

THIS WEEK:

- **Aggravated Battery; LWOP for Juveniles**
- **District Attorneys; Motions for Disqualify**
- **Prior Consistent Statements; Harmless Error**
- **Pro Bono Attorneys; Indigent Defense Act**
- **Theft by Receiving; *Bruton***

Aggravated Battery; LWOP for Juveniles

Moss v. State, S20A1520 (3/15/21)

Appellant was convicted of felony murder, possession of a firearm during the commission of a crime, and theft by receiving stolen property. The evidence showed that appellant used a stolen weapon to shoot and kill the victim in the abdomen during an attempted armed robbery.

Appellant contended that his trial counsel was constitutionally ineffective for failing to demur to the aggravated battery count of the indictment, as well as the felony murder and firearm counts that were predicated on aggravated battery. As an initial matter, the Court found that appellant's ineffective assistance claim was moot as to the aggravated battery count because that offense merged into his felony-murder conviction. But his claim that the alleged defect in the indictment also subjected the related felony murder and firearm counts to demurrer was not moot, because both of those counts were predicated on the aggravated battery and resulted in convictions.

Appellant contended that the aggravated battery count was subject to a demurrer because it failed to allege that he deprived the victim of any particular member of his body. The Court disagreed. The Court found that the indictment used the traditional phrase "to wit" to explicitly link its general allegation that appellant "cause[d] bodily harm to the person of [the victim] by depriving him of a member of his body" to its more specific allegation that appellant "shot [the victim] in the lower *abdomen* with a firearm causing serious bodily injury resulting in death." (Emphasis supplied.) And the indictment necessarily implied as much because the victim's abdomen was the only location on his body specified and because no other bodily member was mentioned. Thus, the Court held, because the aggravated battery count sufficiently alleged that the victim's abdomen was the member of his body of which he was deprived as a result of appellant's action, a demurrer based on appellant's first argument would not have been successful, and appellant could not show deficient performance, as counsel cannot be ineffective for failing to make a meritless motion,

As to appellant's second argument—that even if the indictment could be read to allege that the victim was deprived of his abdomen, the abdomen is not a "member" of the body—appellant conceded during the hearing on his motion for new trial that Georgia courts have "not addressed this particular body part" in the context of aggravated battery, and, the Court noted, it has not found any case that has done so. The Court stated that it has generally defined "member" in OCGA § 16-5-24 (a) as a "bodily part or organ," *Mitchell v. State*, 238 Ga. 167, 168 (1977), and Georgia courts have construed

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"member" to include an eye, jaw, brain, spleen, ear, leg, shoulder, finger, genital organ, tooth, rectum, elbow, nose, and wrist. But the Court stated, its research did not uncover Georgia cases explaining or offering examples of body parts or organs that do not constitute a bodily "member." Thus, because existing precedent does not resolve whether "abdomen" is included in the definition of bodily "member," appellant could not show that trial counsel's failure to file a demurrer claiming that the abdomen is not a bodily "member" amounted to deficient performance.

Appellant also contended that he could not be sentenced to life without parole ("LWOP") because OCGA § 17-10-16 (a) prohibits the imposition of an LWOP sentence on a juvenile. The Court noted that OCGA § 17-10-16 (a) provides: "Notwithstanding any other provision of law, a person who is convicted of an offense . . . for which the death penalty may be imposed under the laws of this state may be sentenced to death, imprisonment for life without parole, or life imprisonment as provided in Article 2 of this chapter."

Appellant argued that the portion of OCGA § 17-10-16 (a) that permits an LWOP sentence when a person is "convicted of an offense . . . for which the death penalty may be imposed" is not satisfied here because the death penalty may not be imposed upon juveniles. Although appellant cited no direct authority for this analysis, he implied that the "notwithstanding any other provision of law" portion of OCGA § 17-10-16 (a) references, and indeed grafts into the statute, the United States Supreme Court's Eighth Amendment jurisprudence. See, e.g., *Roper v. Simmons*, 543 U.S. 551, 578 (125 S.Ct 1183, 161 LE2d 1) (2005) (holding that the Eighth Amendment prohibits the death penalty for juveniles).

