10-1978

Parker v. Randolph

Lewis F. Powell Jr.

there is a direct conflict in a Bruton issue.
CA6 also was wrong in affirming DC's refusal to accord presumptive correctness to findings by state court

Respr - three who confessed to, and were convicted of, felony murder - sought fed. H/C relief on ground that Bruton was violated when the confessions of all three were admitted in evidence ("interlocking confessions").

The fed D.C. agreed that Bruton applied even to interlocking confessions of co-Ds. CA6 (Edwards) affirmed.

There is a direct conflict, with other circuits holding that Bruton does not apply [redacted] in any event error is harmless.

Also this is a "grant" on failure of DC & CA6 to accord presumptive correctness to findings of state court

PRELIMINARY MEMORANDUM

Oct. 27, 1978 List 3, Sheet 2
~~Summer List 17, Sheet 2~~

No. 78-99

Cert to CA 6
(Edwards, Peck & Keith)

CHIEF HARRY PARKER (warden)

v.

Federal/Civil (habeas)

RANDOLPH, PICKENS &
HAMILTON (convicted murderers)

Timely

SUMMARY: Petitioner seeks review of the affirmance of the DC's grant of habeas relief to three convicted murderers. Petitioner contends the lower courts erred in applying Bruton and in holding that the Bruton error found was not harmless beyond a doubt in this "interlocking confession" case. Additionally, petitioner contends the lower courts violated 28 U.S.C. § 2254(d) by not affording a presumption of correctness to state court findings regarding alleged Miranda violations fully and fairly litigated in the state court criminal proceedings.

Please see back of last page.

FACTS: Petitioners were convicted of felony murder committed in the course of a robbery of a poker game and sentenced to life imprisonment. The robbery was initiated by Robert Wood, who had been cheated in prior games by one William Douglas. According to the plan devised by Robert's brother Joe, petititioners were to break in and rob the game, and they would be given a share of the proceeds. Joe told petrs that he would be at the game and would kill Douglas if necessary. Suffice it to say that things did not go according to plan, and that Joe was forced to draw on Douglas and a bystander Thomas, give the gun to his brother, and leave the room to get petrs. Before petrs and Joe returned, Robert had shot and killed Douglas, who allegedly had drawn on him. Petrs then broke in with Joe. Robert grabbed the money, and all fled but Thomas. Robert was the only defendant to take the stand at trial. He argued self-defense and that the dirty rat deserved to die anyways. Robert could clearly identify only petr Hamilton as one of the participants. Thomas could not identify any of the petrs at trial. None of the petrs took the stand, but each had confessed to the robbery prior to the trial, and the confessions were admitted over objection under instructions to consider them only against their individual authors. Efforts were made to redact the confessions so as not to directly incriminate codefendants, but the State has conceded previously that the redactions did not achieve their intended purpose. Prior to trial efforts were made to suppress the confessions as involuntary and taken in violation of Miranda, but the motions were denied by the state court after a full hearing.

The Tennessee Court of Appeals reversed petrs' convictions on the basis of Bruton violations and on the ground that petrs could not be convicted of felony murder because the murder had occurred prior to the robbery. The Tennessee Supreme Court reversed

and reinstated the convictions. The felony murder convictions stood because the murder was part of the res gestae of the robbery that petrs had agreed to participate in. And, Bruton was inapposite because each petitioner's confession had rendered the prejudicial impact of their codefendants' confessions de minimis and harmless error in any event. Petitioners then sought federal habeas.

HOLDINGS BELOW: The district court granted relief on the basis of the Bruton violations that the court could not regard as harmless beyond a reasonable doubt. The district court also found that relief was independently warranted as to petr Pickens because his confession was taken after the police had denied his request for counsel. The court found that the presumption of correctness given the state trial court's contrary finding of fact on this issue, 28 U.S.C. § 2254(d), could not stand because the finding was unsupported by the record. Pickens testified that he had repeatedly asked for counsel to be present during questioning. The interrogating officers testified to the contrary. The DC found it "inconceivable" that Pickens would not have asked for counsel because he had talked to counsel only hours before his arrest and was advised to request counsel if he was arrested before counsel could meet with him and arrange his surrender.

