

## **COURT OF CRIMINAL APPEALS**

### **WALL V. STATE**

COURT OF CRIMINAL APPEALS OF TEXAS  
184 S.W.3d 730 (2005)

The Court of Criminal Appeals of Texas rejects any per se or categorical approach in determining whether excited utterances may or may not be classified as testimonial hearsay. The excited utterance and testimonial hearsay inquiries are separate, but related. While both inquiries look to the surrounding circumstances to make determinations about the declarant's mindset at the time of the statement, their focal points are different. The excited utterance inquiry focuses on whether the declarant was under the stress of a startling event. The testimonial hearsay inquiry focuses on whether a reasonable declarant, similarly situated (that is, excited by the stress of a startling event), would have had the capacity to appreciate the legal ramifications of her statement. These parallel inquiries require an ad hoc, case-by-case approach. An inquiring court first should determine whether a particular hearsay statement qualifies as an excited utterance. If not, the inquiry ends. If, however, the statement so qualifies, the court then must look to the attendant circumstances and assess the likelihood that a reasonable person would have either retained or regained the capacity to make a testimonial statement at the time of the utterance.

### **MARTINEZ v. STATE**

COURT OF CRIMINAL APPEALS  
178 S.W.3d 806 (2005)

Article 38.072 is a rule of evidence admissibility, allowing trial courts to admit some hearsay statements in the prosecution of certain offenses against children when those statements are made under the specified conditions. This statute serves the societal interests of promoting the fair prosecution of child abuse cases and of protecting children in court by allowing the admission of their casual "street corner" confidences to an adult as a supplement to (or sometimes even a substitute for) what may be halting, incoherent, or traumatic in-court testimony. The Confrontation Clause may act as a brake upon the admission of "testimonial" child outcry statements unless the child actually testifies or is presently unavailable but has been subject to cross-examination in a prior proceeding.

### **REYNA v. STATE**

NO. PD-0255-04  
COURT OF CRIMINAL APPEALS OF TEXAS  
2005 Tex. Crim. App. LEXIS 978

Because D did not expressly use the phrase "Confrontation Clause" and merely relied upon the word "credibility," the CCA held he had not properly preserved that issue. Holcomb filed a scathing dissent in which he criticized the majority for

“splitting hairs” on the issue. He felt that the CC is clearly invoked when a person seeks to introduce evidence to challenge the credibility of their testimony.

**RUSSEAU v. STATE**

No. AP-74,466

COURT OF CRIMINAL APPEALS OF TEXAS

2005 Tex. Crim. App. LEXIS 976

The CCA reversed the punishment phase of a capital murder case because the trial court admitted prison records over the objection of D. The reports in question contained testimonial statements which were inadmissible under the Confrontation Clause, because the State did not show that the declarants were unavailable to testify and appellant never had an opportunity to cross-examine any of them. Indeed, the statements in the reports amounted to unsworn, *ex parte* affidavits of government employees and were the very type of evidence the Clause was intended to prohibit. The trial court erred in admitting those portions of the reports that contained the testimonial statements.

**WOODS v. STATE**

COURT OF CRIMINAL APPEALS OF TEXAS

152 S.W.3d 105 (2004)

In affirming a death sentence, the CCA held that casual remarks are not testimonial in nature and therefore fall outside of Crawford.

**1<sup>ST</sup> COURT OF APPEALS – HOUSTON**

**CRAWFORD v. STATE**

NO. 01-04-00163-CR

COURT OF APPEALS OF TEXAS, FIRST DISTRICT, HOUSTON

2005 Tex. App. LEXIS 4789

A defendant's right to confront and cross-examine the witnesses against him under the U.S. Constitution's Sixth Amendment's confrontation clause is not implicated if a hearsay statement is non-testimonial in nature and bears adequate indicia of reliability. Statements of intent, against penal interest, or casual remarks to friends, family or others are not testimonial in nature.

