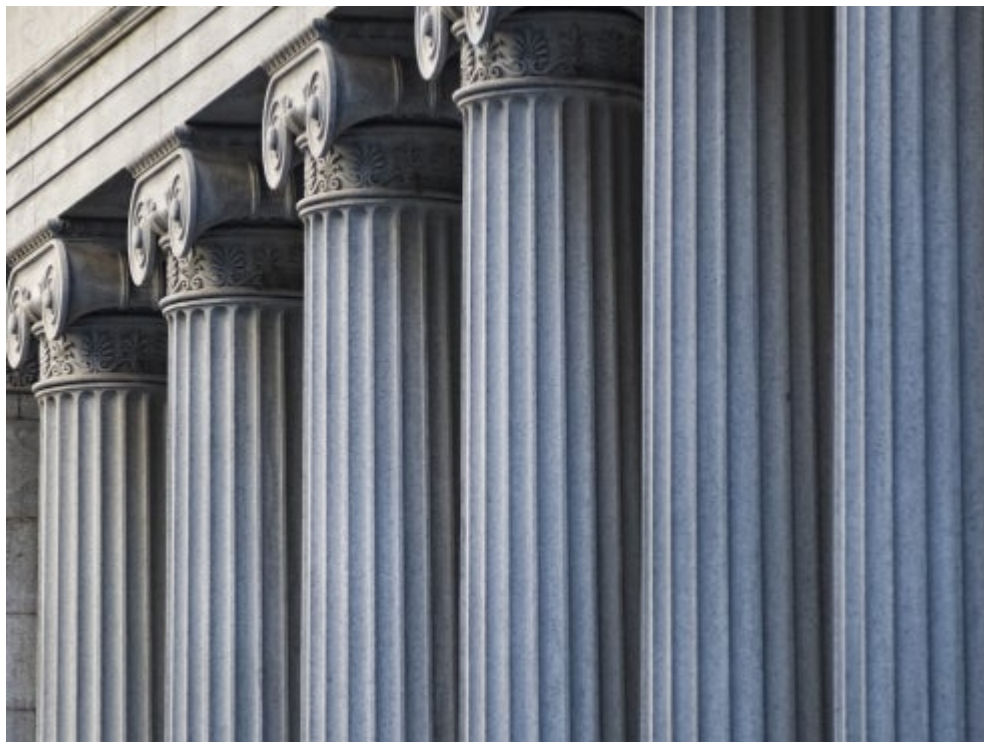


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January 26, 2022

### U.S. Supreme Court Rejects Argument That Defendant “Opened the Door” to Evidence That Violated Confrontation Clause



On January 20, 2022, the U.S. Supreme Court held in an 8-1 [opinion](#) in *Hemphill v. New York* that Darrell Hemphill did not "open the door" to the admission of out-of-court third-party testimony by making it "arguably relevant to his theory of defense."

The Court further held that the admission of such testimony violated Hemphill's rights under the Sixth Amendment's Confrontation Clause. The opinion will have practical significance for defense attorneys and prosecutors preparing for trial. *See* [Supreme Court to Weigh Protections Under Confrontation Clause](#). Hemphill had challenged his murder conviction in New York on the ground that he was unable to cross-examine Nicholas Morris, whose plea allocation in a separate case was introduced against Hemphill at trial. State prosecutors argued that Hemphill had opened the door to using Morris's plea allocation by blaming Morris for the murder. The trial judge determined that, under New York common law, prosecutors were entitled to introduce Morris's plea allocation because it was "reasonably necessary" to correct a potentially "misleading impression" created by Hemphill's defense theory. The majority opinion, written by Justice Sotomayor, held that the admission of Morris's plea allocation under New York's door-opening rule violated Hemphill's Sixth Amendment right to cross-examine the witnesses against him. New York's rule, the majority explained, goes beyond the State's discretion to set reasonable procedural rules, and instead is a "substantive principle of evidence that dictates what material is relevant and admissible in a case." The Court concluded that it was "not for the judge" to determine whether Hemphill's defense theory was unreliable or misleading enough to warrant introducing the plea allocation. The Court dispensed with New York's warnings that ruling for Hemphill would unfairly tip the scales in defendants' favor. New York had argued that prosecutors would be "without recourse" against defendants who selectively introduce out-of-court statements when it benefits them yet prevent prosecutors from doing the same. The Court cited numerous other safeguards that protect the integrity of criminal trials, including state and federal hearsay rules, limiting jury instructions, and judges' discretion to bar relevant but overly prejudicial testimony. It declined to address the "common-law rule of completeness as applied to testimonial hearsay," concluding that it was not at issue in *Hemphill* and leaving the question open for future terms. In a concurring opinion joined by

Justice Kavanaugh, Justice Alito opined that while Hemphill had not relinquished his Confrontation Clause rights under the circumstances, this case "does not call into question the rule of completeness" or other principles that might result in a defendant's waiver of the right of confrontation. Justice Alito went on to describe circumstances when a defendant's conduct could evince an intent to relinquish that right. Justice Thomas, the lone dissenter, argued that Hemphill had not preserved his Confrontation Clause argument in the state proceedings and that the Court therefore lacked jurisdiction to review. The decision is a significant win for the criminal defense bar, whose attorneys now have a powerful tool to block the introduction of testimony not subject to "the crucible of cross-examination."

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