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A Deserved ‘Hear, Hear!’ Goes to Hearsay

By Wendy J. Murphy

In an important victory for law enforcement and crime victims, especially child victims of sexual abuse and battered women, the U.S. Supreme Court ruled last week that when a person makes a statement to a 911 operator or to police at a crime scene, those statements can be used as evidence in a criminal trial.

These were crucial rulings. Such statements often contain key information about the crime that not only helps to corroborate a victim’s testimony at trial, but can also provide all the evidence necessary for a conviction if the victim refuses to testify.

The rulings clarified an earlier decision in which the high court held that certain “testimonial hearsay” – formal statements made by witnesses outside the trial, such as during a station house interview with police or testimony to a grand jury – usually can not be admitted at trial if the victim doesn’t testify.

The court was rightly concerned that admitting such evidence without letting the accused conduct cross-examination would be unfair. Only “testimonial hearsay” had been struck down in the court’s earlier decision, and while it may seem obvious now, it was not clear until these new rulings that 911 calls and statements at the crime scene were not “testimonial” in nature.

Applying a healthy dose of common sense, the court explained its reasoning – that in general, the purpose of a 911 call is not to make a “solemn declaration,” but rather to “obtain police assistance with an ongoing emergency.”

And at the scene of a crime, such as when police respond to a domestic violence call, statements are taken from witnesses not to obtain “testimonial” evidence but because police may need immediate information to defuse the danger to themselves and the potential victim.

Apparently concerned that a police officer might take advantage of the rulings and use 911 calls or crime scene emergencies to “generate testimonial statements,” the court added that the entirety of a 911 call or a crime scene statement might not be admissible if a police interrogation is initiated after the emergency subsides.

Advocates for children and adult victims of sexual and domestic violence across the country are hailing the rulings after years of frustration with the routine dismissal of serious charges in response to intimidation tactics and other pressures that discourage victims from testifying.

Some prosecutors have dealt with the reluctant victim problem by increasing efforts to prosecute witness intimidation cases.

Others have adopted “no-drop” policies, forcing even the most frightened victims to testify – which is effective, but can lead to recantations during trial.

Still others have developed “victimless prosecution” policies, which means pressing ahead with the case without calling the victim to the stand.

All these strategies benefit greatly from the ability to use other types of evidence, such as 911 calls, to prosecute sexual and domestic violence cases.

The court’s new rulings ensure that prosecutors will continue to use innovative strategies to do justice for even the most terrorized and vulnerable victims. It has always been important from the standpoint of both public safety and prevention to encourage sexual and domestic violence victims to call 911.

Now, victims will receive the added bonus of realizing that making that call may well save their lives – and save the prosecution’s case.

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