[J-18-2024]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

TODD, C.J., DONOHUE, DOUGHERTY, WECHT, MUNDY, BROBSON, McCAFFERY, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	No. 31 EAP 2021
	:	
Appellee	:	Appeal from the Judgment of Superior Court entered on April 12, 2021 at No. 803 EDA 2020 affirming the Judgment of Sentence entered on February 28, 2017 in the Court of Common Pleas, Philadelphia County, Criminal Division at No. CP-51-CR-0003755-2016
v.	:	
MICHAEL JONES,	:	
Appellant	:	
	:	ARGUED: May 18, 2022
	:	
	:	RESUBMITTED: January 31, 2024

OPINION

JUSTICE DONOHUE **DECIDED: October 24, 2024**

Michael Jones challenges the admission of his codefendant's confession, which he claims violated the Sixth Amendment Confrontation Clause[1] principles established in *Bruton v. United States*, 391 U.S. 123 (1968) and its progeny. Thus, the question before us concerns the scope of the *Bruton* rule, which absolutely precludes the admission of a non-testifying codefendant's confession that implicates the defendant by name. Though to different degrees, Jones and the Commonwealth both assert that in this and other cases the Superior Court has been applying *Bruton* rules mechanically by approving of

[1] "In all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witnesses against him[.]" U.S. CONST. amend. VI. We note that this case addresses only the federal constitution.

redactions using a bright-line rule tracing to this Court's opinion in *Commonwealth v. Travers*, 768 A.2d 845 (Pa. 2001). Ultimately, much of their concerns about *Travers*' application of the Sixth Amendment to the United States Constitution are rendered moot by the United States Supreme Court's pronouncement in *Samia v. United States*, 599 U.S. 635 (2023), as the Commonwealth acknowledged in supplemental briefing.[2] Nonetheless, a careful review of the non-testifying codefendant's statement from this case illustrates that the jury was informed that the confession was redacted. Though the confession semi-neutrally referred to Jones as "my friend," it also used masculine pronouns, described him by his place of work, referred to the other individual as "my girlfriend," and identified Jones as the one wearing the gray jacket in photos shown to the jurors moments earlier. Because the statement was directly incriminating, identified Jones by likeness, and because the jury was informed that the statement was redacted, we conclude that it violated *Bruton*'s prohibition. We vacate the Superior Court's order and remand for the Superior Court to address whether the violation amounts to harmless error.

Background

On February 6, 2016, at about 3:30 a.m., Jones and codefendants Syheed Wilson and Keirsten Carroll exited a SEPTA train and hailed a cab driven by Alex Destin. Sitting in the front passenger seat, Jones directed Destin where to drive, then told him not to move as he put a gun to Destin's head. Destin continued to drive, and Jones shot twice. The bullets grazed Destin's forehead and right ear. Jones jumped out of the moving taxi and fled. Wilson then pulled Destin's arm back and asked him to stop the cab. Destin

[2] Commonwealth's Supplemental Brief at 9-10 (observing that the *Samia* holding is essentially the same as the *Travers* holding).

refused, and Wilson shot him in the bicep. Destin lost control of the vehicle and hit a parked car. He ran from the vehicle and called for help.

After seeing SEPTA surveillance footage of Jones, Wilson and Carroll on the news, Colin Houston, the owner of the restaurant where Jones and Wilson worked at the time, contacted police and identified them. Jones, Wilson and Carroll were arrested on February 23, 2016. Following arrest, Wilson gave a statement to police identifying Jones as the shooter, Commonwealth's Exhibit 39 (Wilson's police interview, 2/23/2016), and Carroll also gave a brief statement, Commonwealth's Exhibit 40 (Carroll's police interview, 2/23/2016).

An indicting grand jury approved an indictment alleging that Jones committed attempted murder and related charges. Grand Jury Indictment, 3/29/2016. Jones was then charged by criminal information. Criminal Information, 4/27/2016, at 1-2. On September 10, 2016, Jones filed a motion in limine seeking to bar any reference at trial to Jones in Wilson's and Carroll's statements. He argued that the statements, entered without testimony by Wilson and Carroll, would violate the principle established in *Bruton*, i.e., that admission at a joint trial of a non-testifying co-defendant's statement that incriminates the defendant violates the Confrontation Clause. Motion in Limine, 9/10/2016, ¶¶ 1-2. In support, Jones observed that Pennsylvania courts permit redactions of the defendant's name from the statement, but that "the redaction must be complete enough … that the shielded co-[d]efendant, despite not being mentioned specifically by name, cannot be so easily identified by the jury that the redaction would be rendered meaningless." Memorandum in Support of Motion in Limine, 9/10/2016, ¶ 3. As a result, the specific references to Jones were to be replaced with "my friend."

At trial, the Commonwealth called Houston to testify that Jones and Wilson worked together and were friends. The Commonwealth then called Detective Quinn who testified

regarding, inter alia, photo identifications of Jones by Wilson and Carroll, and his interview of Wilson and Carroll. Trial counsel objected to the introduction of these statements relying on *Bruton*. N.T., 10/27/2016, at 181, 193. The trial court overruled the objection. *Id*. At the conclusion of the trial, the trial court instructed the jury that each of the defendant's statements may be considered as evidence only against the defendant who made the statement and not as evidence against a defendant who did not make it. N.T., 10/31/2016, at 30.

The jury found Jones guilty on all counts—attempted murder, aggravated assault, robbery, conspiracy, two counts of terroristic threats, and firearms offenses.[3] Verdict Report, 10/31/2016, at 1. The trial court sentenced Jones to twenty to forty years of imprisonment.[4] Trial counsel appealed. Notice of Appeal, 3/1/2020. Because the trial judge retired in the interim, no Rule 1925(a) opinion was issued.

