

Michigan v. Bryant, Part I

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Categories : [Evidence](#), [Procedure](#), [Uncategorized](#)

Tagged as : [bryant](#), [confrontation clause](#), [crawford](#), [testimonial](#)

Date : March 22, 2011

On February 28, 2011, the United States Supreme Court decided [Michigan v. Bryant](#), its latest *Crawford* case. In an opinion written by Justice Sotomayor, the Court held that a homicide victim's statements to responding officers were non-testimonial. In this post, I will explore the majority opinion. In my next post, I will summarize the other opinions, focusing on Scalia's dissent. In my final post, I'll look at *Bryant's* implications for future cases.

The facts of *Bryant* are as follows. At around 3:25 a.m., Detroit officers responded to a dispatch indicating that a man had been shot. They arrived at the scene and found Covington lying on the ground next to his car at a gas station, with a gunshot wound to his abdomen. He appeared to be in great pain, and spoke with difficulty. The police asked what happened, who shot him, and where the shooting occurred. Covington said that "Rick" shot him at around 3 a.m. He explained that he spoke with Bryant at Bryant's house and when he turned to leave, he was shot. He then drove to the gas station. This conversation lasted about 5-10 minutes, ending when emergency medical services arrived. Covington died within hours. After speaking with Covington, the police called for backup and went to Bryant's house. Although Bryant was not there, they found blood and a bullet on the back porch, an apparent bullet hole in the back door, and Covington's wallet and identification outside the house.

At Bryant's pre-*Crawford* murder trial, the State introduced Covington's statements to the officers as excited utterances (no foundation was established for a dying declaration). Bryant was convicted and the case went up to the Michigan Supreme Court. That court reversed the conviction, holding that Covington's statements were testimonial and their admission violated *Crawford*. The United States Supreme Court granted certiorari.

To put the legal issue in context, recall that *Crawford v. Washington*, 541 U. S. 36 (2004), held that testimonial statements by declarants who do not testify at trial may not be admitted unless the State establishes unavailability and a prior opportunity to cross-examine. In the Court's later decision in *Davis v. Washington, and Hammon v. Indiana*, 547 U. S. 813 (2006) ("*Davis*"), it refined the meaning of the term testimonial, as it applies to police interrogations.

Davis held:

- (1) Statements are non-testimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency; and
- (2) Statements are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

Noting that both *Davis* and *Hammon* were domestic violence cases, the *Bryant* Court recognized that case at hand required it to provide additional clarification on the ongoing emergency prong of the *Davis* primary purpose analysis.

The Court held that when determining the testimonial nature of a statement, a court must assess the primary purpose of the interrogation by objectively evaluating the statements and actions of the declarant and the interrogator, in light of the circumstances of the interrogation. The relevant circumstances include objective facts, such as where the

interrogation occurred. However, the existence of an emergency or the parties' perception that one is ongoing, "is among the most important circumstances . . . in determining whether an interrogation is testimonial." Slip op. at 14. The Court explained that "statements made to assist police in addressing an ongoing emergency presumably lack the testimonial purpose that would subject them to the requirement of confrontation." *Id.* at 23-24. It also clarified that the existence and duration of an emergency depend on the type and scope of danger posed to the victim, the police, and the public.

Turning to case at hand, the Court noted that its analysis was complicated by the fact that because the case was tried pre-*Crawford*, there was no record of the primary purpose of the interrogation. Nevertheless, the Court examined the circumstances of the interrogation and concluded: "At bottom, there was an ongoing emergency here where an armed shooter, whose motive for and location after the shooting were unknown, had mortally wounded Covington within a few blocks and a few minutes of the location where the police found Covington." *Id.* at 27. On these facts, the Court determined that "[t]he potential scope of the dispute and therefore the emergency . . . stretches more broadly than those at issue in *Davis* and *Hammon* and encompasses a threat potentially to the police and the public." *Id.* Significant to its analysis was the fact that the assailant used a gun.

Having determined that an ongoing emergency existed, the Court considered the statements and actions of Covington and the police. Based on Covington's condition and statements, the Court could not conclude that a person in his situation would have had a primary purpose of establishing or proving past events relevant to a criminal prosecution. As for the police, they responded to a call about a shooting without knowing why, where, or when the shooting had occurred, the location of the shooter, or anything else about the crime. The questions they asked were necessary to assess the situation and the threat to them, the victim, and the public. In other words, the Court determined, they solicited information to meet an ongoing emergency. Finally, the court evaluated the formality of the statements, concluding that the interrogation was more similar to the 911 call in *Davis* than the stationhouse interview in *Crawford*. Thus, it held: because the circumstances of the encounter as well as the statements and actions of Covington and the police objectively indicate that the primary purpose of the interrogation was to enable the police assistance to meet an ongoing emergency, Covington's statements were non-testimonial.

Having summarized the majority opinion, my next post will explore the other opinions.