IN THE COURT OF APPEALS OF IOWA

No. 9-393 / 97-1061
Filed February 9, 2000

STATE OF IOWA,

Appellee,

vs.

CARL KON VONGCHANH,

Appellant.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Jack Levin, Judge.

Carl Kon Vongchanh appeals from his convictions for second-degree murder, first-degree robbery, and willful injury. **AFFIRMED.**

James W. Ramey, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, John P. Sarcone, County Attorney, and Nan Horvat and James Ward, Assistant County Attorneys, for appellee.

Heard by Sackett, C.J., and Zimmer, and Miller, JJ.

ZIMMER, J.

This is a companion case to *State v. Leutfaimany,* 585 N.W.2d 200 (Iowa 1998). The defendant, Carl Kon Vongchanh, appeals a jury verdict of guilty on the charges of second-degree murder, first-degree robbery, and willful injury. Finding no merit to his contentions, we affirm the convictions.

I. Background Facts and Proceedings. On October 25, 1996, Tom and Annette Banh arrived at their store around 9:35 a.m. Soon after, four young men, Sy Roeuth, Hatsady Leutfaimany, the defendant, and Kingkhoy Vongphakdy, entered the store. Mrs. Banh recognized Roeuth because some of his family members were regular customers. Mr. Banh went into a back room to do some work. Leutfaimany appeared to do some shopping and testimony suggested Vongchanh stayed near the front of the store in a 'look-out' role. Meanwhile, Vongphakdy and Roeuth went in the back seeking to rob the store. They confronted Mr. Banh and Vongphakdy shot him several times after Banh tried to grab his gun. The four fled the scene. The action in the front of the store, as well as voices and gunshots, were captured on videotape. Mr. Banh died two months after the robbery when life support was removed.

Police located Roeuth and Leutfaimany within hours of the robbery. These two incriminated themselves along with Vongchanh and Vongphakdy. Authorities apprehended Vongchanh in New Mexico on November 5, 1996. Vongphakdy was later arrested in California.

The four men were jointly charged in a single trial information with first-degree murder, first-degree robbery, and willful injury. Over their objections, the

four defendants were tried together. The jury found Vongchanh guilty of second-degree murder, in violation of Iowa Code sections 707.1 and 707.3 (1995), first-degree robbery, in violation of Iowa Code sections 711.1 and 711.2, and willful injury, in violation of Iowa Code section 708.4. His codefendants were found guilty as charged. On appeal, Vongchanh argues: (1) the district court erred in failing to suppress the statement he gave officers in New Mexico; (2) his case should have been dismissed when he was not brought to trial within the ninety-day speedy trial deadline; (3) the trial court erred in failing to sever his trial from that of his codefendants; (4) the State committed prosecutorial misconduct during its closing argument; (5) the trial judge should have recused himself; and (6) the jury should have been allowed to hear the entire tape-recorded statement Vongchanh made to the police.

II. Suppression of Statement to New Mexico Police. Vongchanh was sixteen years old at the time of his arrest in New Mexico. He admitted participation in the robbery to the police. Before the interview, New Mexico police obtained a written waiver of Vongchanh's right to counsel. Vongchanh filed a motion to suppress this statement. In denying the motion, the district court concluded the law of New Mexico applied. Unlike Iowa, New Mexico does not require police to make a good faith effort to contact a parent or guardian of a juvenile in custody who is sixteen years or older. *See* N.M. Stat.Ann. § 32A-2-14 (1997 Supp.). Alternatively, if Iowa law applied, the district court ruled because Vongchanh was charged with a forcible felony, Iowa Code section 232.8(1)(c) excluded Vongchanh from the jurisdiction of the juvenile court, making section 232.11 inapplicable.

On appeal, defendant contends it was error for the trial court to deny suppression. He argues Iowa Code section 232.11, governing admissibility of a juvenile's statement to police, applies to a statement elicited from a juvenile in another state. The New Mexico officers failed to make any effort to contact a parent or guardian, as section 232.11 requires, before procuring a waiver of Vongchanh's right to counsel. Because Vongchanh asserts no constitutional barriers to the admissibility of his statement, we review this issue of statutory interpretation for errors at law. *See State v. Eickelberg,* 574 N.W.2d 1, 3 (Iowa 1997); *State v. Terry,* 569 N.W.2d 364, 366 (Iowa 1997) (interpreting 'reverse waiver' provision of the juvenile justice code).