**2<sup>ND</sup> COURT OF APPEALS – FORT WORTH**

**IN THE MATTER OF D.G.G.**

NO. 2-04-336-CV

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

2005 Tex. App. LEXIS 6200

The appellate court held that the neighbor's statement did not fall in the "testimonial" category and was exempt from Confrontation Clause scrutiny. The fact that the officer was a police officer did not, without more, make the conversation between him and his neighbor akin to a police interrogation. Nothing indicated who initiated the conversations, the circumstances surrounding them, or any other information showing that the neighbor's statement was made in response to question from an officer acting under color of police authority. Finally, the statement was not made in a formalized setting analogous to any of the situations described in Crawford as producing testimonial statements.

**ROGERS v. STATE**

NO. 2-04-212-CR

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

2005 Tex. App. LEXIS 5312

The court held that the admission of a 911 call audiotape did not violate defendant's Confrontation Clause rights because the woman on the 911 tape also testified at trial, and the one statement by an unidentified male was not testimonial in nature.

**MARC v. STATE**

NO. 2-03-205-CR

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

2005 Tex. App. LEXIS 4228

The officers' testimony indicates that each one asked questions of a lone, visibly upset female in a deserted place in the middle of the night in an attempt to determine the reason for her emotional state. We conclude that the victims' statements to the officers were not the product of custodial interrogation, nor were they responses to tactically "structured police questioning."

**HALE v. STATE**

OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

139 S.W.3d 418 (2004)

The admission of a testimonial statement by an accomplice or codefendant as evidence of guilt of the defendant on trial, absent opportunity by the defendant to cross-examine the declarant, is sufficient to make out a violation of the Sixth Amendment.

**SMITH v. STATE**

NO. 2-05-300-CR

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

2006 Tex. App. LEXIS 5173

Generally, statements that are made to police while the declarant is still in

personal danger are not made with consideration of their legal ramifications because the declarant usually speaks out of urgency and a desire to obtain a prompt response; thus, those statements will generally not be deemed testimonial. After the immediate danger has dissipated, however, a person who speaks while still under the stress of a startling event is more likely to comprehend the larger significance of his other words. Thus, if the record fairly supports a finding of comprehension, the fact that the statement also qualifies as an excited utterance will not alter its testimonial nature.

**RANGEL v. STATE**

NO. 2-04-514-CR

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

2006 Tex. App. LEXIS 4997

In this case, since the complainant. was unavailable for traditional cross-examination, [article 38.071](#) would have allowed appellant an opportunity to submit written interrogatories to her in another videotaped interview. But he never did. Accordingly, we believe that appellant had an opportunity to effectively cross-examine the complainant through written interrogatories. The statute afforded appellant the opportunity to submit interrogatories after viewing the first videotaped interview. We hold that in this case, the [Confrontation Clause](#) was not violated because appellant had an opportunity to submit written interrogatories. Further, by submitting interrogatories, appellant would have had the opportunity to test the reliability of statements from the prior interview. Unfortunately, appellant did not avail himself of this opportunity. When a defendant fails to use the statutory procedures available to him that could safeguard his rights, his failure to do so cannot later form the basis for his constitutional attack.

**NOTE:** THIS CASE HAS A GOOD DISSENT

**KING v. STATE**

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

189 S.W.3d 347 2006 (2006)

Generally, a co-conspirator's statements made in the furtherance of the conspiracy are nontestimonial

**YOUNG v. STATE**

NO. 2-04-501-CR, NO. 2-04-502-CR

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

2005 Tex. App. LEXIS 9498

The Sixth Amendment rights of confrontation and cross-examination apply at the punishment stage when the trial judge alone assesses punishment. We believe the right to counsel applies even at punishment in a bench trial. And until a higher court instructs us to the contrary, we shall apply the [Sixth Amendment](#) in its entirety, even to bench trials.

