

THE *BRUTON* RULE: JOINT TRIALS & CODEFENDANTS' CONFESSIONS

Jessica Smith, UNC School of Government (May 2012)

Updated by Christopher Tyner (April 2025)

Contents

I.	The <i>Bruton</i> Rule.....	1
A.	Generally.....	1
B.	Implications of <i>Crawford</i> on the <i>Bruton</i> Rule.....	2
C.	Statement Must Directly Incriminate.....	4
D.	Redaction.....	5
E.	Limiting Instruction.....	7
F.	When Adequate Redaction is Not Possible.....	7
II.	Exceptions.....	7
A.	Hearsay Rules.....	7
B.	Declarant Takes the Stand.....	8
III.	Defendant's Objection to Joinder.....	8

I. The *Bruton* Rule.

- A. Generally.** In *Bruton v. United States*, 391 U.S. 123 (1968), the United States Supreme Court held that a defendant's confrontation clause rights are violated when a non-testifying codefendant's confession naming the defendant as a participant in the crime is introduced at their joint trial for use against the codefendant, even if the jury is instructed not to consider the confession against the defendant. See *also* *Richardson v. Marsh*, 481 U.S. 200, 201-02 (1987) (so stating the rule); *State v. Brewington*, 352 N.C. 489, 507 (2000) (same). The Court explained:

[T]here are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored. Such a context is presented here, where the powerfully incriminating extrajudicial statements of a codefendant, who stands accused side-by-side with the defendant, are 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 other.

Bruton, 391 U.S. at 135-36 (citations omitted). Later cases modified the *Bruton* rule and held that the confrontation clause is not violated by the admission of a non-testifying codefendant's confession if:

- a proper limiting instruction is given and
- the confession is redacted or presented at trial in a manner that does not directly incriminate the defendant.

Samia v. United States, 599 U.S. 635, 652 (2023) (synthesizing the Court's precedent and so describing the *Bruton* rule; holding that admission of DEA agent's testimony recounting content of codefendant's confession was proper when agent used descriptor "the other person [the codefendant] was with" rather than directly identifying the defendant as was done in the confession); *Richardson*, 481 U.S. 200 (admission of a confession was proper when it was redacted to omit all reference to the defendant but the defendant was nonetheless linked to the confession by evidence properly admitted against him at trial).

The United States Supreme Court developed the *Bruton* rule in cases involving confessions incriminating both the declarant codefendant and the defendant asserting a confrontation clause violation. See, e.g., *Samia*, 599 U.S. at 640; *Gray v. Maryland*, 523 U.S. 185, 188 (1998); *Richardson*, 481 U.S. at 203; *Bruton*, 391 U.S. at 124. North Carolina appellate courts sometimes have applied *Bruton* more broadly to codefendant statements that incriminate the defendant even if the statement is not a confession. *State v. Owens*, 75 N.C. App. 513, 516-17 (1985) ("*Bruton* and its North Carolina progeny have not limited the application of the rule to confessions only. The more general term 'statement' is used interchangeably with 'confessions,' . . . and the rule has been expressly applied to statements that are not confessions." (internal citation omitted)); see also *State v. Gonzalez*, 311 N.C. 80, 94 (1984) (applying *Bruton* to codefendant's statement: "I was with some guys, but . . . I didn't rob anyone, they did"). As discussed in more detail below, the statutory codification of *Bruton* governing joinder of defendants is broader still, applying to any statement of a codefendant that "makes reference" to the defendant. G.S. 15A-927(c)(1).

B. Implications of *Crawford* on the *Bruton* Rule. After *Bruton* was decided, the United States Supreme Court in *Crawford v. Washington*, 541 U.S. 36 (2004), radically revamped the analysis that applies to confrontation clause objections. See generally [Crawford & the Confrontation Clause](#). *Crawford* overruled the constitutional framework underpinning many older North Carolina *Bruton* cases which held that the confrontation clause did not bar admission of statements that were particularly reliable or fell within a hearsay exception. Compare *Crawford*, 541 U.S. 36 (overruling the old *Ohio v. Roberts* reliability test), with *State v. Porter*, 303 N.C. 680, 695-97 (1981) (applying *Roberts* in a *Bruton* case). A trial court confronting a *Bruton* objection should evaluate the applicability of the confrontation clause to a challenged statement by assessing whether the statement is testimonial and offered for its truth, as now required by *Crawford*, rather than whether it is reliable or falls within a hearsay exception, as was done under *Roberts* and older North Carolina cases.