However, the Court found, this interpretation ignores the complete statutory text read in its most natural and reasonable way. OCGA § 17-10-16 (a)'s reference to an offense "for which the death penalty may be imposed *under the laws of this state*" (emphasis supplied) is most naturally understood to mean an offense for which the governing Georgia statute lists the death penalty as a sentencing option. Thus, the Court concluded, OCGA § 17-10-16 (a) is satisfied because OCGA § 16-5-1 (e) (1) enumerates death as a potential sentence for murder. To hold otherwise would import into a Georgia statute an evolving body of United States Supreme Court case law when the text says nothing about constitutional limitations in general or juveniles in particular.

Nevertheless, appellant argued, if the Court did not adopt his interpretation of OCGA § 17-10-16 (a), the statute will be rendered "mere surplusage" because its only possible meaning is "that those who cannot constitutionally be sentenced to death may also not be sentenced to life without parole." The Court disagreed. Although it is true that the General Assembly has made a number of changes to the statutory scheme for murder—including repealing other statutes pertaining to LWOP sentences and adding OCGA § 16-5-1 (e) (1), which enumerates LWOP as a potential sentence for persons convicted of murder—OCGA § 17-10-16 (a) still retains meaning. Indeed, by its plain terms, OCGA § 17-10-16 (a) authorizes death, LWOP, and life in prison as sentences for persons convicted of offenses for which the death penalty may be imposed. And even to the extent OCGA § 16-5-1 (e) (1) controls sentencing for the specific offense of murder, OCGA § 17-10-16 (a) still serves as a general background rule that authorizes LWOP (as well as death and life in prison) sentences for other offenses that meet its requirements, whether those offenses currently exist in Georgia law or may be enacted in the future. Accordingly, the Court found, appellant's arguments failed.

District Attorneys; Motions for Disqualify

Neuman v. State, S20A1143 (3/15/21)

On retrial, appellant was convicted of malice murder and possession of a firearm. The record showed that appellant's previous convictions were reversed by the Court following his first trial because the State had improper access to privileged notes and records of appellant's mental health experts during preparation of the State's case. See *Neuman v. State*, 297 Ga. 501 (2015).

Prior to appellant's second trial, the State announced that appellant would be tried by the same two assistant district attorneys who had prosecuted him during his first trial. In response, appellant filed a motion to disqualify the entire office of the District Attorney from participating in the retrial. Appellant noted that the prosecutors were in possession of and had read the information the Court deemed protected by attorney-client privilege and should be disqualified from participating at the retrial. At the hearing on the motion, appellant argued that the prosecutors' possession of this information affected their preparation of his case, creating a disqualifying interest or relationship under OCGA § 15-18-5 (a). In response, the State argued that this situation did not constitute a disqualifying interest or relationship and that the remedy for the State's possession and use of privileged information was not disqualification, but rather complete exclusion of the improper evidence from the second trial. The trial court agreed with the State, denied appellant's motion to disqualify, and allowed the two assistant district attorneys to represent the State again at the second trial. Their representation, however, was subject to strict limitations on the use of the privileged material, including excluding the privileged information from evidence, hiring new experts with no access to the privileged information, erecting an "ethical screen" within their office, and destroying all copies of the privileged information.

Citing two cases from other states: *State ex rel. Winkler v. Goldman*, 485 SW3d 783, 790-791 (Mo. Ct. App. 2016) (holding that the prosecutor should be disqualified from the case due to bad faith conduct in receipt of privileged information), and *State v. Marks*, 758 S2d 1131, 1137 (Fla. Dist. Ct. App. 2000) (affirming disqualification of prosecutor's office after it received extensive, "unfettered access" to over 250 confidential case files held by defendant's attorney), appellant argued that disqualification of the district attorney's office from the second trial was the only proper remedy for the State's receipt of the privileged information. The Court disagreed.

The Court found that disqualification of the prosecuting attorneys might be appropriate in a case like *Marks*, where the privileged information disclosed to the prosecution was so voluminous that it would cast doubt on the fairness of the trial absent disqualification of the prosecuting attorneys who had reviewed the files. Here, however, the disclosed information was relatively limited. The privileged information provided to the prosecutors consisted only of notes and records from experts who were not called as witnesses in the second trial. And, per the order of the trial court, the prosecutors here were barred from making any use of those notes in the second trial. Further, unlike the situation in *Winkler*, the record did not indicate any evidence of bad faith conduct on the part of the prosecuting attorneys or the District Attorney's office, and appellant conceded at oral argument that the State did not engage in any misconduct in obtaining the privileged information.

