

No. _____

In The
Supreme Court Of The United States

ADALBERTO MARTINEZ,

Petitioner,

v.

COMMONWEALTH OF MASSACHUSETTS

Respondent.

*On Petition For Writ Of Certiorari
To The Massachusetts Supreme Judicial Court*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Sixth and Fourteenth Amendments permit the State, in a joint criminal trial, to introduce for its truth a non-testifying codefendant's out-of-court accusation expressly implicating the defendant, on the theory that the statement was made years after the charged offense during an ongoing "joint venture" to conceal the crime, where the statement was made privately to a family member who already knew of the allegations and where the defendant had no opportunity to cross-examine the declarant.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the parties to the petition are named on the cover, and are: the petitioner, Adalberto Martinez, and the respondent the Commonwealth of Massachusetts. There are no other parties. None of the parties are a corporate entity.

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OPINIONS BELOW

The memorandum and order of the Massachusetts Appeals Court is reported at 106 Mass. App. Ct. 1130, 277 N.E.3d 1033 (2026), and is reproduced in the Appendix.¹ [App. 4]. The order of the Massachusetts Supreme Judicial Court denying the petitioner’s request for further appellate review is reported at 497 Mass. 1109, 281 N.E.3d 114 (2026), and is reproduced in the Appendix. [App. 3].

JURISDICTION

The order of the Massachusetts Supreme Judicial Court affirming the petitioner’s conviction and the denial of his petition for further appellate review entered on June 11, 2026. The petitioner seeks review of a judgment by the highest State court in which a decision could be had and invokes this Court’s jurisdiction under 28 U.S.C. 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Sixth Amendment to the United States Constitution provides in relevant part:

In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.

This protection applies to the States through the Fourteenth Amendment.

¹ Citations to the appendix will be referred to by “App.” followed by the page number. Citations to the trial transcripts of the second trial, pertinent to this petition, will be referred to by volume number, or date of a pretrial hearing, followed by the page number. The transcript is on file with the Mass. Appeals Court Clerk’s Office.

STATEMENT OF THE CASE

A. INTRODUCTION

This case arises from petitioner Adalberto Martinez's Massachusetts convictions for aggravated statutory rape of a child following two Suffolk Superior Court jury trials. The question presented here concerns only the second trial, on count one, in which petitioner was tried jointly with codefendant Destiny Santana. The first issue raised in petitioner's state appellate brief challenged the admission, against petitioner, of Santana's out-of-court statement to her mother under a joint-venture theory despite *Bruton v. U.S.*, 391 U.S. 123, 124 (1968) (defendant's Confrontation Clause rights are violated when a non-testifying codefendant's confession naming the defendant as a participant in the crime is introduced at their joint trial, even if the jury is instructed to consider the confession only against the defendant).

The Commonwealth's theory at the second trial was that, in the summer of 2015, petitioner and Santana sexually assaulted Santana's younger sister, C.R.,² who was then fifteen years old. According to the Commonwealth's evidence, C.R. did not immediately report the incident. She later reported it, recanted in 2016 while living with Santana, and

² A pseudonym consistent with the indictment.

then revived the accusation in 2020. The recantation evidence was itself tied to Santana's efforts to keep C.R. from proceeding.

The disputed evidence came from Santana's mother, Marilena Ruiz-Marte. The Commonwealth sought to introduce testimony that in 2019, during an attempt by Santana to reconcile with her mother, Ruiz-Marte told Santana that if she wanted to restore the relationship she had to tell the truth about what happened with C.R. According to Ruiz-Marte, Santana then said that petitioner had sex with C.R. "to make it even," or because petitioner "had to have sex with someone in her family in order to forgive her." The statement thus expressly accused petitioner of the charged act and supplied a motive for it.