A juvenile's statutory right to counsel is contained in Iowa Code section 232.11:

> 1. A child shall have the right to be represented by counsel at the following stages of the proceedings *within the jurisdiction of the juvenile court* under division II:
> a. From the time the child is taken into custody for any alleged delinquent act that constitutes a serious or aggravated misdemeanor or felony under the Iowa criminal code, and during any questioning thereafter by a peace officer or probation officer. . . .
> 2. . . . The child's right to be represented by counsel under subsection 1, paragraph "a" shall not be waived by a child less than sixteen years of age without the written consent of the child's parent, guardian, or custodian. The waiver by a child who is at least sixteen years of age is valid only if a good faith effort has been made to notify the child's parent, guardian, or custodian that the child has been taken into custody and of the alleged delinquent act for which the child has been taken into custody, the location of the child, and the right of the parent, guardian, or custodian to visit and confer with the child.

Iowa Code § 232.11 (emphasis added). Section 232.11 clearly applies only to proceedings within the juvenile court's jurisdiction.

Iowa Code section 232.8(1)(c) exempts certain classes of juvenile offenders from the initial jurisdiction of the juvenile court:

> Violations by a child, age sixteen or older, which subject the child to the provisions of section 124.401, subsection 1, paragraph "e" or "f", or violations of section 723A.2 which involve a violation of chapter 724, or violation of chapter 724 which constitutes a felony, *or violations which constitute a forcible felony* are excluded from the jurisdiction of the juvenile court and shall be prosecuted as otherwise provided by law unless the court transfers jurisdiction of the child to the juvenile court upon motion and for good cause.

Iowa Code § 232.8(1)(c) (Supp. 1995) (emphasis added). This code section is referred to as 'reverse waiver.' *Terry*, 569 N.W.2d at 366. Generally, juveniles are subject to the juvenile court's jurisdiction and may then be 'waived' into district court for prosecution as an adult. *Id.* However, under section 232.8(1)(c), the qualifying juvenile offender *begins* in district court and must seek waiver into juvenile court. *Id.*

We do not address the conflict of law issue because even if Iowa's more favorable law applies, under section 232.8(1)(c), Vongchanh was not subject to the jurisdiction of the juvenile court. Vongchanh was sixteen at the time of the arrest. All of the crimes Vongchanh was alleged to have committed were forcible felonies. *See* Iowa Code § 702.11 (1995) (defining forcible felony); *see also Terry,* 569 N.W.2d at 366 (citing *State v. Powers*, 278 N.W.2d 26, 28-29 (Iowa 1979) (holding attempted murder was forcible felony)); *see also State v. Beeman,* 315 N.W.2d 770, 777 (Iowa 1982) (stating willful injury was felonious assault and therefore forcible felony). The rights in section 232.11 did not attach. *See* Iowa Code § 232.8(1)(c); *see also State v. Harris,* 589 N.W.2d 239, 244 (Iowa 1999) (noting inapplicability of section 232.11 to juvenile charged with murder, an offense section 232.8(1)(c)

excludes from juvenile court jurisdiction). We affirm the district court's refusal to suppress Vongchanh's statement to New Mexico police.

III. Violation of Speedy Trial Right. The State filed its trial information on December 5, 1996, and an amended trial information on December 20, 1996. Trial was set for March 3, 1997, some seventy days after the filing of the amended trial information. On February 26, 1997, Vongchanh filed a motion to continue the trial for at least two months to allow publicity to dissipate and permit him to prepare an adequate defense. The district court granted a limited continuance, resetting the trial date for March 31, 1997. The jury trial commenced April 3, 1997, 104 days after the amended trial information was filed.