1. Statement Must Be Testimonial. *Crawford* and its progeny made clear that the confrontation clause protections are limited to testimonial statements. *Whorton v. Bockting*, 549 U.S. 406, 420 (2007) (confrontation clause has "no application" to non-testimonial statements). Thus, if the statement is non-testimonial, neither *Crawford* nor *Bruton* apply. See *Samia*, 599 U.S. at 643-44 (deciding before proceeding to further analysis that codefendant's confession fell within ambit of confrontation clause because it was testimonial). Although there does not appear to be a North Carolina decision on point, ample case law supporting this proposition exists in other jurisdictions. See, e.g., *United States v. Hano*, 922 F.3d 1272, 1287 (11th Cir. 2019) (stating that every federal appellate court to

consider the issue has held that *Bruton* applies only to testimonial statements); *United States v. Dargan*, 738 F.3d 643, 651 (4th Cir. 2013) (“*Bruton* is simply irrelevant in the context of nontestimonial statements.”); *United States v. Figueroa-Cartagena*, 612 F.3d 69, 85 (1st Cir. 2010) (“The threshold question in every case is whether the challenged statement is testimonial.”); *United States v. Dale*, 614 F.3d 942, 955 (8th Cir. 2010); *United States v. Johnson*, 581 F.3d 320, 325-26 (6th Cir. 2009).

The *Bruton* issue arises most typically with respect a co-defendant’s confession that was procured through police interrogation. Such a statement is clearly testimonial under *Crawford*. *Crawford*, 541 U.S. at 51. Because, however, the *Bruton* rule is not limited to confessions procured by police interrogation, issues may arise as to whether a confession is testimonial and subject to the confrontation clause at all. For guidance on that issue, see [Crawford & the Confrontation Clause](#).

2. **Statement Must be Offered for its Truth.** *Crawford* and its progeny also limit confrontation clause protections to testimonial statements that are offered to prove the truth of the matter asserted. *Crawford*, 541 U.S. at 59 n.9 (“The [Confrontation] Clause . . . does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted.”); *Smith v. Arizona*, 602 U.S. 779, 785 (2024) (“When a statement is admitted for a reason unrelated to its truth, we have held, the Clause’s role in protecting the right of cross-examination is not implicated. That is because the need to test an absent witness ebbs when her truthfulness is not at issue.” (internal quotation and citation omitted)). Thus, a statement that is offered for a purpose other than its truth, such as impeachment, falls outside the confrontation clause. *Crawford*, 541 U.S. at 59 n.9. For a discussion of common purposes for which a statement may be offered other than its truth, see [Crawford & the Confrontation Clause](#). The United States Supreme Court applied this limitation of the confrontation clause outside the context of *Bruton* in *Tennessee v. Street*, a pre-*Crawford* case involving a confession by a non-testifying and separately tried accomplice that incriminated the defendant and was offered to impeach the defendant’s testimony. 471 U.S. 409, 413-17 (1985) (noting the trial court’s “pointed” limiting instruction and the State’s lack of other alternatives for rebutting the defendant’s testimony).

The apparent inapplicability of *Bruton*, as a rule grounded in the confrontation clause, to a jointly tried codefendant’s testimonial statement offered for a purpose other than its truth has not been considered in a published North Carolina case. See *State v. Oxendine*, 193 N.C. App. 247, *5 (2008) (unpublished) (citing *Tennessee v. Street* and finding that *Bruton* did not prohibit introduction of a codefendant’s testimonial statements not offered for their truth; case involved redacted statements and a limiting instruction). As noted below, the statutory rule concerning objections to joinder of defendants, G.S. 15A-927(c)(1), is broader than the constitutional *Bruton* rule and severance is required if a joint trial imperils a defendant’s due process right to a fair trial. G.S. 15A-927(c)(2). See also *State v. Jones*, 280 N.C. 322, 339 (1972) (noting the possibility that a defendant’s right to a fair trial could be infringed by the introduction

of a codefendant's statement incriminating the defendant even if there is no violation of the confrontation clause).

