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911 Call is Held as Evidence if Victim Cannot Testify

By Linda Greenhouse

WASHINGTON, June 19 – A crime victim’s emergency call to 911 can be introduced as evidence at trial even if the victim is not present for cross-examination, the Supreme Court ruled unanimously on Monday.

At the same time the court held that prosecutors cannot make similar use of the transcript of a police interview that was conducted principally for the purpose of investigating a crime rather than responding to a developing emergency.

The court addressed the two situations in light of the Confrontation Clause in the Sixth Amendment, which guarantees a criminal defendant the right “to be confronted with the witnesses against him.”

The court has interpreted this guarantee to bar the use of “testimonial statements” by witnesses who do not appear in court. The question in the two cases, which the court answered in a single opinion by Justice Antonin Scalia, turned on whether a 911 call on the one hand, or a statement given to the police at a crime scene on the other, qualified as “testimonial.”

A call for help to 911 is not inherently “testimonial” because the caller is not acting as a witness, Justice Scalia said. “No ‘witness’ goes into court to proclaim an emergency and seek help,” he explained.

On the other hand, statements given to police officers who are investigating the scene of a crime, if similar to statements that might be made in court, qualify as testimonial and generally may not be admitted, he said, at least to the extent that they are “neither a cry for help nor the provision of information enabling officers immediately to end a threatening situation.”

Justice Clarence Thomas dissented from that part of the opinion. Both the statements at issue were “nontestimonial and admissible,” he said. He added that in excluding the statement to the police, the court “extends the Confrontation Clause far beyond the abuses it was intended to prevent.”

It was something of a surprise that the court decided the two cases in a single opinion. They were

appeals from separate courts and had been argued separately in March.

In the 911 case, *Davis v. Washington*, No. 05-5224, the Supreme Court of Washington permitted prosecutors to use the 911 call to convict a man, Adrian M. Davis, of violating a domestic protective order. His former girlfriend, Michelle McCottry, had made a frantic call to a 911 operator to say that Mr. Davis was in the house and was beating her. At the time of Mr. Davis's trial, the authorities were unable to locate Ms. McCottry. In the absence of witnesses, the 911 call was vital evidence for the prosecution.

In the other case, *Hammon v. Indiana*, No. 05-5705, police responded to a report of a domestic disturbance and found evidence of a physical struggle between a husband and wife, Amy and Hershel Hammon. After interviewing Mrs. Hammon, they arrested her husband, who was charged with battery.

Ms. Hammon was subpoenaed but did not appear at his trial. The officer who had interviewed her testified about what she had told him. Mr. Hammon was found guilty. The Indiana Supreme Court, rejecting his argument that the statement should not have been admitted, upheld his conviction.

The two cases attracted attention from groups concerned with domestic violence. Several "friend of the court" briefs told the justices that victims of domestic violence were often afraid to appear in court, and that prosecutions should not be lost under an expansive interpretation of the Confrontation Clause. When the cases were argued, it was evident that some justices were concerned about the potential impact of such a ruling.

Addressing that concern in his opinion, Justice Scalia said defendants who "seek to undermine the judicial process by procuring or coercing silence from witnesses and victims" would forfeit the protection that the Confrontation Clause would otherwise give them.

These were among the other actions at the court, which will issue more decisions on Thursday in its effort to finish the term by the end of the month.

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