Instead of disqualifying individual prosecutors or a district attorney's entire office, the Court found that the trial court denied the State the benefit of the privileged evidence at trial and provided the appropriate remedy for a situation like this. Therefore, the Court found no abuse of the trial court's discretion in its decision to deny the motion to disqualify.

Moreover, the Court found, the record showed that the trial court also took other reasonable steps before appellant's second trial to prohibit the prosecutors from relying on the information, and it specifically found that the prosecutors had no unfair advantage in the second trial based on it. During the hearing on appellant's motion for new trial, the prosecutors represented to the trial court that, as ordered by the court before the second trial, they had not used the information in their preparation for the second trial and that they had erected an "ethical screen" by hiring new experts, destroying all copies of the documents, and not discussing or otherwise communicating about the privileged information with each other or anyone in the office of the District Attorney. Thus, the Court determined, because the trial court was best positioned to judge the credibility of the prosecutors' statements, it could not say that the trial court erred in relying on these assurances regarding the additional procedures the State followed to prevent use of the privileged information. Finally, the same judge presided over both trials. As with the question of the prosecutors' credibility, the trial court was in the best position to determine whether access to the privileged information infected or tainted the second trial. The trial court determined that it did not, and the Court additionally saw no abuse of discretion in that determination either.

Accordingly, the Court concluded, because appellant did not demonstrate a basis for disqualification of the specific prosecutors who handled his case, disqualification was not warranted as to the office of the District Attorney as a whole.

Prior Consistent Statements; Harmless Error

McGarity v. State, S20A1528 (3/15/21)

Appellant was convicted of malice murder and other crimes in connection with the shooting death of Hendon and reckless conduct (as a lesser included offense of aggravated assault) and simple battery as to Head. The relevant evidence, briefly stated, showed that appellant, Head, and White were friends, who all knew each other from the same apartment complex called Merchants Court. One evening, the three were at a convenience store and appellant and Head were arguing. As Head exited the store, appellant hit him in the face, and Head stumbled to the ground. Head testified that, when he got up to defend himself, appellant pressed a black gun into his abdomen, and Head backed up and then he and White walked away. Hendon then walked past appellant. Appellant took offense that Hendon walked so close to where he and Head were arguing. Appellant then slapped Hendon, knocking him down. When Hendon got back up, appellant pushed him against a wall and shot him.

Appellant argued that the trial court erred by allowing an investigating officer to testify as to the statements made to him by Head, White, and Barner (a friend of White who gave White and appellant a ride to the convenience store) on the day after the shooting. Appellant contended that the prior statements improperly bolstered the credibility of these three witnesses. The State argued that the investigator's testimony was admissible as evidence of prior consistent statements to rebut the defense's attacks on these witnesses' credibility and that, even if this testimony should not have been admitted, the error was harmless.

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The Court noted that OCGA § 24-6-613 (c) governs prior consistent statements. The Court stated that while the final sentence of the Code section effectively codifies our prior decisional law, the first two sentences expand the admissibility criteria to cover prior statements offered to rehabilitate a witness against *any* attack on a witness' credibility, other than that based on character or prior convictions, so long as the prior statement "logically rebuts" that attack. Reading the Code section as a whole, it is clear that a prior consistent statement will be admissible only if (1) the witness' credibility has been attacked, by some means other than impeachment by evidence of character or prior convictions; and (2) the prior statement "logically rebuts" that attack. Further, if the attack is by a charge of recent fabrication or improper influence or motive, a prior statement may "logically rebut" the attack only if it was made before the alleged fabrication, influence, or motive came about.

Here, the Court found, during the State's case-in-chief, the State called the investigator to testify about his investigation of the case. In detailing the chronology of his investigation, the investigator testified, over objection, about interviews he had conducted on the day after the shooting with various witnesses, including Head, White, and Barner. All three of these witnesses had already testified. These witnesses' day-after statements, as recounted by the investigator, were largely consistent with their trial testimony.

On cross-examination, all three witnesses were questioned by defense counsel in a manner designed to elicit that they were acquainted with one another as fellow residents at Merchants Court and that they had communicated among themselves prior to giving their day-after statements. The clear implication of this line of questioning was that these witnesses had "huddled up" to spin a narrative implicating appellant as the shooter. Head and White were also both asked about prior inconsistent statements they made to the police on the night of the shooting.