Defense counsel objected on hearsay and *Bruton* grounds. The trial court excluded references to bruises, domestic violence, and guns, but admitted the core accusation against petitioner. The court made a preliminary finding that a joint venture existed between Santana and petitioner and further found that the venture was still ongoing because Ruiz-Marte already knew of the allegations, had previously been involved in urging police reporting, and "could have been the one to get this whole thing reactivated." The court reasoned that Santana's statement was an attempt to "enlist the mother to conceal the crime." The jury was instructed that it could consider Santana's statement

against petitioner if it found, by a preponderance of the evidence apart from the statement itself, that the defendants had a joint venture to commit the crime and that the statement was made during the joint venture to further or protect it. [App. 79; Tr., 5, 9, 11, 100, 108, 182]. The ADA responded that an ambiguity would go to the weight, not the admissibility of the evidence, and “as far as Bruton goes, that this was a statement of a joint venture in terms of attempting to further the conspiracy and keep a third party from reporting it.” [App. 81-82; Tr. 5, 184-85].

The jury convicted petitioner. On direct appeal, petitioner argued that admission of Santana’s statement violated Bruton because it was a hearsay confession by a non-testifying codefendant that directly incriminated him, and that the statement did not qualify as a joint-venture statement because it was made years after the crime, in response to a family demand for honesty, after the alleged participants’ interests had diverged.

The Appeals Court affirmed. It held that the Commonwealth had independently established a joint venture and that Santana’s 2019 statement to Ruiz-Marte was made during and in furtherance of a continuing concealment effort because Ruiz-Marte knew of the allegations, had previously encouraged reporting, and therefore “could

have been the one to get this whole thing reactivated.” [App. 12]. The Appeals Court further concluded that Santana “was trying to enlist her mother’s loyalty so that she would not speak up.” [App. 12]. It then held that admission of the statement did not violate petitioner’s confrontation rights because the statement was properly admitted as a joint-venture statement and was nontestimonial. [App. 13].

That ruling squarely presents the federal question whether a State may avoid *Bruton* by characterizing a codefendant’s direct, uncross-examined accusation as a statement made in furtherance of a post-crime concealment venture.

B. RELEVANT FACTS PRESENTED AT TRIAL

CR was born in early 2000, and was 23 years old at the time of trial. [Tr. 2nd, 4, 38]. CR’s older sister (by ten years) is Destiny the co-defendant. [Tr. 4, 41-42]. CR described her relationship with her mom growing up as they didn’t “get along a lot,” and “weren’t too close.” [Tr. 4, 42]. From 2007 to 2013, CR lived in Braintree and her dad “was in and out.” [Tr. 4, 47]. Destiny “would randomly show up sometimes,” though “it wasn’t a lot,” and saw around “five times a year.” [Tr. 4, 47]. There was a time when Destiny moved back into the family home including her boyfriend at the time and YR. [Tr. 4, 47-48].

In the summer of 2013, CR was 13 years old and the family lived in Weymouth, MA. [Tr. 4, 49, 54]. Their mother went to the Dominican Republic for the summer to meet her subsequent husband, Luis (Puma). [Tr. 4, 50]. CR recalled that she and her sister took care of YR, who was around six or seven years old. [Tr. 4, 50-51]. Destiny also came over that summer with her then boyfriend Gaby and others of her kids. [Tr. 4, 51, 54]. From September 2014, CR lived in Dominican Republic with caregivers and was brought her back to the U.S in July 2015. [Tr. 4, 53-66]. That summer, CR visited Destiny, twice at her home. [Tr. 4, 66-67]. The first visit they partied and “were drinking and smoking” marijuana. [Tr. 4, 69-70].

CR could not recall the date of the second time went to Destiny’s house in the summer of 2015, but it was about a week after the first visit. [Tr. 4, 70]. The defendant was Destiny’s boyfriend at this time and was at her home. [Tr. 4, 75-76]. CR had not met him before that night in person, though she did speak to him earlier that day on the phone. [Tr. 4, 76-77]. CR described the conversation as him “boasting about himself,” telling her “how much of a gangster he was,” and he told her “in a joking way, that he was going to fuck [her] up.” [Tr. 4, 80]. CR responded, “Ooh, I’m shaking in my blue dress.” [Tr. 4, 81]. CR also recalled Destiny telling her not to mention one of Destiny’s daughters

“because he didn’t know she existed,” and that another man (Blue Boy), had stopped by earlier. [Tr. 4, 81-82].

