

Two defendants were being tried together in federal court for bank robbery. The prosecutor sought to introduce testimony from the first defendant's prison cellmate. The cellmate would testify that the first defendant had admitted to the cellmate that he and the second defendant had robbed the bank. The prosecutor asked the court to instruct the jury that the cellmate's testimony could be considered only against the first defendant.

Can the cellmate's testimony be admitted in a joint trial over the second defendant's objection?

- A. No, because the first defendant made the statement without Miranda warnings.
- B. No, because the limiting instruction cannot ensure that the jury will not consider the testimony in its deliberations regarding the second defendant.
- C. Yes, because the first defendant's statement was a declaration against penal interest.
- D. Yes, because the limiting instruction sufficiently protects the second defendant.

Explanation:

A court should exclude testimony that would violate a criminal defendant's constitutional rights, including the Sixth Amendment **right to confront** (ie, cross-examine) adverse witnesses at trial. In a **joint jury trial**—ie, when two or more defendants are tried before the same jury on charges related to the same facts—a defendant's right to confrontation is violated when:

the court admits a **co-defendant's out-of-court statement** that implicates the other defendant in the crime *and*

the co-defendant **does not testify** at trial and cannot be compelled to testify due to his/her Fifth Amendment privilege against self-incrimination.

Here, at the defendants' joint jury trial for bank robbery, the prosecution wanted the first defendant's cellmate to testify that the first defendant confessed. But the admission of that testimony would violate the second defendant's right to confrontation because (1) the confession was an out-of-court statement that implicated him in the crime and (2) there is no indication that the first defendant will testify at trial (nor can he be compelled to do so).

And a **limiting instruction** directing the jury to only consider the first defendant's statement against him cannot eliminate the substantial risk that the jury will consider that statement in its deliberations concerning *both* defendants. Therefore, a limiting instruction **cannot cure** this Sixth Amendment violation (**Choice D**).

(Choice A) **Miranda warnings** are only required when a person is subjected to custodial interrogation by a known law enforcement officer—not undercover agents or jailhouse informants (like the cellmate). And even if Miranda warnings had been required, the second defendant can only object to the violation of his own constitutional rights—not the rights of another.

(Choice C) A statement against interest—ie, a statement that goes against an unavailable declarant's penal, pecuniary, or proprietary interests—is a hearsay exception that allows an out-of-court statement to be admitted at trial. This exception does not apply here since statements made by party-opponents (eg, the first defendant's confession) are not hearsay. But even if it did, the Sixth Amendment violation renders this testimony inadmissible.

Educational objective:

In a joint jury trial, a criminal defendant's Sixth Amendment right to confront adverse witnesses is violated when (1) the court admits a co-defendant's out-of-court statement that implicates the other defendant in the crime and (2) the co-defendant does not testify. A limiting instruction cannot cure this violation.

References

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

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

Cruz v. New York, 481 U.S. 186, 193 (1987) (finding that a limiting instruction is insufficient to protect a defendant's confrontation right).

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6th Amendment right to confrontation in joint jury trial

