

NEW & NOTEWORTHY IN VICTIMS' RIGHTS

In 2004, the Supreme Court ushered in a new era in the law of hearsay with the case of Crawford v. Washington, 541 U.S. 36 (2004). In Crawford the Court held, inter alia, that when the admission of a testimonial statement in a criminal trial is at issue, the requirements of the Sixth Amendment are satisfied only if a defendant had the opportunity to cross-examine the witness. The Supreme Court left open the precise definition of 'testimonial.' In a recent case, Davis v. Washington, ___ U.S. ___, 2006 WL 1667285 (June 19, 2006), the Court shed some light on the crucial issue of when a statement is considered 'testimonial.' Below is a summary of this recent case:

Davis v. Washington, ___ U.S. ___, 2006 WL 1667285 (June 19, 2006).

For purposes of determining whether statements were testimonial, and therefore subject to the requirements of the Confrontation Clause of the Sixth Amendment, the Court considered statements made by a victim in response to questioning by a 911 operator and statements made by a victim in response to questioning by a police officer responding to a reported domestic disturbance. The Court set forth the following test:

Statements are nontestimonial when made in the course of public interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They 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.

In reviewing the statements at issue, the court concluded that while statements made in response to law enforcement interrogation are testimonial, statements made in response to at least the initial interrogation by a 911 operator are not testimonial. The Court explained that, among other factors, it was important that the 911 statements at issue were "plainly a call for help against bona fide physical threat." Therefore, the victim's statements to the 911 operator were not testimonial.

In contrast, the Court concluded that the statements made in response to police questioning were testimonial. In reaching this conclusion the court noted that there was no emergency in progress; there was no immediate threat to the victim during her statements; and the interrogation took place after the events described and the officer inquired about what had happened in the past tense, not what was happening.

Finally, the Court noted that under the Confrontation Clause rule announced and applied in *Crawford v. Washington*, 541 U.S. 36 (2004) and this case, prosecutions for domestic violence may be more difficult to prove. However, the Court reiterated that "one who obtains the absence of a witness by wrongdoing forfeits the constitutional right to confrontation."

NCVLI's Quarterly Law Update will contain summaries of cases interpreting and applying this case in the coming quarters. If you are representing a victim in criminal court and need technical assistance with this or any other victims' rights issue, please see our website at www.ncvli.org.