### **3<sup>RD</sup> COURT OF APPEALS – AUSTIN**

#### **DAVIS v. STATE**

NO. 03-04-00014-CR

COURT OF APPEALS OF TEXAS, THIRD DISTRICT, AUSTIN

2005 Tex. App. LEXIS 3773

Defendant argued that he was denied his Sixth Amendment right of confrontation and cross-examination because the trial court admitted the hearsay out-of-court statements of the complainant made to a police officer near the scene of the offense when the complainant did not testify and her unavailability was never established. The court held that while the complainant's statements to the officer were admissible under the excited utterances exception to the hearsay rule, that did not mean that they were ipso facto nontestimonial hearsay outside the scope of the Confrontation Clause and admissible into evidence. If the objected-to hearsay was testimonial, the Crawford rule applied, and constitutional error occurred. However, defendant made a judicial confession corroborating much of the declarant's statements to the officer. Thus, the court concluded that if the complained-of hearsay was testimonial in nature, the error did not contribute to the conviction or punishment assessed.

#### **SCOTT V. STATE**

COURT OF APPEALS OF TEXAS, THIRD DISTRICT, AUSTIN

165 S.W.3d 27 (2005)

The question of whether a statement is testimonial within the meaning of the Sixth Amendment and Crawford does not turn on whether it is self-inculpatory within the meaning of the hearsay exception for statements against penal interest.

#### **CASSIDY V. STATE**

COURT OF APPEALS OF TEXAS, THIRD DISTRICT, AUSTIN

149 S.W.3d 712 (2005)

We do not believe that the interview of CW at the hospital on the afternoon of the assault constituted "interrogation" as that term is used in ***Crawford***. Therefore, we do not believe that the hearsay in question was testimonial. *Crawford* strongly suggests, but does not hold, that the admissibility of nontestimonial hearsay is outside the scope of the Sixth Amendment. Under either this theory or the "indicia of reliability" theory currently applied to nontestimonial hearsay, the admission of the excited utterances to the officer did not violate the Sixth Amendment.

## **4<sup>TH</sup> COURT OF APPEALS – SAN ANTONIO**

### **GARCIA v. STATE**

No. 04-02-00910-CR

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

2005 Tex. App. LEXIS 791

Adoptive admissions are not hearsay and their admission does not violate the Confrontation Clause

### **ESLORA v. STATE**

No. 04-04-00112-CR

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

2005 Tex. App. LEXIS 2564

Medical records do not fall within the categories of testimonial evidence described in *Crawford*; business records are nontestimonial.

### **GONZALEZ v. STATE**

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

155 S.W.3d 603 (2004)

The doctrine of forfeiture by wrongdoing extinguishes confrontation claims on essentially equitable grounds. The Constitution gives the accused the right to a trial at which he should be confronted with the witnesses against him; but if a witness is absent by the accused's wrongful procurement, he cannot complain if competent evidence is admitted to supply the place of that which he has kept away. The Constitution does not guarantee an accused person against the legitimate consequences of his own wrongful acts. It grants him the privilege of being confronted with the witnesses against him; but if he voluntarily keeps the witnesses away, he cannot insist on his privilege. If, therefore, when absent by his procurement, their evidence is supplied in some lawful way, he is in no condition to assert that his constitutional rights have been violated.

### **NIESCHWIETZ v. STATE**

No. 04-05-00520-CR

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

2006 Tex. App. LEXIS 5255

Computer entry showing vehicle registration is akin to a business or public record and is thus non-testimonial under the *Crawford* analysis. The Court of Criminal Appeals has distinguished between documents recording routine, objective observations made as part of the daily functions of the preparing official or agency, which are admissible as a public record, and those made during the "more subjective endeavor of investigating a crime," which are not.

**IN THE MATTER OF D.L.**

No. 04-05-00316-CV

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

2006 Tex. App. LEXIS 1758

This case involves an order transferring appellant juvenile from the Texas Youth Commission (TYC) to the custody of the Institutional Division of the Texas Department of Criminal Justice (TDCJ). Appellant argued that his right to confront witnesses was violated when the juvenile court allowed a court liaison to testify based on a summary report, which used information compiled and gathered by a school psychologist and a caseworker, neither of whom were present at the transfer hearing to testify. The court disagreed, finding that a transfer hearing was not a stage of a criminal prosecution for purposes of the Sixth Amendment. A transfer hearing was not a trial and therefore did not need to meet the same stringent due process requirements as a trial in which a person's guilt was decided.

