, after denying Gray's motion for a separate trial, permitted the State to introduce Bell's confession into evidence at trial. But the judge ordered the confession redacted. Consequently, the police detective who read the confession into evidence said the word "deleted" or "deletion" whenever Gray's name or Vanlandingham's name appeared. Immediately after the police detective read the redacted confession to the jury, the prosecutor asked, "after he gave you that information, you subsequently were able to arrest Mr. Kevin Gray; is that correct?" The officer responded, "That's correct." App. 12. The State also introduced into evidence a written copy of the confession with those two names omitted, leaving in their place blank white spaces separated by commas. See Appendix, *infra*. The State produced other witnesses, who said that six persons (including Bell, Gray, and Vanlandingham) participated in the beating. Gray testified and denied his participation. Bell did not testify.

When instructing the jury, the trial judge specified that the confession was evidence only against Bell; the instructions said that the jury should not use the confession as evidence against Gray. The jury convicted both Bell and Gray. Gray appealed.

Maryland's intermediate appellate court accepted Gray's argument that *Bruton* prohibited use of the confession and set aside his conviction. 107 Md. App. 311, 667 A. 2d 983 (1995). Maryland's highest court disagreed and reinstated the conviction. 344 Md. 417, 687 A. 2d 660

(1997). We granted certiorari in order to consider *Bruton*'s application to a redaction that replaces a name with an obvious blank space or symbol or word such as "deleted."

II

In deciding whether *Bruton*'s protective rule applies to the redacted confession before us, we must consider both *Bruton*, and a later case, *Richardson* v. *Marsh*, 481 U. S. 200 (1987), which limited *Bruton*'s scope. We shall briefly summarize each of these two cases.

Bruton, as we have said, involved two defendants– Evans and Bruton– tried jointly for robbery. Evans did not testify, but the Government introduced into evidence Evans' confession, which stated that both he (Evans) and Bruton together had committed the robbery. 391 U. S., at 124. The trial judge told the jury it could consider the confession as evidence only against Evans, not against Bruton. *Id*., at 125.

This Court held that, despite the limiting instruction, the introduction of Evans' out-of-court confession at Bruton's trial had violated Bruton's right, protected by the Sixth Amendment, to cross-examine witnesses. *Id*., at 137. The Court recognized that in many circumstances a limiting instruction will adequately protect one defendant from the prejudicial effects of the introduction at a joint trial of evidence intended for use only against a different defendant. *Id*., at 135. But it said that

> "there are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored. 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 deliber-

> ately spread before the jury in a joint trial. Not only are the incriminations devastating to the defendant but their credibility is inevitably suspect . . . . The unreliability of such evidence is intolerably compounded when the alleged accomplice, as here, does not testify and cannot be tested by cross-examination." *Id.*, at 135–136 (citations omitted).

The Court found that Evans' confession constituted just such a "powerfully incriminating extrajudicial statemen[t]," and that its introduction into evidence, insulated from cross-examination, violated Bruton's Sixth Amendment rights. *Id.*, at 135.

In *Richardson* v. *Marsh*, *supra*, the Court considered a redacted confession. The case involved a joint murder trial of Marsh and Williams. The State had redacted the confession of one defendant, Williams, so as to "omit all reference" to his codefendant, Marsh– "indeed, to omit all indication that *anyone* other than . . . Williams" and a third person had "participated in the crime." *Id.*, at 203 (emphasis in original). The trial court also instructed the jury not to consider the confession against Marsh. *Id.*, at 205. As redacted, the confession indicated that Williams and the third person had discussed the murder in the front seat of a car while they traveled to the victim's house. *Id.*, at 203–204, n. 1. The redacted confession contained no indication that Marsh– or any other person– was in the car. *Ibid.* Later in the trial, however, Marsh testified that she was in the back seat of the car. *Id.*, at 204. For that reason, in context, the confession still could have helped convince the jury that Marsh knew about the murder in advance and therefore had participated knowingly in the crime.

