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SJC Curbs Use of Witness Accounts – Ruling Bolsters Defendants’ Rights

By Jonathan Saltzman, Globe Staff

The state’s highest court ruled yesterday that most statements given to police investigating a crime may not be used at trial unless the witness can be cross-examined – a decision that some advocates for victims of domestic violence predicted will make it harder to prosecute such cases.

In its first interpretation of a 2004 US Supreme Court ruling that strengthened a defendant’s constitutional right to confront an accuser, the Supreme Judicial Court said statements a young Brockton woman made to an officer about an alleged assault by her boyfriend were inadmissible because she later refused to testify against him and thus could not be cross-examined at trial.

The ruling drew criticism from groups that help victims of domestic violence, who are often loath to testify against abusers because of intimidation.

“I’m very, very troubled,” said Mary Lauby, executive director of Jane Doe Inc., a Massachusetts coalition that combats domestic violence. Defendants are entitled to fair trials, she said, but “we’ve got to find a way to figure out how to address the sort of intimidations that we know go on daily for victims.”

In the case at issue, Plymouth County prosecutors had argued that a woman’s statements minutes after the alleged assault in the spring of 2003 were a “spontaneous utterance” that could be introduced at trial – even without her cooperation. Recognizing that victims of domestic violence are often reluctant to testify, courts in recent years have given prosecutors considerable leeway to introduce statements made by alleged victims to police immediately after the abuse.

But the SJC said that almost all questioning of witnesses by police amounts to an interrogation and that any witness or victim who makes a statement must be available for cross-examination under the Sixth Amendment, which guarantees defendants the right to challenge the credibility of their accusers.

Writing on behalf of the seven-member court, Justice Francis X. Spina conceded that the ruling may make it more difficult to prosecute cases of domestic violence and gang-related crimes, in which witnesses are often reluctant to testify.

But the justices “see no other way to be true to the dictates of the confrontation clause as it is now understood,” Spina wrote.

The court ruled 7 to 0, but in a separate opinion that concurred only in part, Justice Martha B. Sosman rebuked the court for going further in its interpretation of a defendant’s right to confront an accuser than the US Supreme Court did last year in *Crawford v. Washington State*.

Although she agreed with parts of the ruling, she said it wrongly sweeps all police questioning under the rubric of interrogation. The ruling, she contended, “eschews moderation” and “stands at the extreme edge of current jurisprudence.”

The SJC ruled in *Commonwealth v. Hermany Gonsalves*, one of three domestic-assault cases focusing on the right of defendants to confront their accusers.

Plymouth District Attorney Timothy J. Cruz condemned the decision and said he was considering appealing it to the US Supreme Court. The ruling, he said, was a step backward, given that courts over the past two decades had recognized the reluctance of victims of domestic violence to testify against alleged abusers.

But Brownlow M. Speer, Gonsalves’ public defender, who had urged the court to quash the woman’s statements, called the ruling a “very carefully reasoned opinion.”

Many state courts across the United States have undermined defendants’ constitutional right to confront their accusers, he said, adding that he hoped the SJC ruling will serve as a template for other states.

The decision was prompted by last year’s federal ruling in the *Crawford* case, which was considered one of the most defense-friendly Supreme Court decisions in years. In that decision, the court ruled that prosecutors may not introduce as evidence witness statements that are made out of court, even if a judge has deemed them reliable. The decision overturned a 24-year-old precedent.

In the Gonsalves case, police responded to a disturbance March 16, 2003, at an apartment in Brockton where a 20-year-old woman told an officer that Gonsalves had grabbed her by the neck, choked her, and thrown her head against the floor, according to the ruling. Gonsalves was arrested on two assault and battery charges.

When the woman refused to testify against him, the state argued that her statements to the officer should be allowed before a jury in District Court because they were a “spontaneous utterance.” But after the *Crawford* ruling, the public defender said the statements should be barred, and the judge agreed.

Prosecutors then asked the SJC to weigh in.

The SJC ruled that all questioning by a police officer – except when the officer is quelling violence or arranging emergency medical care – is an interrogation, and that any statements

obtained can be admitted in court only if the defense has an opportunity to cross-examine the witness.

Spina acknowledged that the new standard could hamstring prosecutors in cases in which crime victims refuse to testify. But he said that even in the Brockton case, prosecutors can still present other evidence, including the officer's testimony about the woman's appearance, screams heard in the apartment, and medical records.

Wendy J. Murphy, a former Middlesex County prosecutor and lecturer at the New England School of Law who advocates on behalf of victims of abuse, said yesterday's ruling will have a chilling effect on the prosecution of domestic violence.

"Women are at greater risk of violence thanks to the SJC," she said in an e-mail message.

Assistant Suffolk District Attorney David Deakin, who heads the family protection and sexual assault unit, said the ruling will have a noticeable effect on domestic violence cases prosecuted in district court, where prosecutors often have less evidence of abuse.

But Deputy Superintendent Margot Hill, commander of the Boston Police Department's family justice division, agreed with the SJC.

She said the ruling will spur Boston's investigators of domestic violence, who handle about 14,000 complaints a year, to gather more physical evidence of a crime.

If detectives can prove that the defendant is trying to silence a victim through intimidation, police can bring witness intimidation charges.

"It will cause us to do our jobs better," Hill said.

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