**MITCHELL v. STATE**

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

191 S.W.3d 219 (2005)

An autopsy report set forth matters observed pursuant to a duty imposed by law, for purposes of the business records exception and a doctor testified to the cause of death based on her opinion on the autopsy report. It was not a statement given in response to police interrogatories, the report did not fall within the categories of testimonial evidence and was non-testimonial.

**5<sup>TH</sup> COURT OF APPEALS – DALLAS**

**JOHNSON v. STATE**

No. 05-05-00848-CR

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, DALLAS

2006 Tex. App. LEXIS 5460

The complainant's sexual examination report and the defendant's DNA analysis were admitted into evidence. Neither person who prepared the reports was available to testify and the reports were offered through, and explained by, other witnesses. The reports at issue in this case do not fall within the Crawford testimonial categories. Instead, these documents contain reports of physical evidence collected during the investigation of a crime. They set forth matters observed pursuant to a duty imposed by law. Neither the rape examination report nor the forensic biology report is testimonial, within the meaning of Crawford, for purposes of confrontation rights. The Court of Criminal Appeals has determined that although a document is classified as a business record for hearsay purposes, it can still be testimonial in its content.

**FELIX v. STATE**

No. 05-04-01322-CR

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, DALLAS

2005 Tex. App. LEXIS 9865

In the context of the Fifth Amendment, which bars against compelling communications or testimony, but not real or physical evidence, the chemical analysis of blood for its alcohol content does not contain even a shadow of testimonial compulsion and does not in any way implicate a defendant's testimonial capacities

**MCNAC v. STATE**

No. 05-04-00492-CR

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, DALLAS

2005 Tex. App. LEXIS 6624

The CA held that statements made to a security officer regarding the commission of an offense were not testimonial in nature because the statement was not made to police, and the witness could not reasonably expect the statement to be used prosecutorially.

**MASON v. STATE**

No. 05-04-00451-CR

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, DALLAS

2005 Tex. App. LEXIS 5032

Even though the statements may have fallen under the excited utterance exception, they were still testimonial. Even if the complainant's out-of-court oral statements were not in response to "interrogation," they were testimonial because they were statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial. This case gives a very good analysis of Crawford.

**VANMETER v. STATE**

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, DALLAS

165 S.W.3d 68 (2005)

The constitutional right of confrontation was a trial right, not a pretrial right which would transform it into a constitutionally compelled rule of discovery. Accordingly, the Supreme Court case did not apply at pretrial suppression hearings.

**MANCILLA v. STATE**

No. 05-03-01637-CR

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, DALLAS

2005 Tex. App. LEXIS 3334

An informant testified that a declarant agreed to sell her drugs and said that defendant was his right hand man. In affirming the conviction, the court found that the testimony did not violate the Sixth Amendment Confrontation Clause. The Crawford standard did not apply because the declarant's statements were not testimonial. They were made during a meeting to arrange the sale of drugs, a setting that would not have led an objective witness to believe that the statement would be available for judicial proceedings. The court also analyzed the admission under the Ohio v. Roberts standard, although questioning its continued validity, and found that the admission was proper under the co-conspirator exception to the hearsay rule. Because the statements fell within a firmly rooted hearsay exception, an independent inquiry into reliability was not required.

**BROOKS v. STATE**

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, DALLAS

132 S.W.3d 702 (2005)

A co-defendant's statement that "expressly implicates" a defendant is "powerfully incriminating." The court found that the co-defendant's statement was testimonial, that defendant was deprived of an opportunity to cross-examine him, and, as such, defendant's Sixth Amendment confrontation rights were violated under the Crawford test. The admission was not harmless, as it was the only direct evidence to show defendant's culpable mental state and his active participation as a party.