Vongchanh maintains he himself never waived his right under Iowa Rule of Criminal Procedure 27(2)(b) to be brought to trial within ninety days of indictment. He asserts the motion to continue was solely his attorney's decision. The State contends Vongchanh did not preserve error on this issue. Alternatively, the State argues defendant waived his statutory speedy trial right or good cause existed for the delay.

On appeal, Vongchanh does not argue his constitutional right to a speedy trial was violated. We review nonconstitutional speedy trial issues for correction of errors at law. *State v. Smith*, 573 N.W.2d 14, 17 (Iowa 1997); *State v. Finn*, 469 N.W.2d 692, 693 (Iowa 1991). The trial court has discretion to refuse to dismiss criminal prosecutions within the limits of exceptions to the speedy trial mandate; thus, we ultimately look to whether the trial court abused its discretion in so refusing. *State v. Orte*, 541 N.W.2d 895 (Iowa App. 1995).

A. Preservation of Error. The State contends error was not preserved on this issue. Vongchanh did make a written motion to dismiss on February 26, 1997. Although the motion focuses on publicity surrounding release of a codefendant's statement, it does mention how this action denied his right to speedy trial by 'forcing' him to request a continuance. This was sufficient to alert the trial court to the speedy trial issue. The trial court issued a cursory denial of the motion to dismiss. We deem this sufficient to preserve error.

B. Speedy Trial. When a trial is not commenced within the ninety-day period specified in rule 27(2)(b), the trial court must dismiss the case unless (1) the defendant has waived his right to a speedy trial, (2) the delay is attributable to the defendant, or (3) "good cause" exists for the delay. *Finn,* 469 N.W.2d at 694.

We find no abuse of discretion in the denial of defendant's motion. Defense counsel's request for a continuance was a waiver of Vongchanh's statutory right to speedy trial. The right to a speedy trial contained in rule 27(2)(b) is not a personal right that can be waived only by the defendant. *State v. LeFlore,* 308 N.W.2d 39, 41 (Iowa 1981). Defense counsel acting within the scope of his or her authority may waive this right on the defendant's behalf without the defendant's express consent. *Id.*

Furthermore, it would have been within the district court's discretion to find good cause. Vongchanh's counsel conceded that the request for continuance presented good cause to exceed the ninety-day limit. We employ four factors to determine whether the "good cause" exception to the speedy trial rule is met: prejudice, the length of the delay, the reason for the delay, and defendant's

assertion of his or her right to a speedy trial. *State v. Olson*, 528 N.W.2d 651, 654 (Iowa App. 1995). The following colloquy took place between the trial court and Vongchanh's counsel at the hearing on the motion for continuance:

> THE COURT: And Mr. Ramey, what is your opinion concerning your defendant's speedy trial rights in view of the filing of his motion for continuance?
>
> MR. RAMEY: I think the filing of the motion for continuance in and of itself is probably good cause, Your Honor. . . . I think it is adequate cause for the Court as far as the requirement that the defendant be tried within ninety days from the filing of the trial information unless good cause to the contrary appears. . . . I think the Court has good cause to extend the period beyond the ninety days whether or not there's a waiver.

No prejudice has been demonstrated due to the fourteen-day delay. *See State v. Bledsoe*, 200 N.W.2d 529, 531 (Iowa 1972) (holding twenty-three-day delay not a speedy trial violation because no prejudice shown); *see also State v. Keys*, 535 N.W.2d 783, 786 (Iowa App. 1995) (holding weak reason for delay suffices to avoid dismissal if delay was short and no prejudice results). In fact, the delay inured to the benefit of the defense. It appears defendant needed more time to prepare for trial—the motion for continuance contains references to incomplete discovery and evidentiary motions that awaited rulings. We find waiver and, alternatively, good cause for the delay. The trial court did not abuse its discretion in denying the motion to dismiss.

IV. Failure to Sever. The trial court permitted police officers and other witnesses to testify concerning confessions each defendant made. The district court required the State to redact each defendant's statement to exclude all references to the other defendants, including changing plural pronouns to singular, neutral pronouns. Witnesses then summarized the redacted versions in their

testimony; the jury never saw adulterated transcripts of the defendants' pre-trial statements.

