



JUNE 18, 2015

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Ohio v. Clark

The U. S. Supreme Court holds that the introduction of statements made by a 3-year-old to his school teachers did not violate the Confrontation Clause of the Sixth Amendment because such statements are not testimonial

In *Ohio v. Clark*, No. 13-1352 (June 18, 2015), the U. S. Supreme Court addressed whether statements to persons other than law enforcement officers are subject to the Confrontation Clause. The record showed that when L. P., a 3-year-old in Clark's care, went to preschool, his teachers noticed marks on his body and L. P. identified Clark as his abuser. At trial, L. P. was found to be incompetent to testify under Ohio law. Nevertheless, the state introduced the child's statements to his teachers as evidence. The state appellate court reversed Clark's conviction on Confrontation Clause grounds and the Supreme Court of Ohio affirmed.

The Supreme Court stated that in *Crawford v. Washington*, it held that the Sixth Amendment prohibits the introduction of testimonial statements by a non-testifying witness unless the witness is unavailable to testify and the defendant had a prior opportunity for cross-examination. In its later cases, the Court noted that it developed what has become known as the "primary purpose" test. In determining whether the admission of out-of-court statements violate the Confrontation Clause, the question is whether, in light of all the circumstances, viewed objectively, the "primary purpose" of the conversation was to create an out-of-court substitute for trial testimony. Where no such primary purpose exists, the admissibility of a statement is the concern of state and federal rules of evidence, not the Confrontation Clause.

The Court stated that because at least some statements to persons other than law enforcement officers could conceivably raise confrontation concerns, it would not adopt a categorical rule excluding them from the Clause's reach. Nevertheless, the Court found, such statements are much less likely to be testimonial than statements to law enforcement officers. And here, the Court concluded, L. P.'s statements clearly were not made with the primary purpose of creating evidence for Clark's prosecution.

First, the statements were informal and spontaneous and made in the context of an ongoing emergency. Thus, the teacher's questions were meant to identify the abuser in order to protect the victim from future attacks. Whether the teachers thought that this would be done by apprehending the abuser or by some other means was irrelevant. At no point did the teachers inform L. P. that his answers would be used to arrest or punish his abuser and the child never hinted that he intended his statements to be used by the police or prosecutors.



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Second, the Court found that the child’s age supported its conclusion that the statements were not testimonial. “Statements by very young children will rarely, if ever, implicate the Confrontation Clause.” Also, the Court noted, as a historical matter, there is strong evidence that at common law, statements made by children who were deemed incompetent to testify were routinely admitted into evidence.

Finally, the Court stated, although it declined to create a categorical rule that statements made to persons who are not law enforcement officers are outside the Sixth Amendment, the fact that L. P. was speaking to his teachers was highly relevant. This is so, the Court stated, because statements made to someone who is not principally charged with uncovering and prosecuting criminal behavior are significantly less likely to be testimonial than statements given to law enforcement. According, the Court reversed the judgment of the Supreme Court of Ohio because under the “primary purpose” test, L. P.’s statements to his teachers were not testimonial.

In so holding, the Court rejected Clark’s argument that Ohio’s mandatory reporting obligations convert a conversation between concerned teachers and their student into a law enforcement mission aimed at gathering evidence for prosecution. Similarly, the Court found irrelevant that the teachers’ questions and their duty to report the matter had the natural tendency to result in Clark’s prosecution. Moreover, whether a statement is testimonial does not turn on whether a jury would view the statement as the equivalent of in-court testimony.