**NEAL v. STATE**

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, DALLAS

186 S.W.3d 690 (2006)

The trial court did not violate defendant's confrontation rights by admitting the recording of the 911 call because the recorded statements were not testimonial. Because the call was made during a crime in progress and made in urgency and with the desire for a prompt response by the police, it was not made under circumstances that would lead an objective witness to reasonably believe the statements would be available for use at a later trial.

## **6<sup>TH</sup> COURT OF APPEALS – TEXARKANA**

### **MOORE v. STATE**

No. 06-04-00148-CR

COURT OF APPEALS OF TEXAS, SIXTH DISTRICT, TEXARKANA

2005 Tex. App. LEXIS 5777

CA reverses because the TC abused its discretion in admitting a videotape of an interview of a witness. The court held it was testimonial in nature due to the circumstances surrounding the interview. Although the interview was conducted at the victim's residence, the videotaped interview was similar to a police interrogation. The formal nature of the statement indicated that it was testimonial. The purpose of the interview was to memorialize the evidence and preserve it for trial.

### **WIGGINS v. STATE**

COURT OF APPEALS OF TEXAS, SIXTH DISTRICT, TEXARKANA

152 S.W.3d 656 (2004)

Co-conspirator statements made in the furtherance of a conspiracy are non-testimonial and therefore not subject to a Crawford analysis.

## **7<sup>TH</sup> COURT OF APPEALS – AMARILLO**

### **FLORES v. STATE**

NO. 07-02-0224-CR

COURT OF APPEALS OF TEXAS, SEVENTH DISTRICT, AMARILLO

2005 Tex. App. LEXIS 5190

In an Injury to a Child case, the State called defendant's sister as a witness and asked her whether the child's mother had told her how the child was injured on a particular occasion. Defendant objected, contending that the answer was hearsay and that its admission would violate his right to confrontation because his wife had invoked the spousal privilege and thus could not be questioned. The trial court overruled the objections and allowed the witness to testify. The court, in affirming, considered whether the statement was testimonial or non-testimonial. The court concluded that the statement was non-testimonial because it was made in the context of a personal relationship, soon after the child's injury. There was nothing of record to indicate that the witness was working for the police or the prosecutor, sought to obtain information on behalf of the police or the prosecutor, or sought to obtain information to be used in a judicial proceeding.

## **8<sup>TH</sup> COURT OF APPEALS – EL PASO**

### **RAMOS v. STATE**

No. 08-04-00085-CR

COURT OF APPEALS OF TEXAS, EIGHTH DISTRICT, EL PASO

2005 Tex. App. LEXIS 6466

Officers responded to a scene and began to questions the CW about what had happened. The court admitted the stmts as excited utterance and stmts for medical tx. The CA, in affirming the decision said that none of these statements were made in a formal setting, in response to tactically structured police questioning, or were the product of custodial interrogation as that term is used in *Crawford*. Rather, it is apparent that the statements were made during the initial interaction between the victim and police/emergency personnel, in which the safety and medical needs of the victim were paramount, and not "under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." Therefore, the hearsay statements were non-testimonial in nature.

### **WALTMON v. STATE**

No. 08-03-00317-CR

COURT OF APPEALS OF TEXAS, EIGHTH DISTRICT, EL PASO

2004 Tex. App. LEXIS 7285

The fact that the anonymous caller reported Appellant's erratic driving did not amount to a testimonial statement as contemplated by *Crawford*. The tipster's statement was not admitted to show that Appellant was indeed driving while intoxicated but to show how the officers happened to be in the area.

## **9<sup>TH</sup> COURT OF APPEALS - BEAUMONT**

### **SMART v. STATE**

COURT OF APPEALS OF TEXAS, NINTH DISTRICT, BEAUMONT

153 S.W.3d 118 (2004)

Like parole revocation, community supervision revocation is not a stage of a criminal prosecution. A community supervision revocation proceeding is an administrative hearing, not a criminal trial. A parolee is entitled to due process before parole is revoked to assure the exercise of discretion will be informed by an accurate knowledge of the parolee's behavior. Due process in a revocation proceeding includes the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation). There is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense.