Vongchanh argues the trials of the four codefendants should have been severed. In the same claim of error, Vongchanh maintains the trial court deprived him of his Sixth Amendment right to confront witnesses, as enunciated in *Bruton v. United States*, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968), by admitting testimony concerning the statements of two nontestifying codefendants, Roeuth and Vongphakdy.[1]

A. Severance. Denial of motions to sever will not be disturbed unless an abuse of discretion is established. *State v. Leutfaimany,* 585 N.W.2d 200, 203 (Iowa 1998); *State v. Olsen,* 482 N.W.2d 452, 455 (Iowa App. 1992). An abuse of discretion is established when a defendant shows sufficient prejudice to constitute denial of a fair trial. *Leutfaimany*, 585 N.W.2d at 203 (citations omitted). Sufficient prejudice from a denial of severance can be shown in several ways: (1) admission of evidence at the joint trial that would have been inadmissible and prejudicial if admitted against a defendant tried alone; (2) a defendant is prevented from presenting exculpatory testimony of a codefendant; (3) the trial is of such complexity and length that the jury is unable to compartmentalize the evidence against each defendant; or (4) conflicting defenses presented by codefendants causes sufficient prejudice to constitute denial of a fair trial. *State v. Clark,* 464 N.W.2d 861, 863 (Iowa 1991). To cause the last type of prejudice, the defenses

[1]Leutfaimany testified and was, therefore, subject to cross-examination.

must be more than merely antagonistic, but must conflict to the point of being irreconcilable and mutually exclusive. *Id.* at 864.

The defendant bore the burden of establishing the necessity of separate trials. *Id.* Defendant has done little to illustrate prejudice. He merely states "three if [sic] not all four of the [*Clark*] factors . . . apply in this case." He makes no references to portions of the lengthy record which support his claim of prejudice. This failure violates Iowa Rule of Appellate Procedure 14(a)(5) and (g). *State v. Truesdell,* 511 N.W.2d 429, 431 (Iowa App. 1993). We find no abuse of discretion in the failure to sever. *See id.* (finding no abuse of discretion in trial court's denial of severance where defendant failed to show any resulting prejudice); *see also Leutfaimany*, 585 N.W.2d at 203-204.

B. Confrontation Clause. In *Bruton,* the United States Supreme Court held that in a joint trial, admission of an agent's testimony concerning a nontestifying co-defendant's confession violated a defendant's right to confront witnesses under the Sixth Amendment to the U.S. Constitution. *Bruton,* 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476. Essentially, where two or more defendants are tried together, the pretrial confession of one cannot be admitted against the others unless the confessing defendant takes the stand. *Richardson v. Marsh*, 481 U.S. 200, 206, 107 S. Ct. 1702, 1707, 95 L. Ed. 2d 176, 185 (1987). However, a redacted version of such a confession may be admitted if it does not facially incriminate or lead the jury directly to the nontestifying declarant's codefendant. *E.g., Marsh,* 481 U.S. at 211, 107 S. Ct. at 1709, 95 L. Ed. 2d at 188 (finding no Confrontation Clause violation in admission of nontestifying codefendant's statement where limiting

instruction given and redactions eliminated any reference, not only to the particular defendant, but to his or her existence). We review confrontation clause claims de novo. *State v. Hoeck*, 547 N.W.2d 852, 856 (Iowa App. 1996).

Vongchanh generalizes that despite the redactions in this case, the testimony concerning codefendants' statements left the clear impression other persons were involved in the robbery. The mere fact that a nontestifying codefendant's statement leaves an impression others were involved in the crime is not necessarily a *Bruton* violation. However, we find nothing in the witnesses' summaries of the nontestifying codefendants' confessions that refers to any person other than the declarant. In this case, singular pronouns were used by the witnesses in place of "we," "they," or names used in the codefendants' original statements. Such redactions are acceptable. *See U.S. v. Edwards*, 159 F.3d 1117, 1125-26 (8th Cir. 1998) (approving use of "they" and "someone" at trial in place of defendants' names in nontestifying co-defendant's original statement); *United States v. Jones*, 101 F.3d 1263, 1270 & n. 5 (8th Cir.1996) (use of "we" and "they"); *United States v. Garcia*, 836 F.2d 385, 390-91 (8th Cir.1987) (use of "someone").