3. **Scope of the Rules.** Finally it is worth noting a difference in the scope of the two constitutional rules. *Crawford* applies whenever the State seeks to admit a testimonial hearsay statement of a non-testifying declarant. *Bruton* applies in a more limited context: whenever the State in a joint trial seeks to admit a testimonial hearsay confession of a non-testifying codefendant that directly incriminates the defendant.

C. Statement Must Directly Incriminate. The *Bruton* rule only applies if the statement directly incriminates the defendant. *Samia*, 599 U.S. at 647-48 (so stating); *State v. Brewington*, 352 N.C. 489, 510 (2000) (same).

1. **Statements Containing no Reference to Defendant.** A statement that does not mention or refer to the defendant in any way does not incriminate the defendant. *State v. Jones*, 280 N.C. 322, 340 (1972) (challenged statements did not reference the defendant by name or identify him in any way; "[t]he Sine qua non for application of *Bruton* is that the party claiming incrimination without confrontation at least be incriminated"); *State v. Boozer*, 210 N.C. App. 371, 385 (2011) (so holding); *State v. Taylor*, 344 N.C. 31, 48 (1996) (same); *State v. Howard*, 56 N.C. App. 41, 45 (1982) (statement did not reference the defendant; the portion of her statement suggesting that the goods were stolen did not suggest that they were stolen by the defendant).
2. **Statements that Facially Incriminate the Defendant.** A statement that is facially inculpatory (e.g., "the defendant helped me commit the crime") clearly incriminates the defendant. *Richardson v. Marsh*, 481 U.S. 200, 208 (1987) (describing such a statement as "vivid[ly]" incriminating). The facially inculpatory statement need not refer to the defendant by proper name to be incriminatory; the United States Supreme Court has recognized that use of nicknames and specific descriptions ("red-haired, bearded, one-eyed man—with-a-limp") fall within *Bruton*. *Gray v. Maryland*, 523 U.S. 185, 195 (1998).
3. **Statements that Incriminate the Defendant by Inference.** The United States Supreme Court has held that the *Bruton* rule does not apply to statements that incriminate a defendant only when linked with other evidence. *Richardson*, 481 U.S. at 208; *see also Samia*, 599 U.S. at 652-53. *Richardson* was a robbery and felony murder case involving three accomplices, two of whom were tried jointly. The Court held that *Bruton* did not prohibit introduction of the codefendant's incriminating statement recounting that, while driving to the victims' house, he and the separately tried accomplice discussed a plan to kill the victims after the robbery. While the statement was redacted to omit any reference to the defendant, the defendant testified later in the trial that she was in the car but did not hear any discussion of a plan to kill the victims. Describing *Bruton* as "very narrow," the Court declined to extend the rule beyond statements that are facially incriminating with respect to the defendant asserting a confrontation clause violation. 481 U.S. at 208-09. *See also Samia*, 599 U.S. at 652-53.

Some North Carolina appellate opinions have applied *Bruton* more broadly to statements that incriminate a defendant only by connection with other evidence. For example, in *State v. Owens*, 75 N.C. App. 513,

515-16 (1985), four defendants—Owens, McClain, Tyler and Kelly—were charged with robbery of a store. In a joint trial of Owens, McClain and Tyler, only Tyler testified. The evidence indicated that the police apprehended the defendants shortly after the crime in a vehicle that contained guns, clothing worn by the robbers, and items taken from the store. Tyler testified she and McClain picked up Owens and Kelly along the roadway in exchange for a promise of gas money. Apparently to discredit this testimony, the State introduced McClain's statement to an investigating detective that they picked up the two men because they had pointed guns at him and Tyler. When Owens raised a *Bruton* issue as to McClain's statement, the State argued on appeal that it did not implicate Owens in the robbery. The court disagreed, stating: "The statement was incriminating to Owens because it placed Owens and Kelly on foot near the scene of the robbery, in possession of the guns which were later identified as similar to those used in the robbery, and so anxious to flee the area that they forced their way into the truck at gunpoint." This analysis appears to be inconsistent with U.S. Supreme Court cases limiting the protections of *Bruton* to facially incriminating statements. *Richardson*, 481 U.S. at 208-11 (*Bruton* is limited to facially incriminating statements and does not apply to statements that are "incriminating by connection"); *Gray*, 523 U.S. at 195 ("*Richardson* placed outside the scope of *Bruton*'s rule those statements that incriminate inferentially"). As discussed in more detail below, there also is some discrepancy between United States Supreme Court and North Carolina case law on the related issue of whether a statement is redacted sufficiently to comply with *Bruton* when it is modified to contain only vague references to unnamed accomplices.

