

## Evidence

### *Crawford* Issues

*Michigan v. Bryant*, 562 U.S. \_\_\_ (Feb. 28, 2011). Justice Sotomayor, writing for the Court, held that a mortally wounded shooting victim's statements to first-responding officers were non-testimonial under *Crawford*. In the early morning, Detroit police officers responded to a radio dispatch that a man had been shot. When they arrived at the scene, the victim was lying on the ground at a gas station. He had a gunshot wound to his abdomen, appeared to be in great pain, and had difficulty speaking. The officers asked the victim what happened, who had shot him, and where the shooting occurred. The victim said that the defendant shot him about 25 minutes earlier at the defendant's house. The officers' 5-10 minute conversation with the victim ended when emergency medical personnel arrived. The victim died within hours. At trial, the victim's statements to the responding officers were admitted and the defendant was found guilty of, among other things, murder.

The Court held that because the statements were non-testimonial, no violation of confrontation rights occurred. The Court noted that unlike its previous decisions in *Davis* and *Hammon*, the present case involved a non-domestic dispute, a victim found in a public location suffering from a fatal gunshot wound, and a situation where the perpetrator's location was unknown. Thus, it indicated, "we confront for the first time circumstances in which the 'ongoing emergency' . . . extends beyond an initial victim to a potential threat to the responding police and the public at large." Slip Op. at 12. This new scenario, the Court noted, "requires us to provide additional clarification . . . to what *Davis* meant by 'the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency.'" *Id.* It concluded that when determining whether this is the primary purpose of an interrogation, a court must objectively evaluate the circumstances in which the encounter occurs and the parties' statements and actions. *Id.* It explained that the existence of an ongoing emergency "is among the most important circumstances informing the 'primary purpose' of an interrogation." *Id.* at 14. As to the statements and actions of those involved, the Court concluded that the inquiry must focus on both the declarant and the interrogator.

Applying this analysis to the case at hand, the Court began by examining the circumstances of the interrogation to determine if an ongoing emergency existed. Relying on the fact that the victim said nothing to indicate that the shooting was purely a private dispute or that the threat from the shooter had ended, the Court found that the emergency was broader than those at issue in *Davis* and *Hammon*, encompassing a threat to the police and the public. *Id.* at 27. The Court also found it significant that a gun was involved. *Id.* "At bottom," it concluded, "there was an ongoing emergency here where an armed shooter, whose motive for and location after the shooting were unknown, had mortally wounded [the victim] within a few blocks and a few minutes of the location where the police found [the victim]." *Id.* The Court continued, determining that given the circumstances of the emergency, it could not say that a person in the victim's situation would have had the primary purpose of establishing past facts relevant to a criminal prosecution. *Id.* at 29. As to the motivations of the police, the Court concluded that they solicited information from the victim to meet the ongoing emergency. *Id.* at 30. Finally, it found that the informality of the situation and interrogation further supported the conclusion that the victim's statements were non-testimonial.

Justice Thomas concurred in the judgment, agreeing that the statements were non-testimonial but resting his conclusion on the lack of formality that attended them. Justices Scalia and Ginsburg dissented. Justice Kagan took no part in the consideration or decision of the case.