

Evidence

Confrontation Issues

[*Ohio v. Clark*](#), 576 U.S. ___ (June 18, 2015). In this child abuse case the Court held that statement by the victim, L.P., to his preschool teachers were non-testimonial. In the lunchroom, one of L.P.'s teachers, Ramona Whitley, observed that L.P.'s left eye was bloodshot. She asked him "[w]hat happened," and he initially said nothing. Eventually, however, he told the teacher that he "fell." When they moved into the brighter lights of a classroom, Whitley noticed "[r]ed marks, like whips of some sort," on L.P.'s face. She notified the lead teacher, Debra Jones, who asked L.P., "Who did this? What happened to you?" According to Jones, L.P. "seemed kind of bewildered" and "said something like, Dee, Dee." Jones asked L.P. whether Dee is "big or little;" L.P. responded that "Dee is big." Jones then brought L.P. to her supervisor, who lifted the boy's shirt, revealing more injuries. Whitley called a child abuse hotline to alert authorities about the suspected abuse. The defendant, who went by the nickname Dee, was charged in connection with the incident. At trial, the State introduced L.P.'s statements to his teachers as evidence of the defendant's guilt, but L.P. did not testify. The defendant was convicted and appealed. The Ohio Supreme Court held that L.P.'s statements were testimonial because the primary purpose of the teachers' questioning was not to deal with an emergency but rather to gather evidence potentially relevant to a subsequent criminal prosecution. That court noted that Ohio has a "mandatory reporting" law that requires certain professionals, including preschool teachers, to report suspected child abuse to government authorities. In the Ohio court's view, the teachers acted as agents of the State under the mandatory reporting law and obtained facts relevant to past criminal conduct. The Supreme Court granted review and reversed. It held:

In this case, we consider statements made to preschool teachers, not the police. We are therefore presented with the question we have repeatedly reserved: whether statements to persons other than law enforcement officers are subject to the Confrontation Clause. Because at least some statements to individuals who are not law enforcement officers could conceivably raise confrontation concerns, we decline to adopt a categorical rule excluding them from the Sixth Amendment's reach.

Nevertheless, such statements are much less likely to be testimonial than statements to law enforcement officers. And considering all the relevant circumstances here, L.P.'s statements clearly were not made with the primary purpose of creating evidence for [the defendant's] prosecution. Thus, their introduction at trial did not violate the Confrontation Clause.

The Court reasoned that L.P.'s statements occurred in the context of an ongoing emergency involving suspected child abuse. The Court continued, concluding that "[t]here is no indication that the primary purpose of the conversation was to gather evidence for [the defendant]'s prosecution. On the contrary, it is clear that the first objective was to protect L.P." In the Court's view, "L.P.'s age fortifies our conclusion that the statements in question were not testimonial." It added: "Statements by very young children will rarely, if ever, implicate the Confrontation Clause." The Court continued, noting that as a historical matter, there is strong evidence that statements made in similar circumstances were admissible at common law. The Court noted, "although we decline to adopt a rule that statements to individuals who are not law enforcement officers are categorically outside the Sixth Amendment, the fact that L.P. was speaking to his teachers remains highly relevant." The Court rejected the defendant's argument that Ohio's mandatory reporting statutes made L.P.'s statements testimonial, concluding: "mandatory reporting statutes alone cannot convert a conversation between a concerned teacher and her student into a law enforcement mission aimed primarily at gathering evidence for a prosecution."

Capital Case Law

[*Brumfield v. Cain*](#), 576 U.S. ___ (June 18, 2015). Because the Louisiana state court's decision rejecting the defendant's *Atkins* claim without affording him an evidentiary hearing was based on an unreasonable determination of the facts, the defendant was entitled to have his claim considered on the merits in federal court. After the defendant was convicted, the U.S. Supreme Court held, in *Atkins*, that "in light of . . . 'evolving standards of decency,'" the Eighth Amendment "places a substantive restriction on the State's power to take the life' of a mentally retarded offender." The Court however left "to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences." The Louisiana Supreme Court later held that "a diagnosis of mental retardation has three distinct components: (1) subaverage intelligence, as measured by objective standardized IQ tests; (2) significant impairment in several areas of adaptive skills; and (3) manifestations of this neuro-psychological disorder in the developmental stage." That court further held that an *Atkins* evidentiary hearing is required when an inmate has put forward sufficient evidence to raise a "reasonable ground" to believe him to be intellectually disabled. In a post-conviction motion in the case at bar, the defendant sought an *Atkins* hearing. Without holding an evidentiary hearing or granting funds to conduct additional investigation, the state trial court dismissed the defendant's petition. After losing in state court, the defendant pursued federal habeas relief. The defendant won at the federal district court but the Fifth Circuit reversed. The U.S. Supreme Court granted review and held that the state court's decision denying his *Atkins* claim was premised on an "unreasonable determination of the facts." In reaching this decision, the Court focused on the two underlying factual determinations on which the trial court's decision was premised: that the defendant's IQ score of 75 was inconsistent with a diagnosis of intellectual disability and that he had presented no evidence of adaptive impairment. The Court held that both of the state court's critical factual determinations were unreasonable.