When the defendant arrived, he and Destiny went to her room. [Tr. 4, 82]. Everyone else was hanging out in the kitchen, drinking and smoking. [Tr. 4, 83]. At some time that night Destiny came to CR looking really nervous. [Tr. 4, 83-84]. She explained to CR about how when they were younger, she had had sex with one of the defendant’s cousins because he went away. This caused the defendant to be mad at Destiny,” and that that’s why he would put his hands on her.” [Tr. 4, 84]. Destiny explained that the only way to fix it would be if “he had sex with someone close to her.” [Tr. 4, 84]. Destiny then showed CR a bruise on her arm, seeming to assert that CR could do that favor for her, and she offered CR money. [Tr. 4, 84]. The arrangement conveyed to CR was that the defendant “wasn’t going to hit her anymore if [she] had sex with him. CR agreed to do that because she felt really bad for Destiny.³ [Tr. 4, 85-86].

A story was then created for the others in attendance; that the three were going to go in Destiny’s room and do tattoos. [Tr. 4, 86-87]. Others were told not to go into the room because the tattoos were being applied to their butts. [Tr. 4, 87]. CR was instructed to take a shower

³ At this point in CR’s testimony the court gave the jury a bad person/bad acts instruction. [Tr. 4, 85].

and shave her vagina before going in the bedroom. [Tr. 4, 87-88]. CR put on “leggings and a shirt” and went into Destiny’s bedroom, Destiny and the defendant were already there. CR testified that she felt “uneasy” and “nervous.” [Tr. 4, 88]. The defendant was sitting on a chair and Destiny was standing next to CR. The door was closed and locked. [Tr. 4, 88-89]. Destiny then turned the lights off. CR then took off her pants and underwear, but kept her shirt on. [Tr. 4, 89]. CR testified that he also kept his shirt on and took his pants off. CR then went and laid down on the bed on her back. The defendant got on top of her, so “he was in between [her] legs.” [Tr. 4, 90]. Destiny laid down next to them and held one of CR’s legs. [Tr. 4, 90-91]. CR then alleged that the defendant put his penis in her vagina. [Tr. 4, 90-91]. The defendant then said to Destiny, “I thought you said she shaved.” Destiny responded by laughing. [Tr. 4, 92].

The defendant “ended up saying in the middle of it like ‘I can't do it.’ and Destiny ended up saying back to him, ‘Well, you’re going to have to.’” [Tr. 4, 92]. CR stated that he was erect and was his penis in her vagina, he used a condom but didn’t ejaculate. [Tr. 4, 92-93]. He then got up, which caused CR to get up also. Destiny and the defendant were saying “let’s try again,” which caused CR to panic. [Tr. 4, 93]. At this point it was over and CR dressed, the lights were turned on and she

went to the kitchen. [Tr. 4, 93-94]. CR stated that she was crying and felt nervous, and was panicking. [Tr. 4, 94].

Destiny conveyed that she wanted CR “to do it again,” and CR responded, “are you serious?” [Tr. 4, 94]. The defendant entered the kitchen and Destiny got mad at CR because she was panicking. [Tr. 4, 94-95]. And the defendant told her to “calm down.” It was also made clear to CR that he wanted to do it again. [Tr. 4, 95]. CR then alleged that Destiny pushed her in front of the fridge and attempted to “choke” her. [Tr. 4, 95]. The defendant told them to stop, and the three ended up sitting at the table. [Tr. 4, 95-96].

The next morning, the defendant and Destiny, got into a brief argument, and then he left. [Tr. 4, 98-99]. CR did not tell anyone what occurred right away because she was embarrassment, and Destiny had asked her not to. [Tr. 4, 99-100].

In August 2015, CR went back to the D.R. to her grandfather’s house, and sometime later her sister Charisma (or Chichi) joined her there. Sometime thereafter, the two woman “ended up moving,” to CR’s godmother’s home. [Tr. 4, 101-02]. At this time CR had an argument with her mother who then stopped sending money to her and her father was not in a financial position to aid her. [Tr. 4, 101-03].

