Letter to the Editor

UPDATE ON CRAWFORD V. WASHINGTON

My essay on the public health implications of the U.S. Supreme Court decision in *Crawford v. Washington*[1] appeared in the July/August 2006 issue of *Public Health Reports*. In it, I described the impact of the Court's decision on domestic violence prosecutions, which often rely on a victim's out-of-court testimony—the very type of evidence made more difficult to admit by the holding in *Crawford*. I pointed out that the Court would return to the task of defining testimonial statements in two domestic violence cases that involved confrontation clause issues. Since my essay was submitted, these cases have been decided under the name *Davis v. Washington*.[2]

In *Davis*, the Court was asked to decide when statements made to law enforcement personnel during a 911 call or at a crime scene are "testimonial," and thus inadmissible pursuant to the Sixth Amendment's Confrontation Clause. The Court enunciated a "purpose test" and held that "[s]tatements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable the police to assist in meeting 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."[3]

Pursuant to this reasoning, in the first appeal the Court ruled that the trial court properly admitted statements made during a 911 call because they were made for the purpose of obtaining law enforcement assistance to meet an ongoing emergency. In the second appeal, the Court ruled that statements made to a police officer who arrived on the scene after the complainant was separated from the perpetrator and while there was "no emergency in progress" were testimonial and inadmissible. The Court, however, remanded the second case to the state court to determine whether the defendant forfeited his confrontation rights by engaging in intimidation and coercion of the victim to prevent her from testifying.

For some, the decision is an important victory for victims of domestic violence that will enable prosecutors to continue to find ways to prosecute domestic violence crimes even when victims are not available to testify.[4] Others, however, had hoped for a more predictable test, noting the difficulty in determining the intent or motive of a law enforcement officer when questioning a complainant as well as the challenge of gauging the emergency nature of a domestic violence situation.[5]

Of particular importance to public health policy experts and domestic violence advocates was the Court's acknowledgment of the dynamics inherent in domestic violence cases, where victims may be intimidated by the perpetrator, and thus be unable to testify.[6] The Court's discussion of forfeiture gave recognition to the gravity of the problem of domestic violence and the barriers to justice that victims face. This case may serve to invite a broader discussion about the full range of obstacles that domestic violence victims encounter when invoking the criminal justice system to seek safety and justice.

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REFERENCES

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