Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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DAVIS *v.* WASHINGTON

CERTIORARI TO THE SUPREME COURT OF WASHINGTON

No. 05–5224. Argued March 20, 2006—Decided June 19, 2006*

In No. 05–5224, a 911 operator ascertained from Michelle McCottry that she had been assaulted by her former boyfriend, petitioner Davis, who had just fled the scene. McCottry did not testify at Davis's trial for felony violation of a domestic no-contact order, but the court admitted the 911 recording despite Davis's objection, which he based on the Sixth Amendment's Confrontation Clause. He was convicted. The Washington Court of Appeals affirmed, as did the State Supreme Court, which concluded that, *inter alia,* the portion of the 911 conversation in which McCottry identified Davis as her assailant was not testimonial.

In No. 05–5705, when police responded to a reported domestic disturbance at the home of Amy and Hershel Hammon, Amy told them that nothing was wrong, but gave them permission to enter. Once inside, one officer kept petitioner Hershel in the kitchen while the other interviewed Amy elsewhere and had her complete and sign a battery affidavit. Amy did not appear at Hershel's bench trial for, *inter alia,* domestic battery, but her affidavit and testimony from the officer who questioned her were admitted over Hershel's objection that he had no opportunity to cross-examine her. Hershel was convicted, and the Indiana Court of Appeals affirmed in relevant part. The State Supreme Court also affirmed, concluding that, although Amy's affidavit was testimonial and wrongly admitted, it was harmless beyond a reasonable doubt.

Held:

1. The Confrontation Clause bars "admission of testimonial statements of a witness who did not appear at trial unless he was un-

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*Together with No. 05–5705, *Hammon* v. *Indiana,* on certiorari to the Supreme Court of Indiana.

available to testify, and the defendant had a prior opportunity for cross-examination." *Crawford* v. *Washington,* 541 U. S. 36, 53–54. These cases require the Court to determine which police "interrogations" produce statements that fall within this prohibition. Without attempting to produce an exhaustive classification of all conceivable statements as either testimonial or nontestimonial, it suffices to decide the present cases to hold that statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of 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. Pp. 6–7.

2. McCottry's statements identifying Davis as her assailant were not testimonial. Pp. 8–14.

(a) This case requires the Court to decide whether the Confrontation Clause applies only to testimonial hearsay, and, if so, whether the 911 recording qualifies. *Crawford* suggested the answer to the first question, noting that "the Confrontation Clause . . . applies to 'witnesses' against the accused—in other words, those who 'bear testimony.'" Only "testimonial statements" cause a declarant to be a witness. The Court is unaware of any early American case invoking the Confrontation Clause or the common-law right to confrontation that did not involve testimony as thus defined. Well into the 20th century, this Court's jurisprudence was carefully applied only in the testimonial context, and its later cases never in practice dispensed with the Confrontation Clause requirements of unavailability and prior cross-examination in cases involving testimonial hearsay. Pp. 8–11.

(b) The question in *Davis*, therefore, is whether, objectively considered, the interrogation during the 911 call produced testimonial statements. In contrast to *Crawford*, where the interrogation took place at a police station and was directed solely at establishing a past crime, a 911 call is ordinarily designed primarily to describe current circumstances requiring police assistance. The difference is apparent here. McCottry was speaking of events as they were actually happening, while Crawford's interrogation took place hours after the events occurred. Moreover, McCottry was facing an ongoing emergency. Further, the statements elicited were necessary to enable the police to resolve the present emergency rather than simply to learn what had happened in the past. Finally, the difference in the level of formality is striking. Crawford calmly answered questions at a station house, with an officer-interrogator taping and taking notes,

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while McCottry's frantic answers were provided over the phone, in an environment that was not tranquil, or even safe. Thus, the circumstances of her interrogation objectively indicate that its primary purpose was to enable police assistance to meet an ongoing emergency. She was not acting as a witness or testifying. Pp. 11–14.

3. Amy Hammon's statements were testimonial. They were not much different from those in *Crawford.* It is clear from the circumstances that Amy's interrogation was part of an investigation into possibly criminal past conduct. There was no emergency in progress, she told the police when they arrived that things were fine, and the officer questioning her was seeking to determine not what was happening but what had happened. Objectively viewed, the primary, if not sole, purpose of the investigation was to investigate a possible crime. While the formal features of Crawford's interrogation strengthened her statements' testimonial aspect, such features were not essential to the point. In both cases, the declarants were separated from the defendants, the statements recounted how potentially criminal past events began and progressed, and the interrogation took place some time after the events were over. For the same reasons the comparison to *Crawford* is compelling, the comparison to *Davis* is unpersuasive. The statements in *Davis* were taken when McCottry was alone, unprotected by police, and apparently in immediate danger from Davis. She was seeking aid, not telling a story about the past. Pp. 14–17.

4. The Indiana courts may determine on remand whether a claim of forfeiture by wrongdoing—under which one who obtains a witness's absence by wrongdoing forfeits the constitutional right to confrontation—is properly raised in *Hammon,* and, if so, whether it is meritorious. Absent such a finding, the Sixth Amendment operates to exclude Amy Hammon's affidavit. Pp. 18–19.

No. 05–5224, 154 Wash. 2d 291, 111 P. 3d 844, affirmed; No. 05–5705, 829 N. E. 2d 444, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, KENNEDY, SOUTER, GINSBURG, BREYER, and ALITO, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment in part and dissenting in part.