Nothing in the disputed testimony leads the jury directly to Vongchanh. The pronoun substitutions in this case did not suggest that a known individual was purposely omitted from the statement. *See United States v. Donahue*, 948 F.2d 438, 444 (8th Cir. 1991) (approving similar substitutions); *Leutfaimany*, 585 N.W.2d at 205 (citations omitted) (noting approval of pronoun substitutions where alterations do not make it apparent that the change protected a specific person's identity). The redactions in this case were virtually seamless.

The only way the jury was led to Vongchanh's involvement was through independent evidence, outside the codefendants' redacted confessions. Such a link is constitutionally permissible and does not render admission of redacted confessions error. *See Donahue*, 948 F.2d at 444; *see also Jones*, 101 F.3d at 1270 (finding no *Bruton* violation where redacted codefendants' confessions using "they" and "we" implicated defendants only when linked to other evidence and rejecting argument that because two defendants were the only ones named in indictment and were only ones present in courtroom, jury led by use of 'we' and 'they' to those defendants). The independent evidence included Vongchanh's own confession, Leutfaimany's testimony, Annette Banh's testimony and the store security videotape.

Other circumstances mitigated any residual effect of the nontestifying codefendants' confessions. The trial court properly issued limiting instructions, cautioning the jury to consider the testimony concerning codefendants' statements only with respect to the particular declarant. The police officers testified from memory of the redacted statements, so the jury did not have any opportunity to see that redactions had been made. The few instances of testimony derived from statements of nontestifying codefendants that did refer to Vongchanh by name were not incriminating. *See United States v. McCracken,* 110 F.3d 535, 543 (8th Cir. 1997) (noting nontestifying codefendant's statements that do not incriminate the defendant are admissible). We conclude the district court's decision to admit nontestifying codefendants' statements, redacted to include pronouns and other

neutral words and accompanied by appropriate limiting instructions, was constitutionally permissible.

Even if the redactions were error, it was harmless. *See Harrington v. California,* 395 U.S. 250, 89 S. Ct. 1726, 23 L. Ed. 2d 284 (1969)(holding *Bruton* error in admission of nontestifying co-defendants' confessions was harmless in face of overwhelming evidence of guilt). Once there has been a *Bruton* error, the prosecution bears the burden of showing the error was harmless beyond a reasonable doubt. *State v. Jefferson*, 574 N.W.2d 268, 275 (Iowa 1997). Whether an error was harmless depends on "whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination, and . . . the overall strength of the prosecution's case." *Id.* In the Sixth Amendment context, untainted evidence is weighed against the probative force of the tainted confession(s). *Id.* We thus ask whether "the guilty verdict actually rendered in this trial was surely unattributable to the error." *Id.* (citations and internal quotations omitted).

The State presented ample evidence, apart from the statements of Vongphakdy and Roeuth, connecting Vongchanh with the crimes. The State argued Vongchanh was guilty either under a direct participation theory or an aiding and abetting theory. Videotape captured footage of Vongchanh entering the market wearing a backpack. Vongchanh appeared to be stationed as a lookout near the front door. Leutfaimany, who was subject to cross-examination, testified Vongchanh left the store after the shooting in the same car with the other defendants. The car was parked around the corner in an alley, not in the store's

parking lot. Vongchanh himself admitted to being in the store and knowing of the plan to get money from the "old man." After the robbery, he hid at a friend's house and then left the state. Juries are entitled to consider evasive behavior in deciding whether a defendant possessed the requisite intent to aid and abet. *See generally State v. Thornton,* 498 N.W.2d 670, 673 (Iowa 1993); *State v. Bone,* 429 N.W.2d 123 (Iowa 1988). Finally, the jury demonstrated an ability to compartmentalize the evidence against each individual defendant according to their culpability. Three defendants were convicted of first degree murder but Vongchanh was convicted of second degree murder. If there was a *Bruton* violation, it was harmless error.