During the time, between September of 2015 and February of 2016, CR cut herself using a razor blade on her arms. [Tr. 4, 103-04]. She ended up telling Chichi that she was cutting herself, after Chichi caught her. [Tr. 4, 104-05]. In their bedroom CR told Chichi what had happened.⁴ [Tr. 4, 106-07]. The two women were in contact with Destiny through Chichi's laptop. [Tr. 4, 105]. CR asked Chichi not to tell what she had confessed. [Tr. 4, 109]. CR testified that Chichi was mad and communicated to Destiny calling her a pig, and she said "she (CR) was 15." Destiny response that she didn't owe anything to Chichi, that she owed CR. [Tr. 4, 110-11]. CR returned to the U.S. in June 2016. [Tr. 4, 112].

CR moved in with different family members including Destiny. [Tr. 4, 113-15]. While living with Destiny, she begged CR not to tell saying "she would get in trouble" and that the police were at her job and that they were questioning her, she told CR that they'd take YR away. [Tr. 4, 118-19]. This made CR feel bad for her, because she didn't want Destiny to get in trouble. [Tr. 4, 119]. In October 2016, CR told a detective that she had made up the story. [Tr. 4, 118]. CR testified that she lied because she had nowhere to live except for Destiny's house, and

⁴ A first-complaint instruction given to the jury. [Tr. 4, 107-09].

Destiny was begging her not to go forward with the investigation. [Tr. 4, 118].

CR returned to the D.R. in March 2017. [Tr. 4, 120]. In May of 2020, CR reported to the police that she wanted to move forward with this case. [Tr. 4, 120-21].

Charisma (or Chichi) was 26 years old at the time of trial. [Tr. 4, 175]. She testified that in the Summer of 2015, she spoke to CR about her being sad and cutting herself. [Tr. 4, 194-95]. Initially, Chichi called their mother, because she was scared because CR was acting differently and had never self-harmed. [Tr. 4, 195]. Chichi did speak with CR and asked her what was wrong. [Tr. 4, 195]. Chichi testified that CR “opened up” to tell her “the truth about what happened the night that [they] went to Destiny’s house.”⁵ [Tr. 4, 196]. CR told her, “that she didn’t in fact get a tattoo, that that was just a cover story, and that that night [their] older sister had asked her if she could have sex with her boyfriend,” the defendant. [Tr. 4, 197]. CR indicated that this stemmed from something that had occurred when they were younger, namely that she had had sex with his cousin. CR said that Destiny said that it was in order to get the defendant’s forgiveness for her having sex with his cousin. [Tr. 4, 198-99]. She said that Destiny was holding her leg while the defendant

⁵ The court gave the jury a first-complaint instruction. [Tr. 4, 196-97].

“was doing that.” [Tr. 4, 199-200]. Chichi then confronted Destiny about this through text through Facebook on her laptop. She recalled “going off on her,” calling her names and told her, “how could you,” “that’s your little sister,” “that’s disgusting.” [Tr. 4, 200-201]. Destiny responded that “it wasn’t [her] business, that that’s between herself and [CR], and that she owed [CR] money, not” Chichi. [Tr. 4, 200]. Chichi also recalled that CR was also was not happy that she had confronted Destiny. [Tr. 4, 200-201].

Eventually Chichi moved back to the U.S., and stayed with various people but ended up living at Destiny’s house the same time as CR. [Tr. 4, 201-03]. Chichi testified that Destiny took CR into a room to speak with her privately, and she listened at the door and heard Destiny apologized, and she acknowledged that that “wasn’t right,” and she was telling her that she wanted them “to move forward as a family,” and that they “could get past it.” [Tr. 4, 203-04]. Chichi also heard Destiny suggest that she wanted CR to recant the statements made to their mother, which she did end up doing because she had “basically nowhere to go.” [Tr. 4, 204-05].

Marielena Ruiz-Marte, mother of Destiny, Chichi, and CR also testified. She mainly was a confirmatory witness to corroborate family members, the whereabouts of her daughters, when they were in the U.S.

versus the D.R., when they lived with her or with Destiny, or some other location. [Tr. 4, 226-232; 5, 15-29].

