

CRAWFORD v. WASHINGTON
124 S.Ct. 1354 (2004)

In Crawford, the petitioner, Michael Crawford, was charged with assault and attempted murder for stabbing a man whom had allegedly attempted to rape his wife, Sylvia Crawford. Crawford was arrested the night of the stabbing and he and his wife made tape recorded statements post Miranda to police. In his statement, Crawford confessed that he and his wife had gone to the victim's apartment where a fight had ensued, the victim had been stabbed, and Crawford had sustained a cut to his hand. Crawford further stated that he believed that the victim had reached for some type of weapon and that Crawford had grabbed for this weapon and sustained the cut to his hand. Sylvia Crawford told a similar story; however, her description of the fight differed in that she did not recall seeing anything in the victim's hands. At trial, Sylvia Crawford invoked her marital privilege and did not testify. The State, relying on an exception to the marital privilege in Washington law for statements otherwise admissible under a hearsay exception, introduced her tape recorded statements as statements against penal interest. Crawford was convicted of assault.

On appeal, Crawford argued that the admission of his wife's statement violated his confrontation rights under the Sixth Amendment to the United States Constitution. The Washington State Appeals Court reversed his conviction, finding that Sylvia Crawford's statements failed to demonstrate particularized guarantees of trustworthiness. In reaching this decision, the Appeals Court relied on Ohio v. Roberts, 448 U.S. 56 (1980), which allowed the admission of an unavailable witness's statement if the statement bears "adequate indicia of reliability" by either falling within a firmly rooted hearsay objection or bearing particularized guarantees of trustworthiness. Crawford's conviction was then reinstated by the Washington Supreme Court which concluded that Mrs. Crawford's statement did not fall under a firmly rooted hearsay objection, but did bear guarantees of trustworthiness in its similarities to Crawford's confession.

The United States Supreme Court granted certiorari and reversed the decision of the Washington Supreme Court. Justice Scalia, writing for the majority, conducted an in-depth analysis of both the text of the Confrontation Clause and its historical underpinnings, and concluded that the Clause was written to redress two main evils:

1) the use of ex parte examinations as evidence, specifically those of witnesses who bore testimony against the accused; and 2) the admission of such testimonial statements (or hearsay) of a witness who did not appear at a trial where there had been no prior opportunity for cross-examination. It was in an effort to eradicate such use of testimonial hearsay, according to Justice Scalia, that the Framers mandated that "the accused shall enjoy the right...to be confronted with the witnesses against him."

Justice Scalia then applied this interpretation of the Confrontation Clause to the

framework that the Court had established in Ohio v. Roberts. Justice Scalia concluded that the Roberts framework was not consistent with the Framers' intent for the Confrontation Clause, rather, that the Confrontation Clause required that reliability of testimonial hearsay be determined "by testing in the crucible of cross-examination," and not be left up to the subjective analysis of a judge. The Court then held that where testimonial hearsay is at issue, like that of Crawford's wife's statements to the police that were used to refute his claim of self-defense at trial, the Sixth Amendment mandates that such testimonial hearsay may only be admitted where the witness is unavailable and there has been a prior opportunity for cross-examination. The Court declined to offer a more comprehensive definition of "testimonial," but did indicate that it applied at a minimum to police interrogations, prior testimony at a preliminary hearing, before a grand jury, at or at a former trial.

At first blush, it appeared that the Crawford decision would have a sweeping impact on all manner of proceedings and discussions abounded about its application to everything from probation surrenders to the admission of drug certificates of analysis at trial. To date, attorneys across the Commonwealth have made Crawford arguments predominantly in the context of the use of so-called excited utterances at trials and to challenge the use of judicial determinations of reliability at probation surrenders with mixed results. Currently there are two cases pending before the Massachusetts Supreme Judicial Court regarding Crawford's application to the admissibility of so-called "excited utterances" at trials where the declarant is either unavailable or unwilling to testify.

CPCS Chief Appellate Counsel, Brownlow Speer, who argued one of the cases before the Supreme Judicial Court this past February, is hopeful that Crawford, if applied correctly, will eventually sound the "death knell" for Massachusetts prosecutions based exclusively on excited utterances. According to Attorney Speer, the leading Massachusetts case on the use of excited utterances, Commonwealth v. Whelton, 428 Mass. 24 (1998), rests largely on the United States Supreme Court's decision in White v. Illinois, 502 U.S. 346 (1992), which the Court in Crawford suggests in a footnote may be overruled. At a minimum, the Crawford Court clearly expressed its belief that the statement that was admitted as an "excited utterance" in White would not pass Constitutional muster as an "excited utterance" under the holding of Crawford. For this reason, Attorney Speer suggests that attorneys should not only argue that the Sixth Amendment bars the use of hearsay which has not been subjected to cross-examination as substantive evidence, but also add that if hearsay that has not been subjected to cross-examination can ever be admissible, that it's a Federal question as to whether or not a specific hearsay declaration qualifies as an excited utterance.