The court of appeals affirmed on both grounds but discussed only the Bruton ground at length. Acknowledging that there was a clear conflict in the Circuits as to whether Bruton applied at all in the interlocking-confession context and as to whether, if it did, the interlocking confessions rendered any Bruton error virtually per se harmless, the court followed its own rule that Bruton

applied, and further held that the error was not harmless beyond a reasonable doubt in the circumstances of this case. The court found nothing in Schneble v. Florida, 405 U.S. 427 (1972), or Harrington v. California, 395 U.S. 250 (1969), that rendered Bruton inapposite in the interlocking-confession context. They were, however, relevant to the harmless error question in that they demonstrate that the defendant's own confession was to be taken into account in determining the harmless error issue. Accordingly, in determining the harmless error issue, the court "accept[ed] at face value each of the defendants' confessions . . . as it might apply in a single trial against him." But, even when the confessions were taken into account along with the other evidence admitted against petrs, the total evidence against each petr, though sufficient to support a guilty verdict, was not "so overwhelming as to compel the jury verdict of guilty." The court concluded that it was not clear "beyond a reasonable doubt" that the outcome would have been the same if each petr was confronted with only his own, and not his codefendants', confession because (1) petrs were not involved in the gambling; (2) they did not originate the robbery plan; (3) they were not present when the deceased was killed; (4) the jury could have found the plan terminated when the mastermind pulled a gun. Moreover, had two of the three confessions been removed from the jury's consciousness by adherence to Bruton, the jury might well have determined that each petr's confession was involuntary.

CONTENTIONS: Petitioner argues that Bruton is inapposite in an interlocking-confession case because the risk of incurable prejudice arising from the admission of a nontestifying codefendant's confession is negligible when the defendant himself has confessed. Bruton is distinguishable because it involved the admission of a codefendant's confession against a nonconfessing defendant, rather than interlocking confessions that each corroborated the other as here. In support of this argument, petr justifiably relies on Catanzaro v. Mancusi, 404 F.2d 296 (2d Cir. 1968), Mack v. Maggio, 538 F.2d 1129 (5th Cir. 1976), and numerous other cases that explicitly or implicitly adopt the same reasoning.

Alternatively, petr contends that, even if Bruton applies and renders each codefendant's confession inadmissible against each defendant, the fact of the defendant's confession itself renders any Bruton error so de minimis as to be almost per se harmless beyond a reasonable doubt. In support of this argument, petr relies on United States v. Spinks, 470 F.2d 64 (7th Cir. 1972), and other cases that have resulted in virtually automatic application of the harmless error doctrine in the interlocking-confession context. Naturally, Harrington and Schneble are relied on in support of this harmless error doctrine.

Finally, petr urges error in the overturning of the state court's finding that Pickens had not been denied his Miranda rights. This finding, though only implicit in the state trial court's denial of Pickens's motion to suppress his confession, was entitled to a presumption of correctness in the federal habeas proceeding. 28 U.S.C. 2254(d). Relying on LaVallee v. Delle Rose, 410 U.S.

695 (1973), petr argues that the DC erred in substituting its credibility determinations and judgment for that of the state trial court on the Miranda issue.

ANALYSIS: As the court of appeals admitted in its opinion, and as even a cursory examination of the cases cited in its opinion will confirm, there is a clear conflict among the Circuits regarding the applicability of Bruton and the harmless error doctrine in "interlocking confession" or "parallel statement" cases, such as this one. Some courts take the position that Bruton applies, and the harmless error question must be ascertained on a case-by-case basis. (6th Cir.) Others say Bruton simply does not apply in that context. (2nd Cir.) Still others say no Bruton error could be regarded as prejudicial and is almost per se harmless in this context. (7th) And, many courts affirm convictions in this context without finding any need to concern themselves "with the legal nicety as to whether the case is without the Bruton rule, or is within the Bruton rule and the violation thereof constituting harmless error." Metropolis v. Turner, 437 F.2d 207 (10th Cir. 1971). Then, of course, there are the conflicts between the Circuits and the state courts within the respective Circuits, as here, between the Sixth Circuit and the Tennessee Supreme Court. The issues involved cry out for Supreme Court review, whatever one's views on the merits.

Moreover, if petr's representation that the records before the state and federal courts on Pickens's Miranda claim were virtually indistinguishable is correct, there would appear to be a serious 28 U.S.C. 2254(d) problem in this case. Arguably,

at least, the district court simply substituted its judgment for that of the state trial court on this factual issue after holding a Townsend hearing. The presumption of correctness normally accorded state court findings fell in this instance because the district court determined that the state court finding simply was not supported by the state court record. 28 U.S.C. § 2254(d)(8) does, of course, authorize federal district court review of the sufficiency of the evidence in the state court record to support a state court finding but does not specify the standard of review which the district court is to apply to the evidence and state court record. Clearly, here, the district court drew independent inferences from the state court record and appeared to make de novo determinations of credibility. This may be proper, but other courts at least have applied a "substantial evidence," Piche v. Rhay, 422 F.2d 1309, 1311 (9th Cir. 1970), or "clearly erroneous," United States ex rel. Bornholdt v. Ternullo, 402 F. Supp. 374, 377 (S.D.N.Y. 1975), standard of review in these circumstances. Neither Townsend v. Sain, 372 U.S. 293, 316 (1963), nor any subsequent decision of this Court of which I am aware clearly spells out the appropriate standard of review for determining whether a state court finding is "fairly supported" by the state court record within the meaning of 28 U.S.C. § 2254(d)(8). This case, thus, may well present an appropriate opportunity to define and apply the applicable standard of review.