In addressing the *Bruton* claim, the Superior Court acknowledged Jones' argument that because Houston testified that Jones and Wilson worked together and were friends, it was plain to the jury that Jones was the "friend" referred to in Wilson's statement. *Commonwealth v. Jones*, 83 EDA 2020, 2021 WL 1345560, at *2 (Pa. Super. Apr. 21, 2021) (non-precedential decision). The Superior Court was unconvinced that these facts fell within the scope of the *Bruton* prohibition. *Id*. at *3. The court observed that the United States Supreme Court refined *Bruton* in *Richardson v. Marsh*, 481 U.S. 200, 211 (1987) by holding that the admission of a codefendant's statement that redacted the defendant's name and was accompanied by a limiting instruction did not violate the Sixth Amendment Confrontation Clause. Relying on *Richardson*, the Superior Court stated that

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[3] 18 Pa.C.S. §§§ 901, 2502, 2702, 3701, 903, 6106.

[4] Subsequent to filing an appeal, his appeal being quashed, and dismissal of his appeal for failure to file a brief, Jones' appellate rights were reinstated nunc pro tunc. *See* Notice of Appeal, 4/22/2017, at 1; Order, 7/31/2017; Order, 9/18/2018; Order, 2/12/2020.

"the calculus changes when a co-defendant's statement does not name the defendant," and "there is an important distinction between statements that expressly incriminate the defendant and those that become incriminating only when linked to other evidence properly introduced at trial." *Id*. (citing *Richardson*, 481 U.S. at 208, 211).

The Superior Court also drew attention to this Court's application of the principles of *Richardson* in *Commonwealth v. Travers*, 768 A.2d 845 (Pa. 2001). There, David Thompson drove Otto Travers to a supermarket to confront a taxi driver (Jackson) who had been warning other taxi drivers, including the victim, not to accept Travers as a customer because he failed to pay for a ride. *Travers*, 768 A.2d at 845. Thompson and Travers did not find Jackson, but they did find the victim. They began arguing with the victim, which culminated in Thompson attempting to strike the victim and Travers shooting the victim at Thompson's instruction. In Thompson's statement to the police, he admitted that he drove Travers to find Jackson, that he knew that Travers took the murder weapon from Thompson's car, that he had punched the victim, and that he instructed Travers to shoot the victim. *Id*. at 846. Thompson's statement to the police was redacted to replace any specific reference to Travers with the neutral term, "the other man," and the trial court issued cautionary instructions to the jury to consider the statement against Thompson only. *Id.*

The *Travers* Court emphasized that the redaction used a neutral pronoun in place of Travers' name. It found that under prior United States Supreme Court precedent, this type of redaction was appropriate under the Sixth Amendment. *Id*. at 850-51. The Court reasoned that the statement did not incriminate Travers on its face, nor did it contain an obvious deletion that was the functional equivalent of naming him. *Id*. at 851.

In addressing Jones' appeal, the Superior Court recounted that this Court in *Travers* found no Sixth Amendment Confrontation Clause violation because the redacted

statement "'could become incriminating only through independent evidence introduced at trial which established the defendant's guilt, and only if the jury did not adhere to the court's limiting instruction.'" *Jones*, 2021 WL 1345560, at *2 (citing *Travers*, 768 A.2d at 851). Thus, "the redaction, combined with the trial court's accurate and repeated cautionary charge, sufficed to protect [Travers'] Sixth Amendment right to confrontation." *Id*. (citing *Travers*, 768 A.2d at 851). Aligning the present case with *Travers*, the Superior Court recalled that Wilson's statement was redacted to use "my friend" in place of Jones and that the trial court gave a cautionary instruction not to use the statement against Jones. It characterized Wilson's redacted statement as "facially neutral," and it found that "any connection drawn between the redacted name and Jones was established through other independent evidence." *Id*. at *3. Thus, according to the Superior Court, the redaction, together with the instruction, adequately protected Jones' right to confrontation. *Id*.

With regard to *Gray v. Maryland*, 523 U.S. 185 (1998), the Superior Court noted that that *Gray* involved a statement in which the codefendant's references to the defendant were replaced with blanks, and the word "deleted" was used to substitute for Gray's name. *Jones*, 2021 WL 1345560, at *3 n. 4. Because Wilson's statement was redacted to include a neutral phrase in place of Jones' name, the Superior Court viewed this as a method both consistent with *Travers* and distinguishable from *Gray*. *Id*.

This Court granted appeal of the following question:

> Did the lower court err by allowing a non-testifying co-defendant's confession to be introduced by the prosecutor at a joint trial where the confession: i) explicitly and unambiguously referenced [the petitioner] as a participant in a shooting; and ii) blatantly linked [the petitioner] as a participant in a shooting – all in violation of [the petitioner's] U.S. Sixth Amendment right of confrontation pursuant to *Bruton v. United States* and Pennsylvania Article I § 9 right to confrontation?

Commonwealth v. Jones, 266 A.3d 1 (Pa. Oct. 26, 2021) (per curiam).[5]

Arguments of the parties

Jones' argument

Jones asserts that the references to "my friend" who worked at Jack's Firehouse with Wilson, taken together with Houston's testimony regarding Jones' employment at Jack's Firehouse, unambiguously identified Jones. Jones' Brief at 37. He argues that this identification would have led the jury to identify Jones immediately. *Id*. (stating that "at the very moment that Syheed Wilson's confession was read … there was not the slightest doubt who Syheed Wilson's friend and co-worker at Jack's Firehouse was[]"). Jones relies principally on *Gray*, which he reads as prohibiting redactions that use descriptive terms that replace the defendant's name with any kind of symbol or that replace the defendant's name with an obvious indication of deletion. *Id*. at 29, 36 (citing *Gray*, 523 U.S. at 195, 192). Jones explains that *Gray*'s prohibitions against using descriptive terms, symbols or obvious indications of deletion to replace the defendant's name were violated here. *Id*. at 36 (citing *Gray*, 523 U.S. at 195, 192). He argues that the use of "my friend" in combination with the identifying detail that Wilson worked with his friend at Jack's Firehouse "is much more than a symbol that was proscribed in *Gray*[.]" *Id*. at 36.