V. Prosecutorial Misconduct. Defendant claims the prosecution violated *Bruton* in closing arguments by using 'they' and encouraging the jury to use nontestifying codefendants' statements against the other defendants. In particular, Vongchanh objects to the following statement by one of the prosecutors: "if you see what they [the four defendants] admitted to, if you remember what their statements to the police were, they're all consistent in one way, 'Yeah, I knew there was a plan, but I didn't think anybody was going to get hurt,' right?" The prosecutor was responding to the common defense that none of the youths had planned for anyone to get hurt. This statement leads to a discussion of how the felony murder rule permits a conviction on the murder charge without the defendants having the specific intent to kill.

Prosecutorial misconduct warrants a new trial only when it is so prejudicial as to deprive the defendant of a fair trial. *State v. Escobedo,* 573 N.W.2d 271, 277 (Iowa App. 1997). Trial courts are given broad discretion in deciding whether the

alleged misconduct caused prejudice; as first-hand observers, trial courts are in a better position to determine the impact of the alleged misconduct. *Id.* Consequently, a trial court ruling on a claim of prosecutorial misconduct will be reversed only for an abuse of discretion. *Id.* The grant of a new trial based on prosecutorial misconduct does not hinge on the misconduct, but the resulting prejudice which prevents the trial from being fair. *Id.* at 278-279.

We find the State's use of plural pronouns derived, not from nontestifying codefendants' statements, but from independent evidence, such as the store security videotape or Leutfaimany's testimony. In the instances where 'they' was used in closing argument, the prosecutor clearly refers to the source of his statement. We also find the cumulative effect of these words was scant and hence not prejudicial. *See Jones,* 101 F.3d 1263 (finding scant prejudicial effect in prosecution's isolated use of 'they'). Furthermore, use of the word 'plan' or arguing a plan existed does not constitute a *Bruton* violation. *Cf. United States v. Smith,* 26 F.3d 739, 748 (7th Cir. 1994) (rejecting complaint of confrontation clause violation where evidence merely indicated *existence* of a conspiracy, but did not directly implicate defendant in that conspiracy).

The Eighth Circuit has addressed *Bruton* violations in the context of the prosecution's closing arguments. No violations have been found where a prosecutor used testimony in closing in the same manner it was presented to the jury, e.g., using neutral pronouns. *E.g., U.S. v. Edwards,* 159 F.3d 1117, 1126 (8th Cir. 1998). In *Edwards*, defendants argued the prosecutor urged the jury to use each defendant's admissions in evaluating codefendants' cases. The Eighth Circuit

disagreed, reasoning the prosecutor's opening accurately emphasized that each defendant had made out-of-court admissions—"Each of these defendants told multiple persons on multiple occasions that they did it." *Id.* In reference to the prosecution's closing, the *Edwards* court noted the prosecutor summarized the testimony in the same manner it was presented to the jury--using neutral pronouns. *Id.* We find the State here did no more. In fact, the prosecutor went on to acknowledge the guilt of each defendant must be determined separately. Furthermore, the trial court issued limiting instructions during and after the trial. This action ameliorated any resulting prejudice. *See State v. Hardin,* 569 N.W.2d 517, 522 (Iowa App. 1997).

VI. Recusal. Vongchanh argues the trial court should have recused itself based on its animosity toward all defendants. He contends the court's rulings favored the State and the district court threatened to embarrass defense counsel if they continued to object during the State's closing argument. We review decisions on recusal only for an abuse of discretion. *State v. Smith,* 242 N.W.2d 320, 324 (Iowa 1976). The party seeking recusal bears the burden of showing the grounds therefor. *State v. Haskins,* 573 N.W.2d 39, 44 (Iowa App. 1997).