Appellant contended that these witnesses' day-after statements were improperly admitted because the statements were made after the witnesses' alleged collusion with one other. So far as this argument went, the Court agreed with it: because these witnesses' day-after statements were not made "before the alleged recent fabrication ... arose," OCGA § 24-6-613 (c), they could not be offered to logically rebut the attacks on the witnesses' credibility based on such fabrication. As to Barner, because the only mode of attack on her credibility was via the allegation of collusion to fabricate, her day-after statement was not admissible. Thus, the trial court abused its discretion in admitting Barner's prior consistent statement.

However, the Court found, the analysis with regard to Head's and White's day-after statements was not as clear-cut. Head admitted on cross-examination that, on the night of the shooting, he told the investigator that he "knew nothing" about it. Similarly, White was cross-examined regarding a statement he made to a different officer on the night of the shooting, in which, the cross-examination implied, he had failed to mention seeing a gun in appellant's hand. Thus, appellant elicited prior inconsistent statements from these two witnesses, although it was not clear that the theory behind that mode of impeachment was different than the claim of fabrication, with the earlier inconsistent statements elicited simply to support the suggestion that the witnesses had then colluded to change their stories.

Also, the Court stated, whether such an additional possible theory of impeachment makes a difference under Georgia's expanded parameters of admissibility for prior consistent statements is a question that the parties did not address. Nor was there any indication that the trial court relied on such an unargued theory, rather than the traditional charge-of-fabrication theory, in admitting any of the prior consistent statements. The Court also noted that the State cited no Georgia case law supporting the admission of Head's and White's prior consistent statements on this ground, nor did the Court find any.

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And, the Court found, analogous federal case law would not support the admission of the prior consistent statements in this case to logically rebut prior inconsistent statements made in different interviews on the previous day, particularly when an alleged motive to fabricate arose during the time between the initial and the day-after statements. Thus, the Court concluded, the trial court also abused its discretion in admitting Head's and White's prior consistent statements.

Next, the Court looked to whether the admission was harmless error. In light of the totality of the evidence, the Court found that it was highly probable that any prior consistent statements admitted improperly through the investigator did not contribute to the verdicts on the counts involving Hendon. However, the Court found, the same could not be said for the two counts involving appellant's confrontation with Head. While other witnesses testified that appellant and Head were involved in an argument, the only evidence that appellant hit Head, which was the basis for the simple battery verdict, or placed a gun against his abdomen, which was the basis for the reckless conduct verdict, was the testimony of Head, White, and Barner. Accordingly, because the trial court's error in admitting these witnesses' prior consistent statements to bolster their testimony likely affected the jury's guilty verdicts on those two charges, the Court found that the error was harmful to that extent and the convictions for those two charges was reversed.

Pro Bono Attorneys; Indigent Defense Act

Duke v. State, S20A1522 (3/15/21)

Appellant is indicted for murder and other offenses. Very briefly stated, the record shows that appellant, who is indigent, was represented by a circuit public defender's office, but switched representation to private counsel that agreed to represent him pro bono. Appellant's private counsel then sought public funds to hire experts and an investigator. The circuit public defender and the Georgia Public Defender Council ("GPDC") took the position that although the Indigent Defense Act ("IDA") allowed the GPDC and circuit public defenders to contract with consultants and lawyers not otherwise employed by the public defender system, there was no mechanism within the IDA that would allow private, pro bono counsel to contract with the GPDC in order to access state funding for experts and investigators. Additionally, the circuit public defender argued that because appellant had retained private counsel, he no longer met the IDA's definition of "indigent" under OCGA § 17-12-2 (6) (C). The trial court concluded "that while [appellant] has a constitutional right to be represented by private, pro bono counsel if he so chooses, he is not simultaneously constitutionally entitled to experts and investigators funded by the State." The Court then granted appellant's application for interlocutory appeal.

Appellant argued that he is indigent, that his indigent status entitles him to state-funded ancillary services — here, experts and an investigator — under the IDA, and that the trial court's conclusions that he is not indigent and that he is not entitled to state-funded ancillary services were erroneous. He further argued that his decision to exercise his constitutional right to counsel of his choice cannot impede his constitutional right to due process and a fair trial by denying him, as an indigent defendant, access to state-funded ancillary services.

