

hearsay issue

the implicit assumption in bruton is that if you sever then the confession will not come in at all in bruton codefendant evans confessed to police that he and bruton robbed the bank bruton that was certainly a statement against penal interest but the holding of bruton is that it is not admissible even if you instruct the jury they are not consider it against bruton

bruton cites to an earlier u.s. sup. ct case, douglas v. ala. which is directly on point to our case. the co defendant in douglas's case had already been convicted but he asserted the 5th bcs. his case was pending on appeal, sup. ct. said it was improper to impeach the codefendant with his confession when he pled the fith becs. it was a confrontation clause violation not to allow cross examination