There is no response.

9/1/78 Walsh opins in petn

(See my notes on Rucker memo. If in fact conferences were interlocking, then probably a grant.

Eric -
When Record is here, if you think Legal Officer should review it, let me know.

10-28-78 -
Response of petr. Hamilton has now been received - adds nothing.
E.G.

SUPPLEMENTAL MEMORANDUM

TO: Mr. Justice Powell

FROM: Eric

DATE: October 14, 1978

RE: Parker v. Randolph, et al.
October 27, 1978 Conference

The requested response has now been received. In a somewhat rambling brief, two of the respondents, Randolph and Pickens (Hamilton, the third resp, has apparently not responded*), offer the following reasons for denying cert in this case.

First, it is contended that the decision on the Bruton

* see note, this page.

issue is clearly correct on the merits. Resps argue that Bruton should apply in interlocking confession cases as much as in any other context, and they dispute that the evidence against them was so strong that the harmless error doctrine can do the state any good. They also claim that the confessions were not truly interlocking to the extent that this would be a good case for the Court to straighten out the conflict among the circuits on the Bruton question.

With respect to the standard of review of the state trial court's factual findings by the federal habeas court, resps argue that the federal court could not really give any presumptive weight to the ruling if the state court since there was no statement of findings and conclusions, just an order stating the result. Resps point out that in the habeas proceeding the state presented no witnesses in its own behalf on the factual question (whether Pickens had asked for counsel before his confession), but chose to rely solely on the transcript of the hearing in state court. Pickens, on the other hand, presented strong evidence, and the federal district judge found the state's position to be "practically inconceivable."

Whether the court of appeals was correct on the merits of the Bruton issue is not critical to the decision to grant cert because the existence of a circuit conflict on this important issue is sufficient to justify review by this Court. It is more important whether the confessions were truly interlocking. If they were not, then this might not be a very suitable vehicle in which to decide the applicability of Bruton to cases falling within the

interlocking confession pattern. It is possible -- likely, in fact -- that resps are understating the degree to which the confessions corroborate each other, for they don't quote from the statements themselves, and the opinions of the courts below don't address this issue. But if resps are correct, the Court might want to think hard before granting. If it looks like the conference is interested in taking the issue, perhaps the case should be relisted and the record called for to determine whether this is a suitable case. The legal oficers might be asked to check into this.

A similar problem exists with respect to the standard-of-review question. If indeed the state trial court failed to state its findings of fact and conclusions of law, this might not be an ideal occasion to get into the amount of deference that a federal habeas court must show to state trial court's factual findings. The lower court's order doesn't seem to be among the papers at the Court, so perhaps calling for the record would be helpful in this respect as well.

These are important issues deserving of review, but I think the Court should be careful not to jump into a case that doesn't present the issues cleanly.

- Hold for this case (Parker) if we grant it.

There is a conflict. 9 called for Record. 9+ in volumnious. Circ

The case presents squarely the validity of U.S. exception to Bruton Rule vs allowing confession of a co-D who does not testify & subject himself to X-Exam

Legal officers if confessions were interlocking

The U.S. exception, applied in this case, is that Bruton does not apply where "confessions are interlocking". ~~Each~~ Three persons were indicted for murder & robbery. Each made a confession implicating himself & the other two

SUPPLEMENTAL MEMORANDUM

TO: Mr. Justice Powell

FROM: Eric

DATE: November 10, 1978

RE: Parker v. Hamilton, No. 78-99

There confessions were introduced vs Petr. - even though the Ds making them did not testify.

U.S. ~~Supreme~~ applied its ~~case~~ exception to Bruton

The record in this case has been received. I recommended that you call for it to determine whether the confessions of the three co-defendants were truly "interlocking" to the extent necessary to present squarely the Bruton issue raised in the petition for cert. The record was also requested in order to to determine whether the state trial court entered any findings of fact. If he did not, this would not be a good

case in which to decide what deference a federal habeas court must afford factual findings by a state criminal court.

The record is voluminous, not well- indexed, and in a bad physical state. After about an hour I was able to locate two of the confessions. I am sure the other material is in there, but it will take some time to dig it out and make the necessary analysis. If you think it is appropriate, it would be a big help to me to have the legal officers take on this project. Although it is a troublesome task, it beats trying to write an opinion in a case that never should have been granted.

With your approval, perhaps this assignment could be refered to the legal officers with the following instructions:

1. Locate and copy the statements of the respondents, as they were put in evidence at their state-court trial, that form the basis of the alleged Bruton violation.

2. Determine whether the confessions are "interlocking" with respect to the relevant facts in such as way as to present squarely the Bruton issue raised in the cert petition.