The Court noted that OCGA § 17-12-2 (6) (C) contemplates that a criminal defendant with earnings below certain poverty guidelines is indigent *unless* he has "*other resources* that might reasonably be used to *employ a lawyer*." (Emphasis supplied.). Giving the pertinent text of the statute its plain and ordinary meaning in the context in which it appears, the "other resources" — i.e., resources other than "earnings" — must be usable to "employ" — i.e., provide work and pay for — a lawyer. But the very definition of pro bono counsel is lawyers who represent clients without pay. Thus, the Court

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found, when a defendant is represented by pro bono counsel, that lawyer is not an “other resource” available to “employ a lawyer.” Further, the fact that a defendant has pro bono counsel is not evidence that he has “other resources that might reasonably be used to employ a lawyer” for the purpose of determining indigence under OCGA § 17-12-2 (6) (C). Therefore, the Court held, the trial court's adoption of an interpretation to the contrary was error.

Next, the Court addressed the question of whether the IDA includes a mechanism for pro bono counsel to access state funding for ancillary defense services. Reading the statute as a whole, the Court concluded that the trial court's ruling (in accord with the GPDC's assertion) that pro bono counsel have no means by which to access state-funded ancillary services under the IDA was also erroneous. Specifically, the IDA allows the GPDC and circuit public defenders to contract with outside counsel and then provide ancillary service funding to indigent defendants represented by such attorneys. The IDA expressly requires the GPDC to contract with conflict attorneys in death penalty cases and the statute also allows circuit public defenders to employ, in addition to assistant and deputy public defenders, “other attorneys” where authorized by local law and funding. And the Court stated, clearly the term “other attorneys” refers to attorneys who do not work in circuit public defender offices. Thus, the Court found, the IDA established a system, supervised by the GPDC, for funding defense counsel and ancillary services for indigent defendants to ensure that defense lawyers and ancillary service providers are competent and conflict-free, and that public funds are used in compliance with the statutory scheme. The GPDC exercises that oversight not just for its own employees and the circuit public defenders and their employees, but also through contracts with outside counsel and ancillary service providers.

Therefore, the Court concluded, the IDA provides a mechanism for pro bono counsel representing an indigent defendant to access public funding for ancillary defense services: by entering into a contractual relationship with either the circuit public defender or directly with the GPDC. Nevertheless, the Court stated, it was not holding that an indigent defendant who has pro bono counsel is entitled to more favorable conditions in terms of ancillary services under the IDA through a contract with the GPDC or a circuit public defender than any other indigent defendant who is represented by counsel under the IDA. Instead, it was merely holding that there is a mechanism under state law for pro bono counsel representing an indigent defendant to access public funding for ancillary services. In so holding, the Court stated that it did not need to conclusively decide at this time whether, in this case, the United States Constitution requires provision of ancillary services for indigent defendants by some other mechanism outside the IDA.

Accordingly, the Court reversed the parts of the trial court's order ruling that pro bono counsel qualify as “other resources that might reasonably be used to employ a lawyer” under the IDA's definition of indigence, and that the IDA does not provide a mechanism by which an indigent criminal defendant represented by pro bono counsel can obtain state funds for ancillary defense services. Because the contractual mechanism is available to appellant, there was no need at this point to address the difficult constitutional questions that would arise if appellant is unable to obtain needed ancillary services in this case. Thus, the Court remanded the case to allow appellant to seek a contract with the GPDC or the circuit public defender that would provide him access to state-funded ancillary services.

Theft by Receiving; *Bruton*

Pender v. State, S20A1505, S20A1506 (3/15/21)

Pender, Whitaker and Fair were convicted of felony murder, theft by receiving, making a false statement to a law enforcement officer and other offenses. The relevant evidence, very briefly stated, showed that Pender and Williams stole a truck. Three days later, Pender, Wells and Dixon committed an armed robbery of a drug dealer. The three used the stolen truck to meet with the drug dealer, which was set up by Whitaker. Later, the four, together with Fair, used the truck to go rob a gambling house. In the course of that armed robbery, one victim was killed.

Pender argued that his conviction for theft by receiving could not stand under *Phillips v. State*, 269 Ga. App. 619, 631 (10) (2004), because there was direct evidence that he was one of the original thieves of the truck. But, the Court stated, it is not a requirement of the present theft by receiving law that the State prove Pender did not steal the truck. Although the evidence presented at trial would have authorized the jury to determine that Williams and Pender acted together to steal the truck, Pender was not charged in this case with theft by taking or any other offense targeted at the original or principal thief of stolen property. Even if he had been so charged, Pender could not have been convicted of both theft by taking and theft by receiving the same stolen property under the facts of this case.