Mrs. Ruiz-Marte, was also asked about a specific incident. [App. 87-88; Tr. 5, 190-91]. In the fall of 2019, Destiny reached out to her by phone indicating that she wanted to have her in her life; to reestablish a relationship. [App. 87-88; Tr. 5, 190-91]. Mrs. Ruiz-Marte indicated this could happen if Destiny were honest about what had happened with CR. [App. 88-89; Tr. 5, 191-92]. Mrs. Ruiz-Marte and Destiny then met in her car, outside of Destiny's apartment. [App. 89; Tr. 5, 192]. In that conversation Destiny admitted what had happened, that there was an incident with CR, Destiny, and the defendant. [App. 89-90; Tr. 5, 192-93]. That the defendant had demanded of Destiny back when this incident happened "to make it even," because "she had had some kind of relationship with a family member of his -- he had to have sex with a family member of hers in order to forgive her." [App. 90-91; Tr., 5, 193-94]. Mrs. Ruiz-Marte stated that her daughter Destiny admitted the rape, but "she didn't talk about specifically" what happened on that night of the party; "She said, 'It had to happen,' And she explained the reason why." [App. 94; Tr. 5, 197]. After Destiny "admitted what had happened," Mrs. Ruiz-Marte then spoke to the Boston Police. [App. 91; Tr. 5, 194].

Dr. Stephanie Block, a psychologist discussed the reasons a child might delay disclosing sexual abuse. [Tr. 5, 117, 121-26]. Dr. Alice Newton general pediatrician discussed general female anatomy and medical exam practices. [Tr. 5, 129].

Boston Police Detective James Morrissey became involved in this case in 2016. [Tr. 2nd, 5, 150-52]. Detective Morrissey joined Detective Bowen in speaking with Destiny Santana on July 18, 2016, at her house in Dorchester. [Tr. 5, 153]. She was informed she was not under arrest. [Tr. 5, 154]. No “*Miranda* warnings” were given. [Tr. 5, 154-55]. Detective Bowen ask Ms. Santana about her relationship with Chino, she responded that they had never been in a boyfriend/girlfriend relationship, and that she had not seen him for a year and a half. [Tr. 5, 156-58]. She also said that the defendant had never stayed at her home. [Tr5, 158].

A criminal complaint obtained against the defendant and he was placed under arrest. [Tr. 5, 158]. Police interviewed him on July 28, 2020. [Tr. 5, 158-61]. He was read his *Miranda* rights. [Tr. 5, 163]. Detective James Morrissey read into the record certain portions of the interview with the defendant. When asked "Who is Destiny Santana?" he responded that she was his “Ex-girlfriend.” [Tr. 5, 210]. When asked when the last time he had contact with Destiny, he responded “I spoke to her the other day.” [Tr. 5, 210]. When asked if he lived with her, he

said, “no,” he just visited. [Tr. 5, 210-11]. He stated he “barely went over there.” [Tr. 5, 211]. He said he had only met CR once. [Tr. 5, 215]. When asked if he “ever spend the night over” at Destiny’s apartment, he responded “Absolutely, yeah.” [Tr. 5, 215].

Detective James Morrissey read into the record certain portions of the July 29, 2020, interview with the co-defendant, Destiny. When asked if she knew the defendant, she responded, “I knew him since I was young, and I dated him a long time ago.” [Tr. 5, 222]. She was 14 years old when they met 2004, he was 18 years old. [Tr. 5, 222-23]. She stated that “He convinced [her] to run away from home,” he then “went away” and she “Made [her] life.” [Tr. 5, 223-24]. She stated that years later, he found her on Facebook. [Tr. 5, 223, 226-27]. When asked “How long were you seeing him when you were 25 [years old]?” she answered, “Not for long. He came over two to three times. I visited him two or three times, and that was it.” [Tr. 5, 224]. She didn’t think he came over to her home more than “four” times. [Tr. 5, 225]. She also stated that he never stayed the night, because they were not “close like that.” [Tr. 5, 226].

Adalberto Martinez testified at this trial and denied the accusation of rape. [Tr. 5, 254; 6, 29-31].