3. Locate and copy all the findings of fact and conclusions of law made by the state-court trial judge.

Incidentally, another cert petn raising the Bruton issue, perhaps on a better record, has been received and is scheduled to be considered at the November 22 conference. Tamilio v. New York, No. 78-5504. I authored the preliminary memorandum which has been annotated and put in your box.

Argued ....., 19... *Assigned* ....., 19... No. 78-99

Submitted ....., 19... *Announced* ....., 19...

PARKER

vs.

RANDOLPH

Record requested and received - LFP.

Grant

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
Burger, Ch. J.		✓											
Brennan, J.			✓		limit to Bruton issue								
Stewart, J.		✓											
White, J.		✓			"								
Marshall, J.			✓										
Blackmun, J.		✓											
Powell, J.		✓			"				"		"		
Rehnquist, J.		✓											
Stevens, J.			✓										
.....													

he join SC bar,

Richman

January 5, 1979 Conference
Supplemental List

No. 78-99 — Motion for Appointment of Counsel

PARKER

v.

RANDOLPH

Resps ask that Walter Lee Evans, Esq., be appointed to represent them. Mr. Evans was admitted to the bar of Tenn. in 1968. He was appointed to represent resps in their successful habeas petn, and to defend that decision in CA 6.

Mr. Evans appears qualified, but he does not say whether he is a member of the bar of this Court. If not, he should be appointed on the condition that he join.

1/2/79 — Richman
sal

Grant, if is or will become member of Bar.
David.

Argued ....., 19... *Assigned* ....., 19... No. 78-99

Submitted ....., 19... *Announced* ....., 19...

PARKER

vs.

RANDOLPH

Motion for appointment of counsel.

G

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.													
Brennan, J.													
Stewart, J.													
White, J.													
Marshall, J.													
Blackmun, J.													
Powell, J.													
Rehnquist, J.													
Stevens, J.													

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 23, 1979

Re: No. 78-99, Parker v. Randolph

Dear Bill,

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

JPS will dissent
PS has joined! 4/23

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: 23 APR 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-99

Harry Parker, Petitioner, v. James Randolph et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1979]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

In *Bruton* v. *United States*, 391 U. S. 123 (1968), this Court reversed the robbery conviction of a defendant who had been implicated in the crime by his codefendant's extrajudicial confession. Because the codefendant had not taken the stand at the joint trial and thus could not be cross-examined, the Court held that admission of the codefendant's confession had deprived the defendant of his rights under the Confrontation Clause of the Sixth Amendment. The issue before us in this case is whether *Bruton* requires reversal of a defendant's conviction when the defendant himself has confessed and his confession "interlocks" with and supports the confession of his codefendant. We hold that it does not.

I

Respondents were convicted of murder committed during the commission of a robbery and were sentenced to life imprisonment. The cast of characters playing out the scenes that led up to the fatal shooting could have come from the pen of Bret Harte.[1] The story began in June 1970, when

[1] As the Court of Appeals aptly commented, "This appeal involved a sequence of events which have the flavor of the old West before the law ever crossed the Pecos. The difference is that here there are no heroes and here there was a trial." 575 F. 2d 1178, 1179 (CA6 1978).

one William Douglas, a professional gambler from Las Vegas, Nev., arrived in Memphis, Tenn., calling himself Ray Blaylock and carrying a gun and a deck of cards. It ended on the evening of July 6, 1970, when Douglas was shot and killed in a Memphis apartment.

Testimony at the trial in the Tennessee state court showed that one Woppy Gaddy, who was promised a cut of Douglas' take, arranged a game of chance between Douglas and Robert Wood, a sometime Memphis gambler. Unwilling to trust the outcome of the contest entirely to luck or skill, Douglas marked the cards, and by game's end Robert Wood and his money had been separated. A second encounter between the two men yielded similar results, and Wood grew suspicious of Douglas' good fortune. In order to determine whether and how Douglas was cheating, Wood brought to the third game an acquaintance named Tommy Thomas, who had a reputation of being a "pretty good poker player." Unknown to Wood, however, Thomas' father and Douglas had been close friends; Thomas, predictably, threw in his lot with Douglas, purposefully lost some $1,000, and reported to Wood that the game was clean. Wood nonetheless left the third game convinced that he was being cheated and intent on recouping his now considerable losses. He explained the situation to his brother, Joe E. Wood, and the two men decided to relieve Douglas of his ill-gotten gains by staging a robbery of the upcoming fourth game.