Jones "concedes that the jury must use inference to connect the statement in Wilson's redacted confession with [Jones]." *Id*. at 24. He does not find that fatal to his *Bruton* claim for two reasons. First, Jones observes that inferences, according to *Gray*, are not determinative of the admissibility of a redacted confession. *Id*. at 24-25 (citing

[5] After briefing and after oral argument concluded in this case, the United States Supreme Court issued its decision in *Samia*, 599 U.S. at 635. *Samia* changed the landscape for the issue on which we initially granted review. As a result, on January 31, 2024, we ordered that the instant case be resubmitted, and we instructed the parties to file supplemental briefs.

Gray, 523 U.S. at 195 (indicating that "inference pure and simple cannot make the critical difference, for if it did, then *Richardson* would also place outside *Bruton*'s scope confessions that used shortened first names, nicknames, descriptions as unique as the 'red-haired, bearded, one-eyed man-with-a-limp[]'") (citing *United States v. Grinnell Corp*., 384 U.S. 563, 591 (1966) (Fortas, J., dissenting))).

Second, Jones asserts that Wilson's confession directly referenced his existence and described him, even if certain inferences were necessary to connect Wilson's confession to Jones. *Id*. at 24, 27. The confession, according to Jones, "clearly and explicitly identified [Jones] as the shooter." *Id*. at 38. He asserts that "[w]hen Detective Quinn testified that the shooter was [Wilson's] friend, who also worked at Jack's Firehouse, … that was tantamount to saying" Michael Jones, and that was error. *Id*. Jones complains that Wilson's confession refers to his existence and describes him uniquely, analogous to the *Gray* example of the "red-haired, bearded, one-eyed man-with-a-limp." *Id*. at 26 (citing *Gray*, 523 U.S. at 195). Jones also compares this case to *Harrington v. California*, where the United States Supreme Court assumed a *Bruton* violation occurred where the confessions described the codefendant as the "white guy" and gave a physical description of him. *Id*. at 26-27 (citing *Harrington v. California*, 395 U.S. 250 (1969)).[6]

[6] Jones' arguments regarding *Richardson* are confusing. Though he subsequently describes the case correctly, Jones' Brief at 28-29, his initial arguments regarding *Richardson* are mistakenly premised on a view that *Richardson* requires that the non-testifying codefendant's statement "**must be** 'redacted to eliminate not only the defendant's name, but any reference to his or her existence.'" Jones' Brief at 23 (citing *Richardson*, 481 U.S. at 211) (emphasis in Jones' brief). *Richardson*, in fact, did not establish a broad rule requiring that the state eliminate the defendant's name and any reference to the defendant's existence. Instead, the *Richardson* Court observed that the Confrontation Clause is not violated by that approach, i.e., the one taken by the prosecution in that case. *Richardson*, 481 U.S. at 211.

Jones urges this Court to distance itself from the *Travers* approach applied by the Superior Court and to instead take guidance from the Third Circuit *Bruton* case law. He criticizes the Superior Court for applying *Travers*' "a blanket rule" which he characterizes as providing that *Bruton* is never violated where the Commonwealth uses a "redaction that would require a juror to consider an additional piece of information outside the confession in order to identify the [defendant]." *Id*. at 31. According to Jones, the Supreme Court jurisprudence and in particular *Richardson*, must not be read as establishing the bright-line approach utilized in *Travers*. *Id*. at 29-30. Instead, he writes, the Court should take guidance from Third Circuit's jurisprudence. *Id*. at 31-35 (citing *United States v. Richards*, 241 F.3d 335, 341 (3d Cir. 2001) (holding that a reference to the defendant's "friend"—when considered with testimony from the defendant's mother that the defendant was the declarant's friend—was just as blatant and incriminating as the word "deleted" in *Gray*); *Washington v. Pennsylvania Secretary Dep't of Corrections*, 801 F.3d 160 (3d Cir. 2015) (holding that a redacted statement referring to the defendant as "driver" violated the Confrontation Clause)).[7]

In regard to *Samia*, Jones emphasizes that *Samia* did not overrule *Bruton*, *Richardson*, or *Gray*. Jones' Supplemental Brief at 6-7. He argues that the confession was "immediately accusatory[,]" and he describes how the confession identified him.[8] Namely, it referred to him as Wilson's friend and coworker from Jack's Firehouse. *Id*. at

[7] In supplemental briefing, Jones does not address how *Samia* impacts his reliance on the Third Circuit examples. We acknowledge that there is reason to question the continued viability of those cases, and we do not draw from them in our analysis. *Accord Romero v. Beard*, 2024 WL 1975475, at *40 n.37 (E.D.Pa. 2024); Defender Association of Philadelphia's Supplemental Brief at 11-12 (acknowledging that "the Third Circuit's rule applying a broader case context approach has been limited").

[8] Jones' initial brief acknowledged that the jury would use inferences to make the connection between Wilson's statement and himself, but in supplemental briefing, he draws attention to other aspects of the confession which made it directly incriminating. Jones' Brief at 24-25.

8. Jones also argues that the Commonwealth elicited testimony that directly linked Jones to my friend who worked at Jack's Firehouse by prefacing the redacted confession with photoidentifications of Jones. *Id*. at 9-10.

Commonwealth's argument

More so than Jones, the Commonwealth modifies its position in response to *Samia*. In its initial brief, the Commonwealth agreed with Jones that Detective Quinn's testimony regarding Wilson's statement violated the Sixth Amendment Confrontation Clause. Like Jones, the Commonwealth initially asserted that the lower court's application of *Travers* is troubling and illustrates that *Travers*' bright-line rule "is sometimes insufficient to protect a defendant's constitutionally guaranteed right to confront their accuser." Commonwealth's Brief at 8, 17 (urging this Court to reconsider its position). The Commonwealth acknowledged that Wilson's redacted statement was incriminating as it "placed the entirety of the blame on 'my friend.'" *Id*. at 14. It also observed that, given the evidence, "the redactions were so transparent that it was tantamount to using [Jones'] name." *Id*. The Commonwealth drew attention to the fact that the jury was repeatedly informed that Wilson and Carroll's statements were redacted. *Id*. at 18. The Commonwealth then explained that a violation of the *Bruton* rule is subject to harmless error review. *Id*. at 19-22. It argued that the error was harmless here. *Id*.