- D. Redaction.** As noted in Section I.A above, if incriminating statements by a non-testifying codefendant are sufficiently redacted and admitted with a limiting instruction, their admission does not violate the *Bruton* rule.
1. **Omission of All References to Defendant.** A statement is sufficiently redacted if it eliminates all specific identification of the defendant, such as his or her proper name or nickname, as well as all references to his or her existence. *Richardson*, 481 U.S. at 211; *State v. Brewington*, 352 N.C. 489, 507 (2000).
 2. **Obvious Redactions.** As a categorical rule, merely replacing the defendant's name with a blank space or the word "deleted" is not a sufficient redaction. *Gray* 523 U.S. at 192-97; *State v. Roope*, 130 N.C. App. 356, 366-67 (1998). This approach is deficient because such an obvious modification essentially refers directly to the non-confessing defendant. *Gray*, 523 U.S. at 192-97 ("[C]onsidered as a class, redactions that replace a proper name with an obvious blank, the word 'delete,' a symbol, or similarly notify the jury that a name has been deleted are similar enough to *Bruton*'s unredacted confessions as to warrant the same legal results."); *Samia*, 599 U.S. 635, 647 ("[C]ertain obviously redacted confessions might be 'directly accusatory,' and thus fall within *Bruton*'s rule, even if they [do] not specifically use a defendant's name.").
 3. **Vague References to Accomplices.** In *Samia*, the United States Supreme Court held that a codefendant's statement, recounted in testimony from a DEA agent, was sufficiently redacted when, instead of

repeating the codefendant's specific identification of the defendant, the agent testified to the codefendant's description of when "the *other person* he was with pulled the trigger on [the victim]." 599 U.S. at 642-43. The defendant argued that other evidence, along with the prosecution's opening and closing statements, so clearly identified him as the "other person" that admission of the statement violated *Bruton* in a similar manner as the obviously redacted statement in *Gray*. The Court rejected this argument, explaining that "the 'neutral' references to some 'other person' were not akin to an obvious blank or the word 'deleted.'" *Id.* at 643. The Court's analysis suggests that, as a matter of federal constitutional law, replacing a specific identification of a defendant with a vague neutral reference that does not amount to an obvious redaction of the type disapproved of in *Gray* is sufficient to satisfy *Bruton* regardless of how strongly other evidence connects a defendant to the statement. See *Samia*, 599 U.S. at 642 (noting that defendant could be identified by inference as the "other person" by prosecution's opening statement asserting that the defendant shot the victim, evidence that the defendant possessed the type of gun that was used, and testimony that the defendant and codefendant lived together in the Philippines and the "other person" was the person with whom the codefendant lived in the Philippines).

North Carolina appellate cases predating *Samia* hold that a redaction that references a vague unnamed accomplice may or may not be sufficient to satisfy *Bruton*, depending on the circumstances. Compare *State v. Gonzalez*, 311 N.C. 80, 94 (1984) (codefendant's confession that did not name the defendant was insufficiently sanitized when the confession included the statement: "I told him I was with some guys, but that I didn't rob anyone, they did"; because the confessor's two codefendants were being tried jointly with him, and since only two persons were seen in the service station at the time of the robbery, the statement clearly implicated the non-confessing defendant), with *State v. Johnson*, 71 N.C. App. 90, 93-94 (1984) (in a trial involving three accomplices, a statement by one of the co-defendants was adequately sanitized when all explicit references to the defendant were removed but the statement referred to the involvement of an unidentified male ("he"); the court noted that while "he" referred to a single person, three accomplices were on trial). The North Carolina appellate courts have not addressed this issue since *Samia* was decided.