The Court held that this redacted confession fell outside *Bruton*'s scope and was admissible (with appropriate limiting instructions) at the joint trial. The Court distinguished Evans' confession in *Bruton* as a confession that

was "incriminating on its face," and which had "expressly implicat[ed]" Bruton. 481 U. S., at 208. By contrast, Williams' confession amounted to "evidence requiring linkage" in that it "became" incriminating in respect to Marsh "only when linked with evidence introduced later at trial." *Ibid.* The Court held

> "that the Confrontation Clause is not violated by the admission of a nontestifying codefendant's confession with a proper limiting instruction when, as here, the confession is redacted to eliminate not only the defendant's name, but any reference to his or her existence." *Id.*, at 211.

The Court added: "We express no opinion on the admissibility of a confession in which the defendant's name has been replaced with a symbol or neutral pronoun." *Id.*, at 211, n. 5.

III

Originally, the codefendant's confession in the case before us, like that in *Bruton*, referred to, and directly implicated another defendant. The State, however, redacted that confession by removing the nonconfessing defendant's name. Nonetheless, unlike *Richardson*'s redacted confession, this confession refers directly to the "existence" of the nonconfessing defendant. The State has simply replaced the nonconfessing defendant's name with a kind of symbol, namely the word "deleted" or a blank space set off by commas. The redacted confession, for example, responded to the question "Who was in the group that beat Stacey," with the phrase, "Me, , and a few other guys." See Appendix, *infra*, at ___. And when the police witness read the confession in court, he said the word "deleted" or "deletion" where the blank spaces appear. We therefore must decide a question that *Richardson* left open, namely whether redaction that replaces a defendant's name with an obvious indication of

deletion, such as a blank space, the word "deleted," or a similar symbol, still falls within *Bruton*'s protective rule. We hold that it does.

Bruton, as interpreted by *Richardson*, holds that certain "powerfully incriminating extrajudicial statements of a codefendant"– those naming another defendant– considered as a class, are so prejudicial that limiting instructions cannot work. *Richardson*, 481 U. S., at 207; *Bruton*, 391 U. S., at 135. Unless the prosecutor wishes to hold separate trials or to use separate juries or to abandon use of the confession, he must redact the confession to reduce significantly or to eliminate the special prejudice that the *Bruton* Court found. Redactions that simply replace a name with an obvious blank space or a word such as "deleted" or a symbol or other similarly obvious indications of alteration, however, leave statements that, considered as a class, so closely resemble *Bruton*'s unredacted statements that, in our view, the law must require the same result.

For one thing, a jury will often react similarly to an unredacted confession and a confession redacted in this way, for the jury will often realize that the confession refers specifically to the defendant. This is true even when the State does not blatantly link the defendant to the deleted name, as it did in this case by asking whether Gray was arrested on the basis of information in Bell's confession as soon as the officer had finished reading the redacted statement. Consider a simplified but typical example, a confession that reads "I, Bob Smith, along with Sam Jones, robbed the bank." To replace the words "Sam Jones" with an obvious blank will not likely fool anyone. A juror somewhat familiar with criminal law would know immediately that the blank, in the phrase "I, Bob Smith, along with , robbed the bank," refers to defendant Jones. A juror who does not know the law and who therefore wonders to whom the blank might refer need only lift his eyes to Jones, sitting at counsel table, to find what will

seem the obvious answer, at least if the juror hears the judge's instruction not to consider the confession as evidence against Jones, for that instruction will provide an obvious reason for the blank. A more sophisticated juror, wondering if the blank refers to someone else, might also wonder how, if it did, the prosecutor could argue the confession is reliable, for the prosecutor, after all, has been arguing that Jones, not someone else, helped Smith commit the crime.

For another thing, the obvious deletion may well call the jurors' attention specially to the removed name. By encouraging the jury to speculate about the reference, the redaction may overemphasize the importance of the confession's accusation– once the jurors work out the reference. That is why Judge Learned Hand, many years ago, wrote in a similar instance that blacking out the name of a codefendant not only "would have been futile. . . . [T]here could not have been the slightest doubt as to whose names had been blacked out," but "even if there had been, that blacking out itself would have not only laid the doubt, but underscored the answer." *United States* v. *Delli Paoli*, 229 F. 2d 319, 321 (CA2 1956), aff'd, 352 U. S. 232 (1957), overruled by *Bruton* v. *United States*, 391 U. S. 123 (1968). See also *Malinski* v. *New York*, 324 U. S. 401, 430 (1945) (Rutledge, J., dissenting) (describing substitution of names in confession with "X" or "Y" and other similar redactions as "devices . . . so obvious as perhaps to emphasize the identity of those they purported to conceal").

