

No. _____

22-6356

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

OCT 04 2022

OFFICE OF THE CLERK

Tyler W Nees
(Your Name)

— PETITIONER

vs.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Oregon Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tyler W Nees
(Your Name)

82911 Beach Access RD
(Address)

Umatilla OR 97887
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

(1) WAS the response ~~to~~ the Question "who Stabbed you" Testimonial? That is was the question Asked to end a present police emergency or to prove past event potentially relevant to later prosecution. As the Court ruled the Statement have independant evidence of trustworthiness and that the Confrontation Clause does not Apply.

(2) WAS Forcing me to trial without my file and time to file motions, ~~Legal~~ along with not allowing me the Jury Questionnaires. was this fundamentally fair?

LIST OF PARTIES

- ☐ All parties appear in the caption of the case on the cover page.
- ☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Oregon Court of Appeals
Multnomah County Circuit Court

RELATED CASES

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TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

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Confrontation Clause of the Sixth Amendment of the
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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix 4 to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 5-25-22.
A copy of that decision appears at Appendix A .

☒ A timely petition for rehearing was thereafter denied on the following date: UNKNOWN , and a copy of the order denying rehearing appears at Appendix NA .

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Constitutional and Statutory provisions³ involved

(Error 1)

X. Admitting the statements of Brian Nees ~~were~~ violated Article I, section 21 of the Oregon State Constitution and the Confrontation Clause of the Sixth Amendment of The United States Constitution.

The statements made by Brian Nees were made in response to direct questions by ~~a~~ a 911 Operator and police officer, who were investigating past Criminal Conduct for the purpose of potential future prosecution, and as such, the statements ^{are} testimonial and violate my (Defendant's) Confrontation rights under Article I, Section 21 of The Oregon Constitution and the Sixth Amendment Confrontation Clause of the United States Constitution.

In the case of *State v. Camarena*, 344 Or. 28 (2008), the Oregon Supreme Court conducted an analysis of statements made during a 911 call and whether or not they were testimonial in nature. In *Camarena*, an emergency operator received a 911 telephone call where the caller hung up as soon as the operator answered, so the operator immediately called the number back and had the following conversation with the original caller:

(Complainant): Hello

(9-1-1): Hi, this is 9-1-1. Somebody called and hung up. Is there a problem there?

(Complainant): YEAH, my boyfriend hit me but then he left.

(9-1-1): Where is he now?

(Complainant): I don't know. He took the car and he left.

(9-1-1): Okay, what kind of car is it?

~~(Complainant): A Honda Accord. A black one.~~

(Complainant): A Honda Accord. A black one.

(9-1-1): Do you know which ^{direction} ~~direction~~ he went? He went?

(Complainant): I don't know.

(9-1-1): What's your address?

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(Complainant): 2700 West Powell.

Id. at 30-32.

The Complainant gave the operator her boyfriend's name, that he was on probation, his driver's license number and told the operator that the assault had ~~operator~~ occurred a minute before she Originally Called 911. Additionally, throughout the conversation, the Complainant "cried intermittently and sounded agitated." Id. at 33. Police were dispatched to the location, and conducted two follow-up interviews with the Complainant. The State had subpoenaed the Complainant; however, she did not appear at Camarena's trial, and he moved to exclude her statements to the 911 operator and all subsequent statements to police officers. The trial court allowed the State to introduce the 911 statements and subsequent statements to the jury, and Camarena was convicted. The Court of Appeals affirmed the trial court's ruling, determining that the Complainant's statements were non-testimonial as well as being "excited utterances" and did not violate Article I, Section 11 of the Oregon Constitution. The Oregon Supreme Court affirmed the conviction as well, ruling that the challenged statements were non-testimonial and did not violate the Sixth Amendment Confrontation Clause.

In the Court of Appeals analysis, the Court looked to the United States Supreme Court decision in *Davis v. Washington*, 126 S.Ct. 2266 (2006), which laid out a framework for determining if statements are testimonial: "to reiterate: under *Davis*, the proper ~~inquiry~~ inquiry is whether the totality of the circumstances objectively indicated that the primary purpose of the interrogation (was) to enable police assistance to meet an ongoing emergency." [547] U.S. at ___, 126 S.Ct. at 2273. From the Court's analysis, we understood that several considerations

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hear on that inquest. First, what is the temporal relationship between the Statements and the events described? That is, were the events 'actually happening' as the Statements were made, or did the Statements recount 'past events' after 'some time' had passed? Second, did the exchange between the police and the declarant relate, logically and practically, to the immediate identification of, and response to, an emergency — as opposed to investigation post criminal conduct and developing information for purpose of possible future prosecution? Third, how 'formal' was the questioning? Did the questioning take place in a police station, in an isolated room, or on the phone? ~~where~~ were the declarant's Statements 'frantic' or ~~deliberate~~ deliberate? "Cumarena, 208 Or App at 587 (2006) id at 34-35.

