



Ohio v. Clark

Supreme Court Summary and Analysis

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Ohio v. Clark

At the end of a busy June, the U.S. Supreme Court issued another ruling addressing the many outstanding questions created by the transformational opinion in *Crawford v. Washington*, 541 U.S. 36 (2004), and the ability of prosecutors to use hearsay statements at trial.

***Crawford* Cases – The Confrontation Clause**

In *Crawford*, the U.S. Supreme Court essentially rewrote the requirements for the use of hearsay statements at trial. Hearsay statements are statements made by an individual, who then does not testify at trial; rather, another witness may testify as those statements if certain requirements are met, most of which hinged on an assessment of the “reliability” of the out-of-court statement. In its ruling, the U.S. Supreme Court held that reliability was an insufficient standard, stating that the Confrontation Clause of the 6th Amendment (guarantees an accused the right to confront his accuser) prohibits the use of out-of-court testimonial statements by a nontestifying witness unless the trial court determines that the witness is unavailable and that the defendant has had a prior opportunity to cross-examine that witness. The Court, however, did not provide a definition or standard to help practitioners determine if a statement is “testimonial.”

Subsequently, the Supreme Court sought to refine this issue of testimonial statement in a pair of cases, *Davis v. Washington*, 547 U.S. 813 (2006), and *Hammon v. Indiana*, 126 S. Ct. 552 (2005) (*cert. granted*). In these cases, the Court created what has become known as the “primary purpose” test to determine if a statement is testimonial and subject to Confrontation Clause requirements or nontestimonial. If the primary purpose of a statement is to assist in addressing an ongoing emergency, that statement is not testimonial. However, if a trial court deems that a statement’s primary purpose is to establish facts that are relevant to a later prosecution, such a statement is testimonial and cannot be used at trial unless the two requirements of the Confrontation Clause have been met.

In the later case of *Michigan v. Bryant*, 562 U.S. 344, the Supreme Court sought to identify the factors that practitioners should look at in determining a statement’s primary purpose. When applying the primary purpose test, trial courts were instructed to look at all of the relevant circumstances surrounding a statement – including the likely intent of both the person making the statement as well as the individual hearing the statement – and that the presence of an ongoing emergency is only one of the factors relevant to the application of the test.

One consistent fact in all of these cases was the fact that the statements in question were all made to law enforcement officers. The Supreme Court had not answered the question whether out-of-court statements made to a non-law enforcement individual are likewise limited by the Confrontation Clause requirements. This is the essential issue in the *Ohio v. Clark* case.

Facts of the Case

In this case, defendant Clark lived with his girlfriend and her two young children. Having sent his girlfriend to work as a prostitute to another city, Clark had sole responsibility for the children, a 3-year-old boy and 1-year-old girl. When the 3-year-old went to his preschool, various teachers noticed bruises and injuries on his face. When asked by his teacher what had happened, the boy indicated that the defendant had hurt him. As mandatory reporters under state law, the teacher and administration contacted law enforcement. After an investigation, Clark was charged with multiple counts of abuse against both of the children. At trial, prosecutors could not have the young boy testify due to a state evidentiary rule that essentially made children of such a young age incompetent to testify. The preschool teacher thus testified at the trial about her observations of the boy's numerous injuries and the statements that the boy made implicating the defendant as the one who abused him. Clark was convicted of all but one of the charges; he appealed the conviction, arguing that the teacher's testimony of the boy's statements were testimonial and thus prohibited by the Confrontation Clause requirements established in *Crawford* and its subsequent cases.

Rulings by Ohio Appellate Courts

The Ohio Court of Appeals agreed with Clark's argument and reversed his conviction. Citing the teacher's role as a mandatory reporter, the appellate court found that any conversation between her and the child was ultimately for the purpose of gathering evidence for a future trial, not to respond to an emergency situation, and thus the child's statements were testimonial. As Clark did not have a prior opportunity to cross-examine the child as the Confrontation Clause requires, the trial court's admission of the hearsay statements was constitutional error. Upon the state's further appeal, this reversal was affirmed by the Ohio Supreme Court, which reiterated that the mandatory reporting requirements transformed the teacher into an "agent of the State," similar to a police officer collecting evidence for prosecution, thus making the child's statements testimonial.

U.S. Supreme Court Ruling

With six justices joining the main opinion (the remaining three concurred in the result, but not the reasoning), the Supreme Court held that the young boy's statements in this situation were not testimonial as they were not made with the primary purpose of creating evidence for prosecution of the defendant, but rather occurred as part of a response to an ongoing emergency. The questions of the teacher to the boy were focused on identifying and ending a threat to the child's physical safety, and that the overall conversation was informal and spontaneous. Additionally, the mandatory reporting requirements imposed on the teacher failed to convert the conversation with the child into a formal law enforcement interview and investigation with the goal of identifying and gathering possible evidence.

Like in *Davis* and *Bryant*, the teacher's first objective for her questions was to protect a young child. The primary purpose of her questions were to meet an "ongoing emergency." Even as a mandatory reporter, a teacher does not have a principal charge of "uncovering and prosecuting criminal behavior," thus statements made to such an individual are "significantly less likely to be testimonial" than statements made to a police officer. Additionally, it is "extremely unlikely" that a child of such an age would intend such statements for use at a later trial as young children have little understanding of the prosecution or the criminal justice system.

Conclusion

The ruling in this case, while stopping short of a categorical rule, provides significant guidance for prosecutors and judges when assessing out-of-court statements. Statements made to private individuals — teachers, family members, neighbors — are significantly unlikely to meet the testimonial standard, as compared to statements made to law enforcement. It is vital, however, that law enforcement continue to identify and document all the circumstances surrounding statements made by victims in domestic violence, sexual assault, stalking and child abuse cases. The timing of any statements, the identity of those making the statements (including age and current physical condition), the identity and role of those hearing such statements, the level of formality of the conversation — all of these are factors relevant to identifying the full context of a statement's circumstances as nontestimonial, so that offenders can continue to be held accountable without reliance upon often fragile or frightened victims.