REASONS FOR GRANTING THE PETITION

I. The Decision Below Permits States To Evade *Bruton* By Relabeling A Non-Testifying Codefendant's Direct Accusation As A Joint-Venture Statement

This Court held in *Bruton v. U.S.*, 391 U.S. 123, 124 (1968), that the Confrontation Clause is violated when, at a joint trial, the jury hears a non-testifying codefendant's confession that expressly implicates the defendant. That principle was reaffirmed in *Cruz v. New York*, 481 U.S. 186, 189-90 (1987) (where two or more defendants are tried jointly, pretrial confession of one that implicates the others is not admissible against others, unless confessing defendant waives Fifth Amendment rights so as to permit cross-examination). And this Court has carefully limited the circumstances in which such statements may be used consistent with the Sixth Amendment, distinguishing between statements that are facially accusatory and those that become incriminating only through later linkage. *See Richardson v. Marsh*, 481 U.S. 200, 208 (1987); *Gray v. Maryland*, 523 U.S. 185, 192-93 (1998); *Samia v. U.S.*, 599 U.S. 635, 653 (2023).

Santana's statement falls squarely within *Bruton*'s core prohibition. It was not redacted. It did not refer to an unnamed "other person." It did not require inferential linkage. It expressly accused petitioner of the charged sexual act and supplied the reason why it allegedly occurred. The Appeals Court acknowledged as much,

recognizing that the statement directly and expressly implicated the defendant. [App. 10-11].

The decision below nonetheless held that no *Bruton* problem existed because the statement was admitted under the joint-venture exception. That reasoning cannot be reconciled with this Court's cases. *Bruton* does not turn on whether a prosecutor can attach a hearsay label to an out-of-court accusation. It turns on whether the State has introduced, for its truth, a confession-like accusation by a non-testifying codefendant whom the defendant cannot cross-examine. If evidentiary relabeling sufficed, *Bruton* would be easy to evade. Prosecutors could routinely introduce direct accusations by asserting that they maintained loyalty, promoted silence, or advanced concealment.

That danger is not hypothetical here. Santana's statement was introduced precisely because it was powerful substantive evidence. The Commonwealth did not offer it merely to explain context or to rebut a collateral claim. It offered the statement to prove petitioner's guilt. Once the State placed that accusation before the jury for its truth, petitioner's inability to cross-examine Santana became the central constitutional problem. The court below erased that problem by assuming the statement was "properly admitted" under state hearsay law and then using that conclusion to defeat the federal claim. This Court's review is

needed to make clear that *Bruton* cannot be nullified by recasting a direct accusation as a coconspirator or joint-venture statement.

II. The Decision Below Conflicts With This Court's Repeated Rejection Of An Open-Ended, Implied Concealment Phase

The rationale adopted below also conflicts with this Court's conspiracy-hearsay decisions. In *Krulewitch v. U.S.*, 336 U.S. 440, 442-44 (1949), this Court rejected the proposition that every completed conspiracy carries an implied subsidiary agreement to conceal the crime after its central objective has been accomplished. In *Grunewald v. U.S.*, 353 U.S. 391, 402 (1957), the Court again explained that acts or statements of concealment do not automatically extend a conspiracy absent proof that concealment itself was part of the original common design. And in *Fiswick v. U.S.*, 329 U.S. 211, 217-18 (1946), the Court held that statements made after a conspiracy has ended cannot be admitted against others merely because the declarant still hopes to avoid consequences.

Those principles foreclose the reasoning below. The charged act occurred in 2015. Santana's statement was made in 2019, during a private conversation with her mother in the course of a family reconciliation. Ruiz-Marte already knew of the allegations and demanded the truth as a condition of restoring the relationship. There was no evidence that petitioner and Santana were then coordinating

alibis, shaping a common story, directing witnesses, or otherwise acting together. There was no evidence petitioner even knew of the conversation.

The Massachusetts Appeals Court nonetheless treated the conversation as part of an ongoing joint venture because Ruiz-Marte “could have been the one to get this whole thing reactivated” and Santana was supposedly trying to enlist her loyalty. [App. 12]. That rationale has no stopping point. Under it, almost any post-crime statement to a relative, friend, or associate who might speak to police could be deemed “in furtherance” of concealment. That is precisely the limitless cover-up theory *Krulewitch* and *Grunewald* reject.