4. **Practical Considerations.** In order to sufficiently redact a statement, it may be necessary to remove entire sentences. *Brewington*, 352 N.C. at (confession was redacted appropriately when it was modified by taking out complete sentences and groups of sentences that mentioned, connected, or referenced the defendant's existence, as redacted it retained a natural narrative flow, and it did not contain any contextual clues indicating that it was altered in any manner; the alternations were subtle and neither attract the jury's attention nor invite speculation). It may be necessary to substitute words or phrases, such as to change plural pronouns to singular pronouns, *State v. Ferrell*, 46 N.C. App. 52, 55 (1980) (statements were properly sanitized by substituting singular pronouns and eliminating any reference to the defendants), or to substitute specific identification with a vague reference to accomplices.

Samia, 599 U.S. at 642-43. It is important for a redacted statement to retain a natural flow, and to avoid the suggestion that the statement was modified, *Brewington*, 352 N.C. at 512.

The full scope of permissible redaction has not been concretely established by the courts. In *Samia*, the Court noted that it had “never opined as to whether rewriting a confession may serve as a proper method of redaction.” 599 U.S. at 641, n.1. See also *Ferrell*, 46 N.C. App. at 55 (rejecting defendants’ argument that redaction caused statements to become “a product of the district attorney’s imagination”). As discussed below, redactions must not materially and prejudicially alter the content of a statement. *Samia*, 599 U.S. at 653 (noting that, in addition to being unnecessary as a constitutional matter, modifying the statement at issue to omit all references to the existence of an accomplice would both imperil the Government’s proof of the coordination element of conspiracy and give the jury the mistaken impression that the declarant codefendant had confessed to shooting the victim)

- E. **Limiting Instruction.** As noted above in Section I.A. a properly sanitized statement may be admitted consistent with *Bruton* if a limiting instruction is given. If defendants X and Y are being tried jointly and the statement is one of defendant X, the jury should be instructed that it may consider the statement as evidence of X’s guilt but may not consider it as evidence of Y’s guilt.
- F. **When Adequate Redaction is Not Possible.** There may be situations in which redaction is not possible. This may occur, for example, when the required redaction would materially alter the content of the statement in a way that prejudices the State or the declarant codefendant. See *State v. Giles*, 83 N.C. App. 487, 494 (1986) (redaction of declarant defendant’s statement to omit all references to accomplice was proper as it did not materially alter the statement and was not prejudicial); *State v. Holmes*, 101 N.C. App. 229, 238 (1990) (same, citing *Giles*), *aff’d on other grounds*, 330 N.C. 826 (1992). In situations where the statement cannot be adequately sanitized, the prosecution must choose between relinquishing the confession or trying the defendants separately. *State v. Brewington*, 352 N.C. 489, 508-09 (2000); G.S. 15A-927(c)(1) (codifying this principle).

II. Exceptions.

- A. **Hearsay Rules.** As noted in Section I.B. above, *Crawford* significantly changed the analysis of the applicability of the confrontation clause to statements of a non-testifying declarant. After *Crawford*, the court must determine whether the statement is testimonial and offered for its truth. If it is, introduction of the statement generally is barred by the confrontation clause (subject to limited exceptions), regardless of whether the statement would otherwise satisfy a hearsay exception. Because satisfying a hearsay exception often also was deemed to satisfy the confrontation clause itself prior to *Crawford*, older North Carolina cases sometimes would broadly state that *Bruton* did not apply to codefendant statements admissible against a defendant through a hearsay exception under the rules of evidence. Compare *State v. Willis*, 332 N.C. 151, 167 (1992) (so framing *Bruton*), *State v. Porter*, 303 N.C. 680, 695-97 (1981) (same), and *State v. Hardy*, 293 N.C. 105, 118 (1977) (same), with *Lilly v. Virginia*, 527 U.S. 116, 128, n.5 (1999) (plurality holds that a codefendant’s

statement against penal interest that also incriminates the defendant did not fall within a “firmly-rooted” hearsay exception satisfying the confrontation clause under pre-*Crawford* analysis; noting that *Bruton* was implicitly premised on this principle), and *State v. Kimble*, 140 N.C. App. 153, 158 (2000) (applying *Lilly*).

