

June 19, 2006

Supreme Court Rules Prosecutors Can Use 911 Statements

By The Associated Press

WASHINGTON (AP) – The Supreme Court ruled Monday that statements made by crime victims to 911 operators or police during emergencies can be used in court even if those victims do not testify at trial.

In a pair of cases, the justices gave a nod to the difficulties of prosecuting domestic violence cases.

By a 9-0 vote, justices ruled that a Washington man’s right to confront his accuser was not violated because he could not cross-examine his ex-girlfriend, who claimed in a 911 call that he had assaulted her.

In another case, out of Indiana, the justices ruled 8-1 that a police officer had crossed the line – from dealing with an emergency to conducting an investigation – when he questioned a woman about what her husband had done to her well after she had been assaulted.

By affirming the Washington man’s conviction and reversing the Indiana man’s, however, the justices opened the door for prosecutors and police to gather evidence to show that batterers intimidated their victims into silence and “forfeited” their rights to confront their accusers in court.

“It’s more of a win than a loss,” said Joan S. Meier, director of the Domestic Violence Legal Empowerment & Appeals Project at George Washington University’s Law School. “It’s an acknowledgment of the reality of domestic violence.”

Writing for the majority, Justice Antonin Scalia said 911 statements are admissible in court when police are trying to deal with an emergency. But such statements cannot be used if the emergency has ended and police are gathering evidence to use in filing criminal charges, he said.

In court filings, several women’s advocacy groups argued that domestic violence cases are difficult to prosecute because victims are so fearful, and that judges need to be more flexible in allowing evidence of abuse.

Scalia acknowledged those challenges, writing, “This particular type of crime is notoriously susceptible to intimidation or coercion of the victim to ensure that she does not testify at trial. When this occurs, (it) gives the criminal a windfall.”

But Scalia said that doesn't mean a defendant's rights to confront an accuser can be set aside. Instead, he suggested the Indiana court delve into whether the defendant intimidated his wife into not testifying and waived his right to question her.

Justice Clarence Thomas was the lone dissenter in the Indiana case, writing that he believed the officer's testimony about what the woman had told him was admissible in court. But Thomas said he does not believe the majority's definition of when an emergency ends and an investigation begins is workable.

The cases involved Adrian Davis of Washington and Hershel Hammon of Indiana, who had argued their rights were violated because their accusers did not testify under oath and were not subjected to cross-examination at their trials.

Lawyers on all sides of the cases – as well as the Bush administration – wanted the justices to clarify a 2004 high court decision that barred prosecutors' use of statements from victims or witnesses if a defendant did not have a chance to question them in court.

At Davis' trial, a judge allowed the tape of Michelle McCottry's February 2001 emergency call to be admitted into evidence but barred police testimony about what McCottry had said to officers. She disappeared before trial and did not testify despite a subpoena.

In the other case out of Peru, Ind., Amy Hammon also did not testify. But a judge allowed a police officer to testify that she had told him that her husband, Hershel, had thrown her into the glass panel of a gas heater during an argument before police arrived.

Thomas, in his dissent, said the police officer's questions could have been posed to determine whether Amy Hammon remained in danger, not solely to gather evidence to charge her husband with a crime.

The cases are *Davis v. Washington*, 05-5224, and *Hammon v. Indiana*, 05-5705.

Copyright © 2006 The Associated Press.