**IN RE COMMITMENT OF TOM POLK**  
COURT OF APPEALS OF TEXAS, NINTH DISTRICT, BEAUMONT  
187 S.W.3d 550 (2006)

The [Sixth Amendment Confrontation Clause](#) applies to a criminal prosecution, and *Crawford* is a criminal case. We have found no case applying *Crawford* to a civil commitment. We decline to extend its application to this civil proceeding.

**10<sup>TH</sup> COURT OF APPEALS**

**11<sup>TH</sup> COURT OF APPEALS - EASTLAND**

**BACA v. STATE**

No. 11-04-00021-CR  
COURT OF APPEALS OF TEXAS, ELEVENTH DISTRICT, EASTLAND  
2006 Tex. App. LEXIS 4698

We hold that the report from the confidential informant that appellant was distributing heroin in Odessa was non-testimonial. There was no interrogation of the informant, and the trial court did not err in overruling appellant's request for the name of the confidential informant.

**IN THE MATTER OF J.R.L.G.**

No. 11-05-00002-CV  
COURT OF APPEALS OF TEXAS, ELEVENTH DISTRICT, EASTLAND  
2006 Tex. App. LEXIS 3344

On appeal, the juvenile argued that admission of his urinalysis lab results violated his Sixth Amendment confrontation right. The court disagreed, holding that the lab reports were non-testimonial evidence. The Sixth Amendment Confrontation Clause was not implicated, and the trial court did not err in admitting the reports. The lab reports did not contain out-of-court statements providing observations of a declarant. The lab reports merely contained the results of the tests.

**12<sup>TH</sup> COURT OF APPEALS – TYLER**

**KEY v. STATE**

NO. 12-04-00030-CR  
COURT OF APPEALS OF TEXAS, TWELFTH DISTRICT, TYLER  
2005 Tex. App. LEXIS 1573

Statements obtained through police officer questioning at or near the scene of a crime are testimonial under *Crawford* if obtained by an officer acting in an investigative capacity to produce evidence in anticipation of a potential criminal prosecution. Such questioning raises Confrontation Clause concerns more than

questioning incidental to other law enforcement objectives such as exigent safety, security, and medical concerns. Most of the post-Crawford cases reviewing this issue have held that initial police-victim interaction at the scene of an incident is not an interrogation and that admission of testimony about that interaction does not offend the Confrontation Clause. The underlying rationale of an excited utterance supports a determination that it is not testimonial in nature for purposes of the Confrontation Clause. Such a declaration from one who has recently endured physical abuse, and with no time for reflection or deliberation, is likely to be truthful. It is consistent with the definition of an excited utterance to conclude that it is not a statement that has been made in contemplation of its use in a future trial.

### **13<sup>TH</sup> COURT OF APPEALS – CORPUS CHRISTI**

#### **MORENO v. STATE.**

NUMBER 13-03-649-CR, NUMBER 13-03-650-CR  
COURT OF APPEALS, THIRTEENTH DISTRICT, CORPUS CHRISTI  
2005 Tex. App. LEXIS 4091

The Confrontation Clause is not implicated when the witness testifies in court and D has a chance to cross-examine them.

#### **DENOSO v. STATE.**

COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS  
CHRISTI  
156 S.W.3d 166 (2005)

Even though autopsy reports are partially subjective, they are generally prepared by officials with no motive to fabricate the results of the reports, and as a general rule, a medical examiner's office is not such a uniquely litigious and prosecution-oriented environment as to create an adversarial context. Therefore, autopsy reports are not testimonial in nature and therefore do not trigger the CC.

