

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v.

CHARLES AUSTIN JENKINS,

Defendant.

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CRIMINAL NO. 23-123-SAG

UNITED STATES' SUPPLEMENTAL OPPOSITION DEFENDANTS'
MOTION TO SEVER- BRUTON ISSUE

The United States of America, by and through its undersigned attorneys, hereby submits its supplemental response to Defendant Charles Jenkins's Motion to Sever, ECF No. 18, and Defendant Robert Krop's Motion to Sever, ECF No. 20-1. Specifically, during oral argument related to these motions to sever, the Court raised a possible *Bruton* issue *sua sponte*. The Government then asked for additional time to review the evidence and brief the issue. As an initial matter, the Government does not intend to play the statement of Krop at a joint trial. Therefore, the Government will only address *Bruton* as it relates to Jenkins's statements.

I. The defendants are not entitled to a severance under *Bruton*

The defendants are not entitled to a severance under *Bruton*. Under *Bruton*, a severance is required where a "confession of a non-testifying codefendant clearly implicates a defendant." *United States v. Akinkoye*, 185 F.3d 192, 197 (4th Cir. 1999) (citing *Bruton v. United States*, 391 U.S. 123, 135–36 (1968)). Facially incriminating confessions violate *Bruton*. See *Richardson v. Marsh*, 481 U.S. 200, 207 (1987). When properly redacted, and coupled with a limiting instruction, however, confessions can be admitted without violating *Bruton*. Compare

Richardson, 481 U.S. at 211 (no *Bruton* issue with a proper limiting instruction and redaction eliminated the defendant's name and any reference to his existence), with *Gray v. Maryland*, 523 U.S. 185, 196 (1998) (*Bruton* issue where redactions obviously referred to the defendant).

Mostly recently in *Samia*, the Supreme Court made clear that the Court distinguishes between “confessions that directly implicate a defendant and those that do so indirectly.” *Samia v. United States*, 143 S. Ct. 2004, 2017 (2023). *Bruton* applies “only to directly accusatory incriminating statements, as distinct from those that do not refer directly to the defendant and become incriminating only when linked with evidence introduced later at trial.” *Id.* (citing *Gray*, 523 at 194, 196) (quotation marks and internal alterations omitted). It does not give “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.*

In this matter, Jenkins was interviewed by members of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) on May 25, 2022. A copy of that transcript was provided to the Court as Jenkins's Exhibit 4-B for the Motions Hearing held on July 18, 2023. As the Court is aware, the alleged conduct involves Jenkins writing “law letters” to allow Krop, the principal owner and operator of the Machine Gun Nest, to obtain machineguns that Machine Gun Nest used to rent and obtain significant revenue. During the interview, Jenkins mentions that he knows Krop as a business owner in Frederick. Jenkins also mentions that he spoke with other employees of the Machine Gun Nest when he (Jenkins) was contacted about the law letters. In reviewing the transcript, the Government believes that any *Bruton* issue can be addressed by appropriate redactions and limiting instructions. For example, replacing Krop's name with the words “another person” or omitting references to another person altogether would be effective in disguising those references and preventing any *Bruton* issues. Therefore, the Government requests that this Court

