

A man and a woman were charged with murder. Each gave a confession to the police that implicated both of them. The woman later retracted her confession, claiming that it was coerced. The man and the woman were tried together. The prosecutor offered both confessions into evidence. The man and woman objected.

After a hearing, the trial judge found that both confessions were voluntary and admitted both into evidence. The woman testified at trial. She denied any involvement in the crime and claimed that her confession was false and the result of coercion. Both defendants were convicted.

On appeal, the woman contends her conviction should be reversed because of the admission into evidence of the man's confession.

Will the woman likely prevail on her appeal?

- A. No, because the woman testified at trial on her own behalf.
- B. No, because the woman's own confession was properly admitted into evidence.
- C. Yes, unless the man testified at trial.
- D. Yes, whether or not the man testified at trial.

## Explanation:

### Bruton rule

Codefendant's out-of-court statement admissible if:

codefendant testifies

out-of-court statement redacts (removes) reference to defendant *or*

statement used to rebut claim of coerced confession & jury is instructed as such

Most errors made by the trial court will be reviewed on appeal for harmless error. Under the **harmless error test**, the government must prove beyond a reasonable doubt that the error did not contribute to the defendant's conviction or the conviction will be reversed. Error occurs when the trial court violates a defendant's constitutional rights.

In a **joint jury trial**, two or more defendants are tried before the same jury for charges related to the same facts. Each defendant has the Fifth Amendment [privilege against self-incrimination](#) and can refuse to testify at trial. But each defendant also has the Sixth Amendment **right to confront** (ie, cross-examine) adverse witnesses. So, if the trial court admits an **out-of-court statement** made by a **non-testifying co-defendant** that is adverse to the other defendant (eg, implicates that defendant in the crime), it violates that defendant's right to confrontation.

Here, the man and the woman each gave a confession to the police that implicated them both for murder. During their joint jury trial, the prosecution offered their prior confessions into evidence. Since the man's confession implicated the woman in the crime, the trial court's decision to admit his prior confession into evidence violated her right to confrontation if he did not testify at trial. Therefore, the woman will likely prevail on her appeal *unless the man testified* and was thereby subject to cross-examination (**Choice D**).

**(Choice A)** Although the woman testified at trial on her own behalf, she could not confront the man through cross-examination if he did not testify. And since her testimony did not render the erroneous admission of the man's confession harmless beyond a reasonable doubt, her conviction should be reversed on appeal.

**(Choice B)** The woman's confession was properly admitted into evidence because she testified at trial. Although her confession may have aided in her conviction, this fails to prove beyond a reasonable doubt that the man's confession did not contribute to her conviction.

### Educational objective:

In a joint jury trial, the Sixth Amendment confrontation clause is violated when a non-testifying co-defendant's prior statement implicating the other defendant in the crime is admitted at trial.

## **References**

U.S. Const. amend. VI (confrontation clause).

Bruton v. United States, 391 U.S. 123, 136 (1968) (analyzing the right to confront co-defendant).

Schneble v. Florida, 405 U.S. 427, 430 (1972) (recognizing that the standard of appellate review for a confrontation issue is harmless error).

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