At this juncture respondents Randolph, Pickens, and Hamilton entered the picture. To carry out the staged robbery, Joe Wood enlisted respondent Hamilton, who was one of his employees, and the latter in turn associated respondents Randolph and Pickens. Douglas and Robert Wood sat down to the fourth and final contest on the evening of July 6, 1970. Joe Wood and Thomas were present in the room as spectators. During the course of the game, Douglas armed himself with a .38 caliber pistol and an automatic shotgun; in response to

this unexpected development Joe Wood pulled a derringer pistol on Douglas and Thomas, gave the gun to Robert Wood, and left to tell respondents to move in on the game. Before respondents arrived, however, Douglas reached for his pistol and was shot and killed by Robert Wood. Moments later, respondents and Joe Wood broke down the apartment door, Robert Wood gathered up the cash left on the table, and the gang of five fled into the night. Respondents were subsequently apprehended by the police and confessed to their involvement in the crime.

Respondents and the Wood brothers were jointly tried and convicted of murder during the commission of a robbery. Tenn. Code Ann. § 39-2402.[2] Each defendant was sentenced to life imprisonment. Robert Wood took the stand at trial, admitting that he had killed Douglas, but claiming that the shooting was in self-defense. Thomas described Douglas' method of cheating at cards and admitted his complicity in the fraud on Robert Wood. He also testified in substance that he was present in the room when Joe Wood produced the derringer and when Robert Wood shot and killed Douglas.

None of the respondents took the stand. Thomas could not positively identify any of them, and although Robert Wood named Hamilton as one of the three men involved in the staged robbery, he did not clearly identify Randolph and Pickens as the other two. The State's case against respondents thus rested primarily on their oral confessions, found by

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[2] Tennessee Code Annotated § 39-2402 provides in pertinent part as follows:

"39-2402, *Murder in the First Degree*—An individual commits murder in the first degree if . . .

"(4) he commits a willful, deliberate and malicious killing or murder during the perpetration of any arson, rape, robbery, burglarly, larceny, kidnapping, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb."

the trial court to have been freely and voluntarily given, which were admitted into evidence through the testimony of several officers of the Memphis Police Department.[3] A written confession signed by Pickens was also admitted into evidence over his objection that it had been obtained in violation of his rights under *Miranda* v. *Arizona*, 384 U. S. 436 (1966). The trial court instructed the jury that each confession could be used only against the defendant who gave it and could not be considered as evidence of a codefendant's guilt.

The Tennessee Court of Criminal Appeals reversed respondents' convictions, holding that they could not be guilty of felony murder since Douglas had been shot before they arrived on the scene and, alternatively, that admission of their confessions at the joint trial violated this Court's decision in *Bruton*. The Tennessee Supreme Court in turn reversed the Court of Criminal Appeals and reinstated the convictions. Because "each and every defendant either through words, or actions demonstrated his knowledge that 'killing may be necessary,'" App. 237, the court held that respondents' agreement to participate in the robbery rendered them liable under the Tennessee felony-murder statute for Douglas' death. The Tennessee Supreme Court also disagreed with the Court of Criminal Appeals that *Bruton* had been violated, emphasizing that the confession at issue in *Bruton* had inculpated a *nonconfessing* defendant in a joint trial at which neither defendant took the stand. Here, in contrast, the "interlocking inculpatory confessions" of respondents Randolph, Pickens, and Hamilton, "clearly demonstrated the involvement of each, as to crucial facts such as time, location, felonious activity, and

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[3] Each of the confessions were subjected to a process of redaction in which references by the confessing defendant to other defendants were replaced with the words "blank" or "another person." As the Court of Appeals for the Sixth Circuit observed below, the confessions were nevertheless "such as to leave no possible doubt in the jurors' minds concerning the 'person[s]' referred to." 575 F. 2d, at 1180 (CA6 1978).

awareness of the overall plan or scheme." App. 245. Accordingly, the Tennessee Supreme Court concluded: "The fact that jointly tried codefendants have confessed precludes a violation of the *Bruton* rule where the confessions are similar in material aspects." App. 245, quoting *Tennessee* v. *Elliott*, 524 S. W. 2d 473, 478 (Tenn. 1975).

The United States District Court for the Western District of Tennessee thereafter granted respondents' applications for writs of habeas corpus, ruling that their rights under *Bruton* had been violated and that introduction of respondent Pickens' uncounseled written confession had violated his rights under *Miranda* v. *Arizona*, *supra*. The Court of Appeals for the Sixth Circuit affirmed, holding that admission of the confessions violated the rule announced in *Bruton* and that the error was not harmless since the evidence against each respondent, even considering his confession, was "not so overwhelming as to compel the jury verdict of guilty . . ." 575 F. 2d, at 1182. The Court of Appeals frankly acknowledged that its decision conflicts with decisions of the Court of Appeals for the Second Circuit holding the *Bruton* rule inapplicable "[w]here the jury has heard not only a co-defendant's confession but the defendant's own [interlocking] confession." *United States ex rel. Catanzaro* v. *Mancusi*, 404 F. 2d 296, 300 (CA2 1968), cert. denied, 397 U. S. 942 (1970). Accord, *United States ex rel. Stanbridge* v. *Zelker*, 514 F. 2d 45, 48–50 (CA2), cert. denied, 423 U. S. 872 (1975); *United States ex rel. Duff* v. *Zelker*, 452 F. 2d 1009, 1010 (CA2 1971), cert. denied, 406 U. S. 932 (1972). We granted certiorari in this case to resolve that conflict.[4] 439 U. S. 978 (1978).