Finally, *Bruton*'s protected statements and statements redacted to leave a blank or some other similarly obvious alteration, function the same way grammatically. They are directly accusatory. Evans' statement in *Bruton* used a proper name to point explicitly to an accused defendant. And *Bruton* held that the "powerfully incriminating" effect of what Justice Stewart called "an out-of-court accusation," 391 U. S., at 138 (Stewart, J., concurring), creates a

special, and vital, need for cross- examination– a need that would be immediately obvious had the codefendant pointed directly to the defendant in the courtroom itself. The blank space in an obviously redacted confession also points directly to the defendant, and it accuses the defendant in a manner similar to Evans' use of Bruton's name or to a testifying codefendant's accusatory finger. By way of contrast, the factual statement at issue in *Richardson*– a statement about what others said in the front seat of a car– differs from directly accusatory evidence in this respect, for it does not point directly to a defendant at all.

We concede certain differences between *Bruton* and this case. A confession that uses a blank or the word "delete" (or, for that matter, a first name or a nickname) less obviously refers to the defendant than a confession that uses the defendant's full and proper name. Moreover, in some instances the person to whom the blank refers may not be clear: Although the follow-up question asked by the State in this case eliminated all doubt, the reference might not be transparent in other cases in which a confession, like the present confession, uses two (or more) blanks, even though only one other defendant appears at trial, and in which the trial indicates that there are more participants than the confession has named. Nonetheless, as we have said, we believe that, considered as a class, redactions that replace a proper name with an obvious blank, the word "delete," a symbol, or similarly notify the jury that a name has been deleted are similar enough to *Bruton*'s unredacted confessions as to warrant the same legal results.

IV

The State, in arguing for a contrary conclusion, relies heavily upon *Richardson*. But we do not believe *Richardson* controls the result here. We concede that *Richardson* placed outside the scope of *Bruton*'s rule those

statements that incriminate inferentially. 481 U. S., at 208. We also concede that the jury must use inference to connect the statement in this redacted confession with the defendant. But inference pure and simple cannot make the critical difference, for if it did, then *Richardson* would also place outside *Bruton*'s scope confessions that use shortened first names, nicknames, descriptions as unique as the "red-haired, bearded, one-eyed man-with-a-limp," *United States* v. *Grinnell Corp.*, 384 U. S. 563, 591 (1966) (Fortas, J., dissenting), and perhaps even full names of defendants who are always known by a nickname. This Court has assumed, however, that nicknames and specific descriptions fall inside, not outside, *Bruton*'s protection. See *Harrington* v. *California*, 395 U. S. 250, 253 (1969) (assuming *Bruton* violation where confessions describe codefendant as the "white guy" and gives a description of his age, height, weight, and hair color). The Solicitor General, although supporting Maryland in this case, concedes that this is appropriate. Brief for United States as *Amicus Curiae* 18–19, n. 8.

That being so, *Richardson* must depend in significant part upon the *kind* of, not the simple *fact* of, inference. *Richardson*'s inferences involved statements that did not refer directly to the defendant himself and which became incriminating "only when linked with evidence introduced later at trial." 481 U. S., at 208. The inferences at issue here involve statements that, despite redaction, obviously refer directly to someone, often obviously the defendant, and which involve inferences that a jury ordinarily could make immediately, even were the confession the very first item introduced at trial. Moreover, the redacted confession with the blank prominent on its face, in *Richardson*'s words, "*facially* incriminat[es]" the codefendant. *Id.*, at 209 (emphasis added). Like the confession in *Bruton* itself, the accusation that the redacted confession makes "is more vivid than inferential incrimination, and hence more

difficult to thrust out of mind." 481 U. S., at 208.

Nor are the policy reasons that *Richardson* provided in support of its conclusion applicable here. *Richardson* expressed concern lest application of *Bruton*'s rule apply where "redaction" of confessions, particularly "confessions incriminating by connection," would often "not [be] possible," thereby forcing prosecutors too often to abandon use either of the confession or of a joint trial. 481 U. S., at 209. Additional redaction of a confession that uses a blank space, the word "delete," or a symbol, however, normally is possible. Consider as an example a portion of the confession before us: The witness who read the confession told the jury that the confession (among other things) said,

> "Question: Who was in the group that beat Stacey?
> "Answer: Me, deleted, deleted, and a few other guys." App. 11.