The problem is heightened by the personal and blame-shifting character of Santana’s statement. Santana made the statement to repair a strained family relationship, after her mother insisted on honesty. That strongly suggests an individual motive, not a shared criminal one. And the statement cast petitioner as the person who required the act in order to “forgive” Santana. Even if partially self-inculpatory, it plainly shifted principal blame. This Court has long treated accomplice accusations that spread or shift blame with special suspicion. *See Lee v. Illinois*, 476 U.S. 530, 530 (1986); *Lilly v. Virginia*, 527 U.S. 116, 133-34

(1999). The decision below thus extends the joint-venture exception well beyond the limits recognized by this Court.

III. The Decision Below Improperly Collapsed The Distinct Protections Of *Bruton* And *Crawford*

The Appeals Court also reasoned that Santana's statement was nontestimonial because it was made privately, in her mother's car, rather than to law enforcement. Even assuming that were correct under *Crawford v. Washington*, 541 U.S. 36, 54 (2004), *Davis v. Washington*, 547 U.S. 813, 829-30 (2006), *Michigan v. Bryant*, 562 U.S. 344, 370-71 (2011), and *v. Clark*, 576 U.S. 237, 245-46 (2015), it does not resolve the question presented here.

Crawford and *Bruton* address different problems. *Crawford* asks whether a statement is testimonial. *Bruton* asks whether a jury in a joint criminal trial can realistically be expected to disregard a non-testifying codefendant's facially incriminating accusation against the defendant. A statement may be private enough to fall outside *Crawford*'s core testimonial category yet still be devastatingly accusatory when offered to a jury as substantive proof of guilt.

That is what occurred here. Santana's accusation was not introduced merely for background. It was introduced to prove that petitioner committed the crime and to explain why. The fact that the original listener was a private family member does not make the

accusation less destructive once repeated to a jury in a joint trial. By treating the statement's private setting as effectively dispositive, the decision below collapses *Bruton* into *Crawford* and creates a roadmap for avoiding both: characterize a codefendant's direct accusation as private and nontestimonial, then further characterize it as helping conceal the crime, and the State may place it before the jury without producing the declarant. This Court should grant review to foreclose that end-run around the Confrontation Clause.

IV. This Case Is An Excellent Vehicle, And The Error Was Not Harmless

This case cleanly presents the federal question. The *Bruton* objection was preserved at trial. The trial court expressly admitted the statement against petitioner on the theory that the joint venture continued into a concealment phase. The Appeals Court affirmed on that same basis and expressly held that *Bruton* was not violated because the statement was properly admitted as a joint-venture statement. [App. 12-13]. There is no vehicle problem and no uncertainty about the ground of decision.

Nor was the error harmless. This was a credibility-driven prosecution involving delayed reporting and events said to have occurred years earlier. Santana's uncross-examined accusation was uniquely potent because it appeared to come from the only other adult

participant, supplied a motive narrative, and gave the Commonwealth the functional equivalent of an accomplice confession. Petitioner had no opportunity to test whether Santana was telling her mother what she wanted to hear, shifting blame, minimizing her own culpability, or speaking from motives of reconciliation and self-preservation rather than truth. The inability to expose those possibilities through cross-examination is exactly the evil the Confrontation Clause forbids.

This Court's review is warranted because the decision below authorizes admission of a facially incriminating codefendant accusation based on an expansive and speculative concealment theory that threatens to erode the protections of both Bruton and this Court's limits on post-crime coconspirator statements.

CONCLUSION

The petition for a writ of certiorari should be granted. The Massachusetts court's rejection of standards articulated by the Confrontation Clause and Due Process Clause affected the outcome of the petitioner's case and will no doubt continue to affect cases of other similarly situated defendants in state and federal courts. Where the fundamental rights of countless criminal defendants are at stake and will continue to be compromised as a result of the confusion on this issue, the writ should be granted and the case briefed and set down for argument.

Respectfully submitted,
Adalberto Martinez,
By his attorney,

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