[4] The conflict extends throughout the Courts of Appeals. The Courts of Appeals for the Third and Sixth Circuits have expressly ruled that the *Bruton* rule applies in the context of interlocking confessions, see *Hodges* v. *Rose*, 470 F. 2d 643 (CA6 1978); *United States* v. *DiGilio*, 538 F. 2d 972, 981–983 (CA3 1976), cert. denied, 429 U. S. 1038 (1977), and the Court of Appeals for the Ninth Circuit has done so impliedly, see *Ignaco* v. *Guam*, 413 F. 2d 513, 515–516 (CA9 1969), cert. denied, 397 U. S. 943 (1970). In

II

In *Delli Paoli* v. *United States*, 352 U. S. 232 (1957), a nontestifying codefendant's confession, which incriminated a defendant who had not confessed, was admitted at a joint trial over defendant's hearsay objection. Concluding that "it was reasonably possible for the jury to follow" the trial court's instruction to consider the confession only against the declarant, this Court held that admission of the confession did not constitute reversible error. Little more than a decade later, however, *Delli Paoli* was expressly overruled in *Bruton* v. *United States*, *supra*. In that case defendants Bruton and Evans were convicted of armed postal robbery after a joint trial. Although Evans did not take the stand, a postal inspector was allowed to testify that Evans had orally confessed to having committed the robbery with Bruton. The trial judge instructed the jury that Evans' confession was competent evidence against Evans, but was inadmissible hearsay against Bruton and therefore could not be considered in determining Bruton's guilt.

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addition to the Court of Appeals for the Second Circuit, at least four other Courts of Appeals have rejected the *Bruton* claims of confessing defendants. Cases from the Fifth and Seventh Circuits have reasoned that the *Bruton* rule does not apply in the context of interlocking confessions and that, even if it does, the error was harmless beyond a reasonable doubt. See *Mack* v. *Maggio*, 538 F. 2d 1129, 1130 (CA5 1976); *United States* v. *Spinks*, 470 F. 2d 64, 65–66 (CA7), cert. denied, 409 U. S. 1011 (1972). Two other Courts of Appeals have rejected the *Bruton* claims of confessing defendants, refusing to concern themselves "with the legal nicety as to whether the . . . case is without the *Bruton* rule, or is within *Bruton* and the violation hereof constitute[s] only harmless error." *Metropolis* v. *Turner*, 437 F. 2d 207, 208–209 (CA10 1971); accord, *United States* v. *Walton*, 538 F. 2d 1348, 1353–1354 (CA8), cert. denied, 429 U. S. 1023 (1975). State court decisions in this area are in similar disarray. Compare, *e. g.*, *Stewart* v. *Arkansas*, 519 S. W. 2d 733 (1975), and *People* v. *Moll*, 26 N. Y. 2d 1, 256 N. E. 2d 175, cert. denied, *sub nom. Stanbridge* v. *New York*, 398 U. S. 911 (1970), with *People* v. *Rosochacki*, 41 Ill. 2d 483, 244 N. E. 2d 136 (Ill. 1969), and *Connecticut* v. *Oliver*, 160 Conn. 85, 273 A. 2d 867 (1970).

This Court reversed Bruton's conviction, noting that despite the trial court's admittedly clear limiting instruction, "the introduction of Evans' confession added substantial, perhaps even critical, weight to the Government's case in a form not subject to cross-examination." *Bruton* v. *United States*, *supra*, 391 U. S., at 127–128. Bruton was therefore held to have been denied his Sixth Amendment right of confrontation. The *Bruton* court reasoned that although in many cases the jury can and will follow the trial judge's instruction to disregard inadmissible evidence,

> "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 co-defendant who stands accused side-by-side with the defendant, are deliberately spread before the jury in a joint trial. Not only are the incriminations devastating to the defendant, but their credibility is inevitably suspect, a fact recognized when accomplices do take the stand and the jury is instructed to weigh their testimony carefully given the recognized motivation to shift blame onto others. The unreliability of such evidence is intolerably compounded when the alleged accomplice, as here, does not testify and cannot be tested by cross-examination. It was against such threats to a fair trial that the Confrontation Clause was directed." *Id.*, at 135–136 (citations and footnotes omitted).