We find no abuse of discretion in the trial court's failure to recuse itself. Vongchanh does not demonstrate the trial court's rulings were legally unfounded. In our reading of the transcripts of hearings on motions and the trial itself, the district court behaved civilly toward and exhibited patience with all attorneys. The threat to embarrass defense counsel, made during a sidebar, appears isolated and was immediately retracted. This case is unlike cases in which judicial intemperance

has been found. *E.g., In re Inquiry Concerning Eads,* 362 N.W.2d 541 (Iowa 1985); *Blum v. State,* 510 N.W.2d 175 (Iowa App. 1993). The trial court in those cases created a hostile or intimidating atmosphere for the attorneys. We find no such atmosphere at this trial. As the State points out, the mere fact that the judge maintained his decision to try all four defendants together does not amount to bias. We affirm on this issue.

VII. Failure to Play Defendant's Entire Statement for the Jury. Vongchanh maintains he should have been permitted to introduce his entire tape-recorded statement to police under Iowa Rule of Evidence 106. He claims the redacted version of his statement implied more guilt than was contained in the original. He also contends it was important for the jury to hear his tone of voice and understand his cooperative attitude toward police. Vongchanh seems to suggest the original also contained exculpatory evidence that was not presented to the jury because of the redactions. This claim revisits *Bruton* and severance issues.

We find this argument without merit. Rule 106 provides:

> (a) When an act, declaration, conversation, writing, or recorded statement, or part thereof, is introduced by a party, any other part or any other act, declaration, conversation, writing, or recorded statement is admissible when necessary in the interest of fairness, a clear understanding, or an adequate explanation.

An exception to this evidentiary 'rule of completeness' arises in the *Bruton* context where a statement can be admitted in edited or "redacted" form with the references to codefendants omitted. *United States v. Kaminski,* 692 F.2d 505, 522 (8th Cir. 1982) (interpreting identical federal rule). Under the rule, a defendant may move to have his or her entire, unredacted confession introduced "only when the

[out-of-court] statement in its edited form . . . effectively distorts the meaning of the [original] statement or excludes information substantially exculpatory of the nontestifying defendant." *Edwards,* 159 F.3d at 1127 (citations omitted); *Bolden,* 92 F.3d at 687; *see also Leutfaimany,* 585 N.W.2d at 207 (citations and internal quotations omitted). If an incriminating statement must be admitted because of its exculpatory value to the declarant, the confrontation problem is solved by severance of the co-defendants' trials. *Bolden,* 92 F.3d at 688 n.1.

Here, the original statement was not distorted and no exculpatory information was excluded. Although defense counsel contended at trial that the full statement would show Vongchanh took no part in planning the robbery, we find no such exculpatory evidence. In his confession, Vongchanh at first denies he knew the others were going to rob the store, but later concedes he knew his codefendants intended to rob the store but he did not know anyone had a gun. Furthermore, most of what defendant claims the tape-recording would have revealed was presented to the jury through cross-examination of the New Mexico detective who took the statement. Defense counsel elicited that Vongchanh was cooperative with police. The detective testified Vongchanh denied that he knew there was going to be a robbery, that any of the other defendants were carrying weapons or that he himself had been carrying a gun. The detective also testified that Vongchanh went on to contradict himself. We affirm on this issue.

VIII. Conclusion. In summary, we affirm the denial of the motion to suppress. Iowa's reverse waiver provision excluded Vongchanh from the juvenile court's jurisdiction and thus his rights under Iowa Code section 232.11 did not

attach. We find Vongchanh's attorney waived the statutory speedy trial right and good cause existed for the delay. The trial court did not err by failing to sever the trials of the codefendants. Furthermore, the failure to sever did not result in a *Bruton* violation. The district court's decision to admit nontestifying codefendants' statements, redacted to use only singular pronouns and eliminate any reference to Vongchanh's existence and accompanied by limiting instructions, was constitutionally permissible. The prosecution did not commit any misconduct that resulted in prejudice to Vongchanh during trial. The district court did not abuse its discretion in declining to recuse itself based on its isolated threat to embarrass defense attorneys or its decision to try all four defendants together. Finally, defendant was correctly denied permission to admit his entire statement to police because the redacted version did not distort the original meaning or exclude exculpatory information.

AFFIRMED.