#### **WALL v. STATE**

COURT OF APPEALS, THIRTEENTH DISTRICT, CORPUS CHRISTI  
143 S.W.3d 846 (2004)

Defendant argued that the admission of a victim's statement, taken by police at the hospital, violated his right to confrontation. The court agreed that admitting the statement under the excited utterance exception to the hearsay rule violated the Sixth Amendment under the recently announced Crawford standard. Disagreeing with another Texas appellate decision, the court held that the victim statement was "testimonial" under Crawford as a matter of law. Because a testimonial statement was at issue, only confrontation could satisfy the constitutional demands for reliability, and defendant had not had the opportunity to cross-examine the unavailable witness.

## **14<sup>TH</sup> COURT OF APPEALS – HOUSTON**

### **DE LA CRUZ v. STATE**

OS. 14-04-00475-CR, 14-04-00476-CR

COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT, HOUSTON

2005 Tex. App. LEXIS 5850

There is not CC violation if the W testifies and you have the opportunity to cross her. It does not matter that the complained of statements came in through another witness.

### **TYLER v. STATE**

NO. 14-04-00544-CR

COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT, HOUSTON

2005 Tex. App. LEXIS 4742

In affirming a capital murder case, the court concluded that there was no Confrontation Clause violation because the victim's statement was not testimonial in nature. The statements in question were not being recorded in any manner and were given in a particularly informal setting, which was while the victim was being prepared for surgery by hospital staff. It appeared that the victim simply wanted to let the officer know what happened to aid the start of the investigation. How they can conclude that the CW did not make the statement with the subjective belief that it would be later used in trial is a wonder.

### **SPENCER v. STATE**

COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT, HOUSTON

162 S.W.3d 877; 2005 Tex. App. LEXIS 3162

Defendant's girlfriend did not testify at trial, but the trial court allowed the two officers who responded to the girlfriend's 911 call to testify that she told them that defendant had hit her. The trial court admitted the girlfriend's initial statements to the officers under the excited utterance exception to the hearsay rule. The court held that the girlfriend's statements to the officers were not "testimonial," under the Crawford test because the girlfriend initiated the contact by summoning the police for help, and the officers' preliminary question at the scene was designed to ensure the safety of those on the scene and did not amount to interrogation. The court noted that even if the girlfriend's statements were made in response to questioning, preliminary questions when police arrive at a crime scene to assess and secure the scene did not constitute interrogation because they bore no indicia of the formal, structured questions necessary for statements to be testimonial.

**JAHANIAN v. STATE**

COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT, HOUSTON  
145 S.W.3d 346

D contends his right to confrontation and cross-examination were abridged by the admission of co-D's written statement. Co-D did not testify at trial, and law enforcement officials have been unable to locate her. The State attempted to introduce Co-D's statement through an officer. The State argued that the statement was excepted from the Hearsay Rule as a Statement Against Interest. CA held that co-D's statement violated the [Confrontation Clause of the Sixth Amendment](#) without regard to whether it satisfied an exception to the Hearsay Rule.

**LAREDO v. STATE**

NO. 14-05-00808-CR

COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT, HOUSTON  
2006 Tex. App. LEXIS 4257

Defendant claimed the trial court erred in admitting a videotape of an interview with the complainant child because she was not "unavailable to testify" as a prerequisite to admission. The trial court found that the child was unavailable to testify and the out-of-court statements were generally admissible. During trial, an unsuccessful attempt was made to have the child testify from the judge's chambers via closed circuit television. The State then offered the videotape into evidence, and the trial court admitted it over defendant's hearsay objections. On appeal, the court held that the trial court did not abuse its discretion in ruling that the child was unavailable to testify because, contrary to defendant's assertions, the child did not testify in any way relevant to the Article 38.071 inquiry where she essentially refused to answer any questions about the alleged offense.

**WALKER v. STATE**

COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT, HOUSTON  
180 S.W.3d 829 (2005)

Police approached a witness while she was in police custody to question her about an ongoing criminal investigation and asked her to identify suspects in that investigation. These facts demonstrate that the setting was sufficiently formal and structured to qualify as a police interrogation. Additionally, under these circumstances, the witness reasonably could have believed that her identifications would be used in the subsequent trials of Ramos and appellant.