One year after *Bruton* was decided, this Court rejected the notion that erroneous admission at a joint trial of evidence such as that introduced in *Bruton* automatically requires reversal of an otherwise valid conviction. See *Harrington* v. *California*, 395 U. S. 250 (1969). In some cases the properly admitted evidence of guilt is so overwhelming, and the prej-

udicial effect of the codefendant's admission so insignificant by comparison, that it is clear beyond a reasonable doubt that introduction of the admission at trial was harmless error.[5]

Petitioner urges us to follow the reasoning of the Court of

[5] In *Harrington* v. *California*, 395 U. S. 250 (1969), four defendants were found guilty of murder after a joint trial. Defendant Harrington admitted being at the scene of the crime but denied complicity. His three codefendants, however, confessed, and their confessions were introduced at trial with the instruction that the jury was to consider each confession only against its source. One of Harrington's codefendants, whose confession implicated Harrington, took the stand and was subject to cross-examination. The other two codefendants, whose statements corroborated Harrington's admitted presence at the scene of the crime, did not take the stand. Noting the overwhelming evidence of Harrington's guilt, and the relatively insignificant prejudicial impact of his codefendants' statements, the Court held that "the lack of opportunity to cross-examine [the non-testifying trine to claimed violations of *Bruton*. In *Schneble* v. *Florida*, 405 U. S. *California*, 386 U. S. 18 (1967)]." 395 U. S., at 253.

On two subsequent occasions, this Court has applied the harmless error doctrine to claimed violations of *Bruton*. In *Schneble* v. *Florida*, 405 U. S. 427 (1972), Schneble and a codefendant were found guilty of murder following a joint trial. Although neither defendant took the stand, police officers were allowed to testify as to a detailed confession given by Schneble and a statement given by his codefendant which tended to corroborate certain portions of Schneble's confession. We assumed, without deciding that admission of the codefendant's statement had violated *Bruton*, but held that in view of the overwhelming evidence of Schneble's guilt and the comparatively insignificant impact of the codefendant's statement, "any violation of *Bruton* that *may* have occurred at petitioner's trial was harmless error beyond a reasonable doubt." 405 U. S., at 428 (emphasis added).

In *Brown* v. *United States*, 411 U. S. 223 (1973), the prosecution introduced police testimony regarding extrajudicial statements made by two nontestifying codefendants. Each statement implicated both of the codefendants in the crimes charged. Neither codefendant took the stand, and the police testimony was admitted into evidence at their joint trial. Although the Solicitor General conceded that the statements were admitted into evidence in violation of *Bruton*, this Court held that the police testimony "was merely cumulative of other overwhelming and largely uncontroverted evidence properly before the jury." *Id.*, at 231. Thus, any *Bruton* error was harmless beyond a reasonable doubt.

Appeals for the Second Circuit and to hold that the *Bruton* rule does not apply in the context of interlocking confessions. Alternatively, he contends that if introduction of interlocking confessions at a joint trial does violate *Bruton*, the error is all but automatically to be deemed harmless beyond a reasonable doubt. We agree with petitioner that admission at the joint trial of respondents' interlocking confessions did not infringe respondents' right of confrontation secured by the Sixth and Fourteenth Amendments to the United States Constitution, but prefer to cast the issue in a slightly broader form than that posed by petitioner.

Bruton recognized that admission at a joint trial of the incriminating extrajudicial statements of a nontestifying codefendant can have "devastating" consequences to a nonconfessing defendant, adding "substantial, perhaps even critical weight to the Government's case." 391 U. S., at 128. Such statements go to the jury untested by cross-examination and, indeed, perhaps unanswered altogether unless the defendant waives his Fifth Amendment privilege and takes the stand. The prejudicial impact of a codefendant's confession upon an incriminated defendant who has, insofar as the jury is concerned, maintained his innocence from the beginning is simply too great in such cases to be cured by a limiting instruction. The same cannot be said, however, when the defendant's own confession—"probably the most probative and damaging evidence that can be admitted against him," *Bruton* v. *United States*, *supra*, at 139 (WHITE, J., dissenting)—is properly introduced at trial. The defendant is "the most knowledgeable and unimpeachable source of information about his past conduct," *id.*, at 140 (WHITE, J., dissenting), and one can scarcely imagine evidence more damaging to his defense than his own admission of guilt. Thus, the incriminating statements of a codefendant will seldom, if ever, be of the "devastating" character referred to in *Bruton* when the incriminated defendant has admitted his own guilt. The right protected

by *Bruton*—the "constitutional right of cross-examination," *id.*, at 137—has far less practical value to a defendant who has confessed to the crime than to one who has consistently maintained his innocence. Successfully impeaching a codefendant's confession on cross-examination would likely yield small advantage to the defendant whose own admission of guilt stands before the jury unchallenged. Nor does the natural "motivation to shift blame onto others," recognized by the *Bruton* Court to render the incriminating statements of codefendants "inevitably suspect," *id.*, at 136, require application of the *Bruton* rule when the incriminated defendant has corroborated his codefendant's statements by heaping blame onto himself.