Nevertheless, the Court found, *Phillips* and similar decisions of the Court of Appeals, see, e.g., *Marriott v. State*, 320 Ga. App. 58, 60-63 (1) (2013); *Fields v. State*, 310 Ga. App. 455, 456-457 (1) (2011), purport to apply the principle that when there is direct evidence that the defendant was the original or principal thief of the stolen property, he cannot be convicted of theft by receiving that property. Those opinions appear to trace back to *Thomas v. State*, 261 Ga. 854, 855 (1) (1992), in which the Court held that the same person could not be convicted of both robbery of a vehicle and theft by receiving that vehicle because such offenses are mutually exclusive when based on the same stolen property.

However, the Court stated, it reads *Phillips* and similar decisions of the Court of Appeals to be conflating two related, but distinct, roles for a court in reviewing the evidence presented at trial. Trial courts must instruct juries that they cannot simultaneously convict a defendant of both theft by taking and theft by receiving, and a new trial must be granted when a defendant is convicted of two offenses that are mutually exclusive. But that is distinct from a court's role in reviewing the sufficiency of evidence under *Jackson v. Virginia*. Under *Jackson*, the court determines only whether the evidence presented at trial authorized the jury's verdict, viewing all of the evidence presented in the light most favorable to that verdict. And where, as here, the defendant is found guilty of only one of two mutually exclusive offenses, it does not matter that the evidence would have also authorized the jury to return a guilty verdict on the other offense.

A conviction for the offense of theft by receiving, as set forth in OCGA § 16-8-7 (a), requires competent evidence that the defendant received, disposed of, or retained stolen property and knew or should have known that the property was stolen. A lack of intent to restore the property to its rightful owner can be demonstrated by direct evidence or inferred from the circumstances. The State is not required to also prove that the defendant was not the person who stole the property. Nor is the presence of evidence, whether direct or circumstantial, sufficient to support a conviction for theft by taking fatal to a conviction for theft by receiving.

Applying these principles, the Court clarified that, for purposes of reviewing the sufficiency of the evidence presented at trial under *Jackson v. Virginia*, a court need not determine whether the evidence presented supports a finding that the defendant was not the principal thief of the stolen property to uphold a jury's guilty verdict as to a theft-by-receiving charge. In cases where a defendant is charged with both theft by taking and theft by receiving, the trial court should clearly instruct the jury that it cannot find the defendant guilty of both offenses based on the same conduct. However, where, as here, the defendant is only charged with theft by receiving, a court reviewing the sufficiency of the evidence presented as to that charge need only determine whether the evidence presented at trial, viewed in the light most favorable to the verdict, supports the jury's guilty verdict as to that charge — not whether the evidence excludes the possibility that the defendant was the principal thief of the stolen property. Therefore, the Court disapproved its decisions and that of the Court of Appeals to the extent they can be read to hold otherwise.

Pender also argued that the trial court erred in violation of *Bruton* when it failed to exclude a statement made by Wells that he knew Pender from the neighborhood. The Court noted that at trial, a detective testified that Wells told him that he knew Pender and that they had lived in the same neighborhood. Pender argued that this statement directly incriminated Pender in the false-statement charge, which was based on Pender's statement to the police that he did not know Wells. The Court agreed.

In isolation, a person's mere statement that he knows a defendant does not typically implicate the defendant in a crime. Where, however, the charged crime is that the defendant made a false statement to law enforcement indicating that he did not know that person, the statement by the person that he does know the defendant is the core of the charged offense and facially and directly implicates the defendant in the crime. Thus, the admission of Wells' statement that he knew Pender violated *Bruton* because there was no need to connect this statement with other evidence in order to make it incriminating.

Next, the Court determined if the trial court's error was harmless. Here, the Court found, the jury could have determined that Pender's statement to the police that he did not know Wells was false based on other evidence presented at trial. In fact, the Court found, the other evidence that Pender's statement about not knowing Wells was false was overwhelming, and the prejudicial effect of Wells' statement to the police was minimal by comparison. Accordingly, the Court concluded that it was clear beyond a reasonable doubt that this *Bruton* violation was harmless.