In its supplemental briefing, with the benefit of *Samia*, the Commonwealth takes the position that the introduction of the confession did not violate Jones' Sixth Amendment Confrontation Clause rights. Based on *Samia*, the Commonwealth argues for the Court to affirm. Commonwealth's Supplemental Brief at 9. According to the Commonwealth, the current state of the law is as follows: "a facially neutral redaction, accompanied by an appropriate jury instruction, is sufficient to protect a defendant's rights under the Federal Confrontation Clause, regardless of how apparent it might be to a reasonable juror that

the redacted language implicates a defendant who has no opportunity to confront the person who made the accusatory statement." *Id*.

In its view, the *Samia* ruling is essentially the same as that of *Travers*, where this Court held that a confession that was redacted to replace specific references to Travers with "the other man" was not directly incriminating because it did not incriminate Travers on its face and did not include obvious modifications that were the functional equivalent of naming Travers. *Id*. at 9-10 (citing *Travers*, 768 A.2d at 851). The Commonwealth explains that its philosophical position is more akin to that of the dissenting Justices in *Samia*, but it concedes that *Samia*'s pronouncement is binding. *Id*. at 10. The Commonwealth highlights the "legal fiction" that we pretend that jurors follow the instructions and ignore that the statement here referred to Jones. *Id*. at 12. It emphasizes the correctness of the position of the *Samia* dissent that the redaction and jury instruction are insufficient to cure the taint of the incriminating confession. *Id*. at 12-13 (citing *Samia*, 599 U.S. at 657-79 (Kagan, J., dissenting)). Nonetheless, the Commonwealth reiterates its position that the Court must follow *Samia*, which forecloses relief under the Sixth Amendment. *Id*. at 14.[9]

Amicus

The Defender Association of Philadelphia ("Defender Association") writes in support of Jones, insisting that neither the United States Supreme Court's jurisprudence nor this Court's *Travers* opinion has approved of the Superior Court's blanket rule approving of the use of neutral pronouns. *See* Defender Association's Brief at 17, 21 ("*Travers'* language is strong, but it does not establish an absolute rule."). The Defender

[9] The Commonwealth suggests that defendants in the future may be entitled to relief under Article I, Section 9 of the Pennsylvania Constitution, but it notes that Jones did not raise and preserve a claim premised on the unique protections of the Pennsylvania Constitution. Commonwealth's Supplemental Briefing at 14 (citing *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991)).

Association views the 2001 opinion in *Travers* as a turning point in this Court's Confrontation Clause jurisprudence and complains that it sowed confusion. *Id*. at 22-23. It faults the Superior Court with uniformly holding that redacting identifying terms from a non-testifying codefendant's statement with neutral pronouns will cure Confrontation Clause violations. *Id*. at 24.

The Defender Association argues for the *Bruton* test to turn on the following question: would the codefendant's statement, when viewed "in light of the [g]overnment's whole case[,] compel[] a reasonable person to infer the defendant's guilt[?]" *Id*. at 8 (citing *United States v. Schwartz*, 541 F.3d 1331, 1351 (11th Cir. 2008)). By contrast, a redaction is inadequate when it fails to conceal the declarant's assertion as to the identity and existence of the defendant. *Id*. It insists that the United States Supreme Court has determined that whether a *Bruton* violation occurs "depends upon how much or little deduction is needed, not whether it's needed at all." *Id*. at 9. The Defender Association proposes that the reviewing court address three questions to determine the likely inference: how many people the statement could reasonably incriminate; whether the details of the statement make it obvious that it was identifying a particular person; and "whether the government's basic theory of the case will necessarily pierce the veil of anonymity." *Id*. at 5-6, 30-33.

In supplemental briefing, the Defender Association argues that "*Samia* changes nothing here" because the confession directly implicated Jones and the alteration was obvious. Defender Association's Supplemental Brief at 5, 26-30.[10] The Defender Association maintains that *Samia* did not adopt a per se rule but instead continues to

[10] Like the Commonwealth, the Defender Association believes that Article I, Section 9 of the Pennsylvania Constitution may require a different approach. Defender Association's Brief at 5 n.2

require a case specific analysis of the statement to determine the feasibility and adequacy of redactions. *Id*. at 11.

The Pennsylvania District Attorneys Association (PDAA) advances the position that Wilson's statement did not violate the Confrontation Clause. Citing *Bruton*, *Richardson*, and *Gray,* PDAA argues that the only way the Confrontation Clause is violated is if the statement is **facially** incriminating. PDAA's Brief at 11 (citing an excerpt of *Gray* where the high Court "found—somewhat contradictor[il]y—that the blank spaces separated by commas prominently displayed on the face of the confession '**facially** incriminate[d]' the defendant." *Id*. (citing *Gray*, 523 U.S. at 196) (emphasis in *Gray*) (internal citations omitted). PDAA rehashes *Travers*' interpretation of *Gray*, insisting that the case "strongly implied" that a redaction employing a neutral pronoun does not offend the Sixth Amendment. *Id*. at 13 (citing *Travers*, 768 A.2d at 850-51). PDAA asserts that this Court's jurisprudence, starting with *Travers*, has analyzed alleged *Bruton* violations consistent with that rule and has correctly rejected the Third Circuit's case law which suggests a more expansive application of *Bruton* principles. Thus, so long as the statements "are redacted to avoid express references to a non-declarant defendant, and [] the trial court gives a proper limiting instruction," they are admissible. *Id*. at 15. In addition to relying on United States Supreme Court precedent, PDAA implores this Court to consider judicial resources, inefficiencies and inefficacies implicated by the broad interpretation of *Bruton*. *Id*. at 21-31. Finally, PDAA insists that even if there was an error in this case, it was harmless beyond a reasonable doubt. *Id*. at 31-33.