The right of confrontation conferred by the Sixth Amendment is a safeguard to ensure the fairness and accuracy of criminal trials, see *Dutton* v. *Evans*, 400 U. S. 74, 89 (1970), and its reach cannot be divorced from the system of trial by jury contemplated by the Constitution. A crucial assumption underlying that system is that juries will follow the instructions given them by the trial judge. Were this not so, it would be pointless for a trial court to instruct a jury, and even more pointless for an appellate court to reverse a criminal conviction because the jury was improperly instructed. The Confrontation Clause has never been held to bar the admission into evidence of every relevant extrajudicial statement made by a nontestifying declarant simply because it in some way incriminates the defendant. See, *e. g.*, *id.*, at 80; *Mattox* v. *United States*, 156 U. S. 237, 240–244 (1895). And an instruction directing the jury to consider a codefendant's extrajudicial statement only against its source has been found sufficient to avoid offending the confrontation right of the implicated defendant in numerous decisions of this Court.[6]

[6] In *Opper* v. *United States*, 348 U. S. 84 (1954), petitioner contended that the trial court had erred in overruling his motion for severance, arguing that the jury may have improperly considered statements of his co-

When, as in *Bruton*, the defendant has chosen not to take the stand and has made no extrajudicial admission of guilt, limiting instructions cannot be accepted as adequate to safeguard the defendant's rights under the Confrontation Clause. Under such circumstances, the "practical and human limitations of the jury system," *Bruton* v. *United States*, 391 U. S., at 135, override the theoretically sound premise that a jury will follow the trial court's instructions. But when the defendant's own confession is properly before the jury, we believe that the constitutional scales tip the other way. The possible prejudice resulting from the failure of the jury to follow the trial court's instructions is not so "devastating" or "vital" to the confessing defendant to require departure from the general rule allowing admission of evidence with limiting instructions. We therefore hold that admission of interlocking confessions with proper limiting instructions conforms to the requirements of the Sixth and Fourteenth Amendments to the United States Constitution. Accordingly, the judgment of the Court of Appeals as to respondents Hamilton and Randolph is reversed.

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defendant, which were inadmissible as to petitioner, in finding petitioner guilty. This Court rejected the contention:

"It is within the sound discretion of the trial judge as to whether the defendants should be tried together or severally and there is nothing in the record to indicate an abuse of such discretion when petitioner's motion for severance was overruled. The trial judge here made clear and repeated admonitions to the jury at appropriate times that Hollifield's incriminatory statements were not to be considered in establishing the guilt of the petitioner. To say that the jury might have been confused amounts to nothing more than an unfounded speculation that the jurors disregarded clear instructions of the court in arriving at their verdict. Our theory of trial relies upon the ability of a jury to follow instructions. There is nothing in this record to call for reversal because of any confusion or injustice arising from the joint trial. The record contains substantial competent evidence upon which the jury could find petitioner guilty." *Id.*, at 95; see, *e. g.*, *Blumenthal* v. *United States*, 332 U. S. 539, 552–553 (1947).

III

The Court of Appeals affirmed the District Court's granting of habeas corpus relief to respondent Pickens on the additional ground that his rights under *Miranda* v. *Arizona*, 384 U. S. 436 (1966), had been violated. Although petitioner sought review of this ruling, our grant of certiorari was limited to the *Bruton* issue. We thus have no occasion to pass on the merits of the Court of Appeals *Miranda* ruling. Accordingly, the judgment of the Court of Appeals as to respondent Pickens is affirmed.

Affirmed in part and reversed in part.

April 25, 1979

No. 78-99 Parker v. Randolph

Dear Bill:

Please add at the end that I took no part in the consideration or decision of this case.

Sincerely,

Mr. Justice Rehnquist

Copies to the Conference

LFP/lab

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 26, 1979

Re: No. 78-99 - Parker v. Randolph

Dear Bill,

Please join me.

Sincerely yours,

Mr. Justice Rehnquist

Copies to the Conference

cmc

May 1, 1979

78-99 Parker v. Randolph

Dear Bill:

Please show on the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 16, 1979

Re: No. 78-99 - Parker v. Randolph

Dear John:

Please join me in your dissent.

Sincerely,

T.M.

Mr. Justice Stevens

cc: The Conference

THE C. J.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.
							4/2/79	
Join with 5/14/79	Join JPS 5/14/79	Join with 4/23/79	Join with 4/26/79	Join JPS 5/16/79	Tipped Dropt Concurring in part	out letter 5/1/79	1st Dropt 4/23/79	Will circulate dissent soon 4-24-79
					5/1/79 1st Dropt 5/4/79		2nd Dropt 4/30/79 3rd Dropt	1st draft circ 5-18-79 1st draft
					2nd Dropt 5/8/79 3rd Dropt		5/17/79 4th dropt 5/18/79	5/15/79 2nd Dropt 5/21/79
					5/25/79			
				78-99 Parker v. Randolph				