Why could the witness not, instead, have said:

> "Question: Who was in the group that beat Stacey?
> "Answer: Me and a few other guys."

Richardson itself provides a similar example of this kind of redaction. The confession there at issue had been "redacted to omit all reference to respondent— indeed, to omit all indication that anyone other than Martin and Williams participated in the crime," 481 U. S., at 203 (emphasis deleted), and it did not indicate that it had been redacted. But cf. *post*, at 4, (SCALIA, J., dissenting) (suggesting that the Court has "never before endorsed . . . the redaction of a statement by some means other than the deletion of certain words, with the fact of the deletion shown").

The *Richardson* Court also feared that the inclusion, within *Bruton*'s protective rule, of confessions that incriminated "by connection" too often would provoke mistrials, or would unnecessarily lead prosecutors to abandon the confession or joint trial, because neither the prosecutors nor the judge could easily predict, until after the in-

troduction of all the evidence, whether or not *Bruton* had barred use of the confession. 481 U. S., at 209. To include the use of blanks, the word "delete," symbols, or other indications of redaction, within *Bruton*'s protections, however, runs no such risk. Their use is easily identified prior to trial and does not depend, in any special way, upon the other evidence introduced in the case. We also note that several Circuits have interpreted *Bruton* similarly for many years, see, *e.g.*, *United States* v. *Garcia*, 836 F. 2d 385 (CA8 1987); *Clark* v. *Maggio*, 737 F. 2d 471 (CA5 1984), yet no one has told us of any significant practical difficulties arising out of their administration of that rule.

For these reasons, we hold that the confession here at issue, which substituted blanks and the word "delete" for the respondent's proper name, falls within the class of statements to which *Bruton*'s protections apply.

The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

APPENDIX TO OPINION OF THE COURT

[Typewritten Version of Handwritten Redacted Statement, State's Exhibit 5B]

(REDACTED STATEMENT)

This is a statement of Anthony Bell, taken on 1–4–94 at 0925 hrs in the small interview room. Statement taken by Det. Pennington and Det. Ritz.

(Q) Is your name Anthony Bell
(A) Yes
(Q) Are 19 years old and your date of Birth is 6–17–74
(A) Yes
(Q) Can you read and write
(A) Yes
(Q) Are you under the influence of alcohol or drugs
(A) No
(Q) You were explained your Explanation of Rights, do you fully understand them
(A) Yes
(Q) Are you willing to answer questions without an attorney present at this time
(A) Yes

Anthony Bell

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Bell, Anthony

(Q) Has anyone promised you anything if you answer questions
(A) No
(Q) What can you tell me about the beating of Stacey Wil-

liams that occurred on 10 November 1993
(A) An argument broke out between and Stacey in the 500 blk of Louden Ave Stacey got smacked and then ran into Wildwood Parkway. Me ,
and a few other guys ran after Stacey. We caught up to him on Wildwood Parkway. We beat Stacey up. After we beat Stacey up, we walked him back to Louden Ave I then walked over and used the phone. Stacey and the others walked down Louden
(Q) When Stacey was beaten on Wildwood Parkway, how was he beaten

Anthony Bell

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Bell, Anthony
(A) Hit, kicked
(Q) Who hit and kicked Stacey
(A) I hit Stacey, he was kicked but I don't know who kicked him
(Q) Who was in the group that beat Stacey
(A) Me, , and a few other guys
(Q) Do you have the other guys names
(A) , and me, I don't remember who was out there
(Q) Did anyone pick Stacey up and drop him to the ground
(A) No when I was there.
(Q) What was the argument over between Stacey and

Anthony Bell

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Bell, Anthony

(A) Some money that Stacey owed
(Q) How many guys were hitting on Stacey
(A) About six guys
(Q) Do you have a black jacket with Park Heights written on the back

(A) Yeh
(Q) Who else has these jacket.
(A) ,
(Q) After reading this statement would you sign it
(A) Yes

Anthony Bell

Det. William F. Ritz Det. Homer Pennington