In supplemental briefing, PDAA maintains that its position is further supported by *Samia*. PDAA's Supplemental Brief at 12 (arguing that the *Samia* Court rejected "the exact challenge" Jones now makes). It draws attention to the facts of this case to argue that Wilson's redacted statement neither facially incriminates nor directly implicates

Jones. *Id*. at 6. PDAA explains that it is "not the statement itself that identifies [Jones] as the perpetrator[.]" *Id*. at 11 (emphasis omitted). Instead, PDAA states that it is the other evidence that makes the statement incriminating. *Id*. PDAA takes the position that *Samia* approved of the use of a neutral term to replace the defendant's name, and that the references to "my friend" which included references to his place of work, though "arguably more specific," do not on their face identify Jones. *Id*. at 18.

Analysis

In *Bruton*, the United States Supreme Court recognized that there are some contexts in which a non-testifying codefendant's confession so directly and powerfully implicates the defendant in the crime that a cautionary instruction will be insufficient as a matter of law to protect the defendant's confrontation rights. *Bruton*, 391 U.S. at 135-37; *see also Commonwealth v. Markman*, 916 A.2d 586, 601 (Pa. 2007) (explaining that the admission of a confession came within the *Bruton* rule because it comprised an attempt by the non-testifying codefendant "to shift the bulk of the blame to the [a]ppellant"). Introduction of the confession naming the defendant "posed a substantial threat to petitioner's right to confront the witnesses against him," a hazard the Court could not ignore. *Bruton*, 391 U.S. at 137.

Following *Bruton*, the Supreme Court faced *Richardson v. Marsh*, 481 U.S. 200 (1987), where a non-testifying codefendant's confession referencing a car ride taken by codefendants was redacted to omit all reference to the defendant (Marsh). *Id.* at 200. The confession there described conversations between the declarant and another codefendant, without any indication that Marsh had been present in the car, though Marsh's own testimony at trial placed her in the car. In distinguishing *Bruton*, the Supreme Court opinion authored by Justice Scalia emphasized its consideration of the practical impact of applying the *Bruton* prohibition to that context. The Court distinguished *Bruton*

on the grounds that the confession "was not incriminating on its face, and became so only when linked with evidence later introduced at trial (the defendant's own testimony)." *Id*. at 208. "Where the necessity of such linkage is involved, it is a less valid generalization that the jury will not likely obey the instruction to disregard the evidence." *Id*. Further, the Court found "[e]ven more significant" that a contrary conclusion would have vast practical effects: it would be "time consuming … far from foolproof … [;]" would discourage joint trials which "serve the interests of justice by avoiding the scandal and inequity of inconsistent verdicts[;]" and its "price… is too high, since confessions … are essential to society's compelling interest in finding, convicting and punishing those who violate the law." *Id*. at 208-09. Thus, the Court held that the Confrontation Clause is not violated by the admission of a non-testifying codefendant's confession with a proper limiting instruction when the confession is redacted to eliminate any reference to the defendant's existence. *Id*. at 211. It noted: "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.

Thereafter, in *Gray v. Maryland*, 523 U.S. 185 (1998), the Supreme Court refined the rule, and addressed a redacted confession that referred directly to the existence of the non-confessing defendant by replacing the defendant's name with a symbol, i.e., the word "deleted" or a blank space set off by commas. When read into the record, the detective used "deleted" for each blank space. *Id.* at 192. The Court expressed concern that the obvious deletion may well call attention to the removed name. *Id*. It stated that "*Bruton*'s protected statements and statements redacted to leave a blank or some other similarly obvious alteration function the same way grammatically." *Id*. at 194. Unlike the statement in *Richardson* which did not point to the defendant at all, this statement was "directly accusatory" and created a vital need for cross-examination. *Id*. It acknowledged

that the use of "deleted" was a less obvious reference to the defendant than the use of a full and proper name, but nonetheless, "[r]edactions 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 … 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." *Id*. at 192.

The *Gray* Court acknowledged that *Richardson* "placed outside the scope of *Bruton*'s rule those statements that incriminate inferentially." *Id*. Then it stated:

> 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 falls 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). …
>
> 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.' [*Richardson*,] 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.' [*Id*.] at 208.

Id. at 195-96 (emphasis in original). Thus, the Court found that admission of the redacted confession using the word "deleted" violated the Confrontation Clause. *Id*.

Twenty-five years later, the Supreme Court granted certiorari to address whether the Confrontation Clause bars the admission of a non-testifying codefendant's confession where (1) the confession is modified to avoid directly identifying the non-confessing defendant and (2) the court provides a limiting instruction that jurors may only consider the confession with respect to the confessing codefendant. *Samia*, 599 U.S. at 639. Adam Samia had traveled to the Philippines where he worked for crime lord Paul LeRoux. LeRoux tasked Samia, Joseph Hunter, and Carl Stillwell with killing Catherine Lee, a local real-estate broker. *Id*. at 640. Subsequently, Lee was murdered by two gunshots to her face at close range. Samia, Hunter and Stillwell were arrested and charged with murder-for-hire and related offenses. Stillwell confessed to his involvement in Lee's murder, admitting that he had been driving the van in which Lee was killed, but claiming that Samia shot Lee from the passenger seat. *Id*. The three men were tried jointly. *Id*. at 640-41. Prior to trial, the Government moved in limine to admit Stillwell's confession, proposing that an agent would testify to the content of the confession "in a way that eliminated Samia's name while avoiding any obvious indications of redaction." *Id*. The District Court granted the motion but ordered the Government to make further alterations. At trial, the agent testified regarding Stillwell's confession in which Stillwell generally described Samia's involvement and referred to Samia as the "other person." For instance, the Government asked the agent, "Did [Stillwell] say where [the victim] was when she was killed?" and the agent answered, "Yes. He 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." *Id*. at 641-42. The agent's recitation of the confession also indicated that the "other

person" was someone with whom Stillwell had travelled and lived and who carried a particular firearm. *Id*. at 642.

On appeal, the Second Circuit determined that there was no error in admitting the modified statement. It explained that the statements did not explicitly identify Samia separate and apart from any other evidence, and it found that the neutral language was not so awkward or obvious as to tip off the jury as to the redaction. *United States v. Hunter*, 2022 WL 1166623, at *5 (2d Cir. 2022) (internal citations omitted). Further, it stated that "a juror listening to these statements could have concluded that several other people may have been Stillwell's co-conspirator." *Id*.