Post-*Crawford*, the confrontation clause is an independent bar to a non-testifying codefendant’s testimonial statement offered for its truth, regardless of whether the statement satisfies a hearsay exception. See *Crawford*, 541 U.S. at 61 (“[W]e do not think the Framers meant to leave the Sixth Amendment’s protection to the vagaries of the rules of evidence. . . .”). Thus, it no longer is accurate to say that *Bruton* does not apply if a statement falls within a hearsay exception. However, as a practical matter many hearsay exceptions involve statements likely to be deemed non-testimonial regardless of hearsay rules. Cf. *Willis*, 332 N.C. at 168 (codefendant made statement in furtherance of conspiracy); *Porter*, 303 N.C. at 696 (codefendant made excited utterance in response to overhearing police radio communication immediately after arrest); *Hardy*, 293 N.C. at 117 (jail house informant recounted codefendant statements falling within the adopted admission hearsay exception that the informant overheard while sharing a cell).

- B. Declarant Takes the Stand.** If the declarant takes the stand and is cross-examined, a defendant has been afforded his or her right to confrontation and the *Bruton* rule does not apply. See, e.g., *State v. Evans*, 346 N.C. 221, 232 (1997); *State v. Workman*, 344 N.C. 482, 496 (1996).

- III. Defendant’s Objection to Joinder.** G.S. 15A-927(c)(1) codifies *Bruton* principles by requiring that trials of codefendants be severed in certain circumstances. *State v. Johnston*, 39 N.C. App. 179, 182 (1978) (G.S. 15A-927(c)(1) codifies *Bruton*). If a defendant objects to a joint trial because an out-of-court statement of a codefendant makes reference to the defendant but is not admissible against him, the trial court must require the prosecutor to select one of the following courses of action:

- a joint trial at which the statement is not admitted into evidence;
- a joint trial at which the statement is admitted into evidence only after all references to the defendant have been effectively deleted so that the statement will not prejudice the defendant; or
- a separate trial of the objecting defendant.

G.S. 15A-927(c)(1)a.-c.

G.S. 15A-927(c)(3) authorizes a trial court to order the State to disclose, outside the presence of jurors, any statements made by the defendants which the State intends to introduce at trial when that information would assist the court in ruling on an objection to joinder or severance of defendants.

Because G.S. 15A-927(c)(1) applies to any codefendant statement that “makes reference” to the defendant, it covers a broader range of statements than the *Bruton* rule. The North Carolina appellate courts have not addressed whether the statutory requirement that all references to a non-testifying defendant be “effectively deleted” imposes a higher standard for redaction than the constitutional *Bruton* rule as interpreted in *Samia*. As discussed above, there is some discrepancy between United States Supreme Court and North Carolina case law concerning both statements that inculcate by inference and statements that are redacted with vague references to accomplices.

G.S. 15A-927(c)(2) addresses broader grounds for granting joinder or severance (discussed in greater detail in [Joinder and Severance](#)). In *State v. Evans*, 346 N.C. 221, 232 (1997), the North Carolina Supreme Court considered both G.S. 15A-927(c)(1) and (c)(2) in determining whether the trial court erred in admitting a codefendant's confession at his joint trial with the defendant and in denying the defendant's motion for severance. There, the State attempted to introduce a redacted version of the codefendant's confession during the testimony of the law enforcement officer who had interrogated the codefendant. The codefendant later testified to an alibi defense that was inconsistent with the redacted confession. The trial court allowed the State to impeach the codefendant with an unredacted version of the confession, which incriminated the defendant. The defendant was convicted and appealed, arguing a violation of *Bruton*, due process, and G.S. 15A-927. The Court found no error, reasoning that *Bruton* did not apply because the codefendant testified, thus affording the defendant his right to confrontation. The Court further held there was no violation of due process or G.S. 15A-927(c)(2), noting plenary evidence irrespective of the codefendant's statements that the defendant was involved in the murder for which he was tried. The Court further noted that the trial court's instruction to the jury limiting the use of the codefendant's statement to assessment of the codefendant's credibility cured "[a]ny error in the admission of [the codefendant's] statements." 346 N.C. at 232-33. *Cf. State v. Jones*, 280 N.C. 322, 339 (1972) (noting, in a case decided prior to enactment of G.S. 15A-927, the possibility that a defendant's right to a fair trial could be infringed by the introduction of a codefendant's statement incriminating the defendant even if the codefendant takes the stand and there is no violation of the right of confrontation).