

# Seattle Post-Intelligencer

Tuesday, June 20, 2006

## 911 Calls Backed as Evidence – Tapes can Provide Help in Domestic Violence Cases

By Tracy Johnson, P-I Reporter

A Kent domestic violence victim's frantic call to 911 left U.S. Supreme Court justices in agreement Monday that jurors should be allowed to hear such emergency calls even when the victim isn't willing to take the witness stand.

The 9-0 decision drew tempered praise from police, prosecutors and domestic violence advocates, who wanted the court to go further but were glad tape-recorded 911 calls can still be played for juries in many cases.

The court ruled that the calls are fair evidence if the caller is reporting an emergency but not if potential danger has ended.

"Overall, we are happy that they recognized the dangerousness and seriousness of domestic violence ... and said that 911 tapes can be used," said Grace Huang of the Washington State Coalition Against Domestic Violence. "It's going to depend on the individual situation whether there is still a risk going on."

King County Prosecutor Norm Maleng called the court's decision "an important ruling for the rights of victims in domestic violence and other criminal cases" and said 911 calls have "always been important evidence."

In February 2001, Michelle McCottry told a 911 operator that her ex-boyfriend, Adrian Davis, assaulted her in her Kent home. Panic rose in her voice as she said, "He's here jumpin' on me again. ... He's usin' his fists."

Justices ruled Monday that a tape of her 911 call was properly played during Davis' trial even though McCottry didn't show up in court, taking away defense lawyers' opportunity to cross-examine her about what happened.

Seattle attorney Jeffrey Fisher, who represented Davis before the high court, was disappointed for Davis but said the ruling – which also settled a domestic violence case from Indiana – could have been much worse for people accused of crimes.

He said jurors won't hear a victim's after-the-fact call to 911 unless the victim comes to court and testifies, giving defendants their constitutional right to confront their accuser.

"Once the event is over, then the Constitution does kick in," Fisher said. "That is a very important holding – and one that's going to strengthen criminal defendants' rights in many jurisdictions."

Fisher, who was supported by the American Civil Liberties Union and National Association of Criminal Defense Lawyers, had argued that people who report crimes to 911 might make mistakes or even lie, making it crucial for defense attorneys to be able to cross-examine them on the witness stand.

King County Deputy Prosecutor James Whisman, who argued the case for the state of Washington, said 911 calls can be strong evidence in all kinds of crimes.

They're often especially useful in prosecuting domestic violence cases because the victims are too terrified or humiliated to testify against their abuser.

"So often, they do provide a snapshot of what happened," Whisman said. "You're actually hearing what was going on right around the time the crime occurred."

Seattle police spokesman Sean Whitcomb called the ruling "a partial win." He said the department believes in the importance of prosecuting domestic violence cases and will work to make sure victims feel safe enough to testify.

"We do believe that all 911 calls are important pieces of evidence, and we'll have to work harder on those cases where the tapes are not admissible," Whitcomb said.

Writing for the court, Justice Antonin Scalia said 911 calls can be used in court when the situation is an emergency: The caller is seeking help, and police are trying to give it.

But the court held that calls can't be used as evidence if the emergency is over and the main purpose is to gather information that might help the prosecution in court.

McCottry, Scalia wrote, "was speaking about events as they were actually happening" and "was facing an ongoing emergency." Her call, he wrote, "was plainly a call for help against a bona fide physical threat."

Some court watchers said the ruling was unexpected coming from Scalia, who authored a momentous 2004 opinion that gave new strength to defendants' right to confront their accuser.

Seattle attorney Aaron Caplan of the ACLU said he was pleased the court "didn't draw a bright-line rule that all 911 tapes are admissible" and instead "very appropriately said that you need to be sensitive of the facts of each case."

In the related Indiana case, justices ruled 8-1 that jurors should not have been allowed to hear what an apparent domestic violence victim told police because the situation was no longer an emergency.

Justice Clarence Thomas dissented in the Indiana case. He disagreed with the majority's rationale in both cases, though he agreed McCottry's statement was properly used and that Davis' felony conviction should be upheld.

Dissenting, Justice Clarence Thomas said the woman's statement was properly used in court because the officer questioning her may have been trying to assess whether she was still in danger.

That case did not involve a 911 call: The woman made her report to officers that came to her home.

Seattle attorney Sheryl Gordon McCloud of the Washington Association of Criminal Defense Lawyers said both cases may leave questions about exactly when an emergency ends and police investigation – aimed at gathering evidence for the courtroom – begins.

"I think it's Round One," she said of Monday's ruling. "I think there's going to be more litigation over where the line is drawn in the future."

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