On appeal to the United States Supreme Court, Samia complained that the confession was erroneously admitted because other evidence and statements at trial "enabled the jury to immediately infer that the 'other person' described in the confession was Samia himself." *Samia*, 599 U.S. at 642. For instance, he complained that the Government's opening statement, indicating its theory that Samia was in the passenger seat of the vehicle when he shot Lee, would allow the jury to infer that he was the "other person" referred to in Stillwell's confession. *Id*. Such an inference could also be drawn based on other trial evidence showing that Samia and Stillwell coordinated their travel to the Philippines and lived together there and that Samia had the type of gun used to shoot Lee. *Id*. at 643. Samia also complained of a video shown to the jury in which Hunter spoke about hiring two men to murder Lee. According to Samia, the Government's reliance on that video as evidence against him "allow[ed] the jury to infer that Samia and Stillwell were co-conspirators." *Id*.

The Supreme Court declined to attribute these inferences to the jury, and it declined to find a *Bruton* violation. In consideration of *Bruton*, *Richardson*, and *Gray*, the Supreme Court highlighted that the confession was redacted to avoid naming Samia, and

that it was not obviously redacted in a manner resembling *Gray*. *Id*. at 653. The Court compared it to a hypothetical modified confession it had looked upon favorably in *Gray*, referring to "[m]e and a few other guys[,]" such that it would fall outside of the rule drawn in *Bruton*. *Id*. (citing *Gray*, 523 U.S. at 196). The Court rejected Samia's contrary interpretation of the *Bruton* rule, stating that it would be overly burdensome and far from foolproof because it would "require federal and state trial courts to conduct extensive pretrial hearings to determine whether the jury could infer from the Government's case in its entirety that the defendant had been named in an altered confession." *Id*. at 654. The Court stated that "it would be impractical to fully police juror inferences in the way Samia seems to suggest; in a criminal trial, all evidence that supports the prosecution's theory of the case is, to some extent, mutually reinforcing." *Id*. It reasoned that the practical effect of Samia's position would be to mandate severance in any case involving a codefendant's confession, an unacceptable result. *Id*. Nor was it reasonable to force the Government to forgo use of the confession entirely, given the value of confessions to convicting those who violate the law. *Id*.

It was within that constitutional framework, though without the benefit of *Samia*, that the trial court in this matter considered Jones' objection to the introduction of Wilson's confession at trial. Relevantly, at trial, the Commonwealth set the stage to make it abundantly clear that the person referred to in the statement was Jones, though it redacted the codefendant's references to "Mike" (Jones' first name) to "my friend."

First, it called Michael Houston to testify that he employed Jones and Wilson at Jack's Firehouse Restaurant and that the two men were friends outside of work. N.T., 10/27/2016, at 124-25. Following the testimony of Houston, the Commonwealth called Detective Quinn, who first testified regarding videos he received from SEPTA showing Wilson, Jones and Carroll at the SEPTA station around the time of the incident, from

which they captured still photos for purposes of identification. *Id*. at 173-180. Making sure to make its point clear to the jury, the Commonwealth showed the videos and stills to the jury, and Detective Quinn described each of the defendants, referring to Wilson as the one in the black jacket and Jones as the one in "the gray jacket." *Id*. at 176.[11]

Next, Detective Quinn testified regarding his interview of Wilson. *Id*. at 182; Commonwealth's Exhibit 39 (Wilson's police interview, 2/23/2016). The prosecutor reviewed Wilson's *Miranda*[12] waiver at length, having Detective Quinn read directly from Wilson's police interview statement as entered into the record. N.T. 10/27/2016, at 182-85. Then, the prosecutor asked, "did you ask [Wilson] questions about this incident that happened on February 6th, 2016?" *Id*. at 185. Detective Quinn answered "Correct[,]" and the prosecutor asked "Do you have the typed version that was provided to you by me?" to which the Detective answered, "Redacted one?" *Id*. The prosecutor confirmed then directed the Detective to read from that version of Wilson's statement. *Id*.[13]

Detective Quinn then read the statement into the record, testifying that Wilson told him the following account of the incident:

> "Myself and my friend had clocked out of work about 10:00 to 11:00 p.m. on February 5th. We work at Jack's Firehouse. …

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[11] In this respect, Jones argues that the Commonwealth "blatantly linked" Jones to "my friend" who worked at Jack's Firehouse Restaurant by prefacing the redacted confession with Detective Quinn's testimony identifying Wilson and Jones in the photographs. Jones' Supplemental Brief at 9-10. As he convincingly points out, "[t]his is precisely the type of extrinsic evidence of a defendant's identity that runs afoul of *Bruton*." *Id*.

[12] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[13] When Detective Quinn read codefendant Carroll's statement into the record over Jones' *Bruton* objection, the prosecutor instructed him to "read … from the printed version I gave you[,]" distinguishing it from the exhibit entered into evidence which was unredacted. N.T., 10/27/2016, at 193. The distinction between the redacted and actual statement was again highlighted when Detective Quinn misread what should have been "my friend" as "my boyfriend" (thus identifying Wilson for the jury). The prosecutor redirected Detective Quinn to the redacted version, instructing him to "reread that line as it appears on the version that I gave you[.]" *Id*. at 194.

> "We went to a party up in West Philly. I told my friend[] to call me when she was done. She work at the one on Fox Street. Myself and my friends had gotten on the subway about 2:00 a.m. to 2:30 a.m."

N.T., 10/27/2016, at 185. He continued:

> "It was the Broad Street line. I'm not sure what station. When me and my friend got off the subway … We [see] my friend that was at Tasker-Morris station. She just happened to be on the same train, not the same car. My friend and I see her when we get off the subway. The three of us begin to walk together.
>
> "My friend flagged down a cab as soon as we got out the subway. We think my friend was going to pay for it. He gets in the front seat. I got in the backseat. I was behind the driver and she was behind my friend.
>
> "My friend—my friend in the front told the driver to go to 28th and Tasker. I was talking to my friend in the back. We get to the corner of 27th and Morris Street. My friend out of nowhere pulls [a gun] out.
>
> "My friend in the front seat takes his right hand and looking forward points the gun at the cabdriver and said, 'give that shit up.' The cabdriver, waving his hands as he was driving trying to get the gun. A shot went off towards the cabdriver's arm. Only one shot went off.
>
> "Myself and my friend were in the backseat. My friend in the front seat just bails out of the cab. We tried to get out but we could not because of the locks. The cabdriver was speeding straight down the road. He was bleeding from the arm. Myself and my friend in the back were telling him to stop. The cabdriver bangs out at, I think 24th and Tasker. The cabdriver got out of the cab. Myself and my friend in the back were still locked inside the car.
>
> "We see a cop car pull up. We are still in the cab. The cop gets out and looks at the man, see that he is shot. Then the cop puts the cabdriver inside the cop car. We were kicking and banging the door. We see a black lady on the phone. We said, yo, can you let us out? The lady unlocked the door. I told my friend in the back to come on. I see my friend that

> was in the front at the corner where we crashed out. He still had the pistol out. We were still drunk. We went to my house, the three of us. When we got to the house, I had an argument with him."

Id. at 187-89. Detective Quinn testified regarding Wilson's description of the gun and Wilson's statement that the shooter shot one time. Then, Detective Quinn, still testifying to the prosecutor's typed version of Wilson's confession, stated the following:

> Next question. "The photo that was shown to you, who is in it? That is me in the back, that is my friend with the purse and my friend from work in the gray jacket."
>
> Then photo is signed by Syheed Wilson.
>
> "Do you know where your friend from work is now? The last time I spoke to him was on Sunday. He was at work. Do you know what he did with the gun? I have no idea. Did he give you any money that night? No. He tried to rob the cabdriver.["]

Id. at 189. Detective Quinn testified to the remainder of the statement. The prosecutor then clarified regarding the photograph to make clear that Wilson's photographic identification from his statement was made in reference to one of the SEPTA still photographs reviewed by the jury moments earlier where Jones was identified as the one in the gray jacket:

> Q: There is a picture referenced in here. Is that another one of the still photos?
>
> A: Yes.
>
> Q: Okay. And so Mr. Wilson looked at that photo and identified – and my question is he identified himself, correct?
>
> A: Correct.

Id. at 191.

Trial counsel's objections to the introduction of the statement were overruled. *Id*. at 181. At the conclusion of the trial, the trial court issued a cautionary instruction to the

jury. N.T., 10/31/2016, at 30. Jones was found guilty on all counts. Verdict Report, 10/31/2016, at 1.

While the present case was pending before this Court, the Supreme Court granted certiorari then decided *Samia*, in which it concluded that the Confrontation Clause is not violated by admission of a non-testifying codefendant's confession that does not directly inculpate the defendant and is subject to a proper limiting instruction. *Samia*, 599 U.S. at 635. The Court reviewed *Bruton*, *Richardson*, and *Gray* and interpreted them as distinguishing between confessions that "directly implicate a defendant and those that do so indirectly." *Id*. at 652. The *Samia* opinion undoubtedly foreclosed arguments regarding confessions which inferentially incriminate a defendant. It explained that "neither *Bruton*, *Richardson*, nor *Gray* provides license to flyspeck trial transcripts in search of evidence that could give rise to a collateral inference that the defendant had been named in an altered confession." *Id*. at 653. However, it recognized the continued vitality of *Gray* when it distinguished the facts in Samia's case from those in *Gray*, explaining that the confession at issue "was redacted to avoid naming Samia, satisfying *Bruton*'s rule. And, it was not obviously redacted in a manner resembling the confession in *Gray*; the neutral references to some 'other person' were not akin to an obvious blank or the word 'deleted.'" *Id*.

There is no doubt that *Samia* narrowed the application of *Bruton* principles, but it left intact *Bruton*'s core prohibition as well as the other precedent. In this case, the Commonwealth clearly set the stage for the jury to know that "my friend" was Jones. Immediately preceding the reading of the statement, the Commonwealth called a witness whose sole purpose was to explain that Jones and Wilson worked together at Jack's Firehouse and were friends. Then it called Detective Quinn to read the statement which began by describing Jones by his place of work and his gender. Troubled though we are

by these "inferential" incriminations, *Samia* requires this Court to focus on two absolute prohibitions: a confession cannot directly incriminate the defendant or use obvious redactions.

As to the second prohibition, we cannot ignore that the jury in this case was told that the statement was redacted in multiple ways. The prosecutor clarified for the detective to read from the "typed version that was provided" by the prosecutor instead of the original statement entered into evidence. N.T., 10/27/2016, at 185. The prosecutor also instructed the detective to read from "the printed version I gave you" of codefendant Carroll's statement and then had to correct the detective who had inadvertently read the statement as identifying "my boyfriend[,]" thus identifying which friend was her boyfriend (Wilson) and which was not (Jones). *Id*. at 193-194. The disclosure of the redaction was not as troublesome in this case as it was in *Gray*, as the jury was not explicitly told that the identity of "my friend" was changed. Nor was this scenario as benign as in *Commonwealth v. Cannon*, 22 A.3d 210 (Pa. 2011),[14] because the jury here was repeatedly told that the statement was altered. Nonetheless, we need not address whether telling the jury that the statements were redacted alone renders this a violation of the *Bruton* prohibition, because other aspects of the statement inform our analysis.

Namely, as to the prohibition against directly incriminating the defendant, we observe that the codefendant's statement identifies "my friend" in a SEPTA still photograph shown to the jury—the statement thus directly identifies "my friend" as Jones

[14] In *Cannon*, 22 A.3d at 210, the Court granted review to address a prosecutor's remarks describing the codefendant's statement in which the defendant's name was replaced with "the other guy." The defendant claimed that the prosecutor "broke the redaction" by identifying Cannon as "the other guy." *Cannon*, 22 A.3d at 215. This Court disagreed, finding that the prosecutor did not in fact inform the jury that the statement at issue was redacted. *Id*. at 219. The *Cannon* Court cited *Gray* only in passing, and it offered no insight about what happens when a prosecutor **does** inform the jury that the statement at issue is redacted.

by his appearance. *See Harrington*, 395 U.S. at 253 (assuming *Bruton* violation where confession describes codefendant as "white guy" and describes his age, height, weight, and hair color). The photographic identification within Wilson's statement calls to mind *Gray*'s example of a "red-haired, bearded, one-eyed man-with-a-limp[,]" *Gray*, 523 U.S. at 195, because there is only one person in the SEPTA still image wearing the gray jacket, Jones. The jurors were shown the picture of Jones and heard Wilson's statement that, "this is my friend." This was not meaningfully different from handing jurors a statement that substituted Jones' picture for his name. In this case, the jurors were told they were hearing a redacted statement, and they were told that Wilson blamed his friend, the only one in a gray jacket in the SEPTA still images they studied. We can imagine no reason to read this portion of the statement in which Wilson identifies Jones by the SEPTA still image other than to identify Jones as "my friend." The statement directly incriminates Jones and requires no inferences.

To read *Samia* as narrowly as the Commonwealth does effectively signals the death of *Bruton*. Notably, *Samia*'s dissenting Justices expressed concern that the majority was doing just that—rendering *Bruton* an empty shell of Sixth Amendment protection—but the *Samia* Majority corrected this misimpression by recognizing the continued vitality of *Bruton*, *Richardson*, and *Gray*. *Compare Samia*, 599 U.S. at 667 (Kagan, J., dissenting) (stating the Majority's bottom line was that "*Bruton* should go") *with id*. at 652 (citing to *Bruton*, *Richardson*, and *Gray* to establish rule against introduction of confession that directly implicates a codefendant). Indeed, the *Samia* Majority recited the passage of *Gray* indicating that *Richardson* did **not** place "outside *Bruton*'s scope confessions that use shortened first names, nicknames, [and] descriptions as unique as the 'red-haired, bearded, one-eyed man-with-a-limp.'" *Id*. (citing *Gray*, 523 U.S. at 195)

(internal citations omitted). In other words, confessions that use unique descriptions are still prohibited by *Bruton* and the Sixth Amendment.

The Commonwealth and PDAA apparently read *Samia* as permitting any identification of the defendant, so long as some component of the identification is not in the statement itself.[15] Under this reasoning, if it is not absolutely clear to an unknowing stranger who reads the statement in isolation that the statement is identifying this precise defendant, then the statement's introduction does not violate *Bruton*. However, we know that *Bruton* disallows confessions which use nicknames or descriptions, each of which requires some outside knowledge as to the fact that this defendant goes by this nickname or that this defendant looks (and walks, as in the *Gray* example) a certain way. When the statement expressly identifies the defendant by reference to the photoidentification, it does not "inferentially" establish the defendant's identity. It directly links the SEPTA still image to the statement. No inference is required.[16] *Samia* did not overrule *Bruton* sub silentio.

Therefore, because this statement, as presented to the jury, identified Jones by his likeness in a still photograph that was shown to the jury moments before, and because

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[15] PDAA's Brief at 10-11 (arguing that "it is only when the statement is read in connection with **other evidence at trial**—namely, the testimony of Mike Houston, the owner of Jack's Firehouse, who identified defendant and Wilson as being friends who worked at his restaurant—that the statement becomes incriminating against defendant[,]" and this does not violated *Bruton*) (emphasis in original).

[16] Under PDAA's logic, the Commonwealth could introduce a still image of the defendant, then introduce a statement of a codefendant identifying the defendant by the image, as it did in this case, all to circumvent the prohibition against introducing statements of a non-testifying codefendant which incriminate a defendant. Intentionally engineering the introduction of evidence to circumvent constitutional precedent and incriminate a defendant through a statement of a codefendant not subject to cross-examination or confrontation raises additional concerns about the district attorney's conduct. *See similarly Cannon*, 22 A.3d at 223 (Saylor, J., concurring) (declining to endorse the district attorney's "exploitation of 'contextual implication' in conjunction with a non-testifying co-defendant's statement").

the jury was informed that it was hearing a redacted statement, we reach the unremarkable conclusion that the statement violated *Bruton*'s prohibition.[17]

Whether this violation is properly characterized as harmless error is another question to be addressed on remand by the Superior Court.

Justices Wecht, Brobson and McCaffery join the opinion.

Justice Wecht files a concurring opinion.

Chief Justice Todd files a dissenting opinion in which Justices Dougherty and Mundy join.

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[17] Jones adequately preserved this constitutional challenge by filing a motion in limine challenging the introduction of Wilson's statement and subsequently objecting to the introduction of the entire statement at trial. Motion in Limine, 9/10/2016; Memorandum in Support of Motion in Limine, 9/10/2016; N.T., 10/27/2016, at 181 (renewing *Bruton* objection). Throughout the appeal, Jones argued that its introduction violated his constitutional rights under the Sixth Amendment to the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution as established in *Bruton*, *Richardson*, and *Gray*. Thus, we granted review to address whether the confession explicitly and unambiguously referenced petitioner as a participant in the shooting and blatantly linked him to the shooting in violation of the Sixth Amendment, Article I, Section 9, and *Bruton*. The logical starting point for this analysis is recounting the statement as introduced at trial to determine whether it linked Jones to the shooting in the eyes of the jury. Commonwealth's Exhibit 39 (Wilson's police interview, 2/23/2016); N.T., 10/27/2016, at 185-190. We decline to parse out the statement, review only certain parts or ignore the fact that the jury was repeatedly told that the statement was redacted. The Commonwealth candidly wrote that "the jury here was inadvertently informed that there were redactions in the statements," implicitly acknowledging that this consideration is subsumed within our review. *See* Commonwealth's Brief at 18. The Dissent's approach would make sense if Jones' objection had been to specific portions of the statement, but it was not. Dissenting Op. at 24-25 (Todd, C.J.,). Jones objected to the introduction of the statement because it violated *Bruton*, and he cited nearly all the case law that we rely on today. It would be anomalous to ignore parts of the statement that starkly violate the well-established case law that Jones himself cites and discusses.