In Cumarena, the Court acknowledged, 'although 911 operators may not be police officers *per se*, their jobs do, at times, place them in circumstances that require them to act as police agents for law enforcement purposes,' and concluded that for the purpose of the case that the emergency operator in Cumarena acted as a police agent. Id at 38. The Court then looked to Davis again for the four factors used in determining the victim's Statements were non-testimonial. The Court concluded that a reasonable listener, evaluating the victim's Statements objectively, would conclude that (1) the victim was relating events to the 911 operator as they actually happened rather than ~~describing~~ describing past events; (2) the victim faced an ongoing emergency in the form of a bona fide physical threat; (3) the Statements that the victim made were ~~was~~ necessary to resolve the present emergency, including Statements regarding the defendant's identity so that police officers dispatched to the scene would

know whether or not they faced a violent felon; and (4) The victims' statements were not made in the safety of a station house or police officer's presence, but were made "over the phone, in an environment that was not tranquil, or even (as far as any reasonable 9-1-1 operator could make out) safe." *id.* at 2276-77. The Court concluded that, considered together, those circumstances objectively indicated that the primary purpose behind the victims' 911 interrogation in Davis was to enable authorities to meet an ongoing emergency. *id.* at 40.

The Oregon Supreme Court agreed with the outcome by the Court of Appeals, but that it misapplied the "totality of the Circumstances" analysis in Davis by focusing almost exclusively on the nature of the questions by the 911 operator. The Court went on to say that:

As the Supreme Court made plain in Davis and we now reiterate, "it is in the final analysis the declarant's statements, not the interrogator's questions, that the Confrontation Clause requires us to evaluate." Davis, 547 at ___, 126 S.Ct. at 2274 n.10. 45 we read Davis. that statement was intended to emphasize that statements made in situations not amounting to "interrogation" may, depending on the circumstances nevertheless qualify as testimonial, so that their admission would violate the Sixth Amendment if the declarant were not available to testify. *id.* at 41.

The Court then went on to focus on the part of the emergency call with the 911 operator and concluded that an objective analysis of the statements received the same outcome as the Court of Appeals:

As relevant here, those statements established that

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(1) Complainant's boyfriend had hit her and left the ~~Cop~~ Couple's apartment; (2) the attack took place only moments before the 911 operator made contact with the Complainant; (3) The Complainant had been hit in the eye; and (4) the Complainant had provided the 911 operator with the address where she could be found. SEE Camarena (2005)

This case can be distinguished from Camarena. For example, in Camarena the Court stated the beginning of Complainant's 911 telephone call "clearly described an attack that had passed, ~~the~~ but ^{the call} occurred within one minute of the attack, or just after the defendant (accused) had left the Couple's residence," and that the defendant could have easily returned. In this case, Brian Nees did not call 911, Ormond Fentress, Jr called 911 (emergency ~~sexual~~ medical, fire, police) requesting an ambulance and medical aid, the injury had already ~~occurred~~ occurred, there was no indication of exactly when or where the injury occurred, nor was an indication the injury was caused in a violent act or with mens-rea. There was no indication of a threatening situation in progress. There was a possible suspect seen running away from the area before the call was placed. There was ^{NO} ~~not~~ indication from the 911 call of any danger or of a threatening situation or renewed attack, the 911 operator was speaking to Ormond Fentress, Jr and directing him to question Brian Nees in an investigation into events that had already occurred in an attempt to establish or prove past events potentially relevant to future Criminal prosecutions, while waiting for the ambulance to arrive.

Second, as in Camarena, while a reasonable person could-
Conclude

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Brian Nees faced "an ongoing medical emergency" in that he had an injury that needed medical attention, the important differences here are that there were two individuals with him on a public Street and giving him aid ~~and~~ while awaiting the arrival of the ambulance. There was no police emergency.

Third, In Camarena, the Court found that because of the possibility of the return of the Complainant's boyfriend, "the Complainant's identification of her boyfriend as her assailant, as well as her location, were both necessary to help terminate that ongoing emergency." *Id.* at 42 This is distinguishable from this case because Ormond Fentress, Jr told the 911 operator their location for the ambulance to come to Brian Nees' aid, and that he only saw one individual who could be a possible suspect, and that person was seen running away from the area. While certainly there was a medical emergency at the time of the 911 call, there was no indication of threat to anyone or of a danger or renewed attack, and Brian Nees was safe with two individuals caring for him while waiting for medical assistance & as opposed to the Complainant in Camarena who was alone. Unlike Camarena the identification of the suspect was not required or ~~was~~ was it necessary at the time to end a threatening situation.

The fourth factor the Court sets out in Camarena, that "it was reasonable to infer from Complainant's statements that the environment from which she was calling would be neither tranquil nor reasonably safe ~~with~~ until aid arrived, giving the possibility of her boyfriend's return" is simply not present in the case before you. Because Brian Nees was with both

Ormond Fentress, Jr, and Crystal Stockwell, on a public street, with the only possible suspect last seen running away from the location, the environment he was in was "reasonably safe" there was no indication of criminal conduct occurring or a threatening situation or a threat to public or was there any indication that an attacker if there even was one would return before medical aid and law enforcement arrived.

The same analysis applies to the statements made by Brian Nees in response to questioning in the ambulance by officer Cox. That questioning is similarly distinguishable from Camarena and those statements are testimonial as well. Because all of the statements made by Brian Nees during the 911 call and during questioning by officer Cox in the ambulance are testimonial admission violated Article 1 section 11 of the Oregon Constitution and the Sixth Amendment of the United States Constitution.

Here the Judge ruled: Because the statements have independent evidence of ~~the~~ trustworthiness that the Confrontation Clause does not apply in this case. Then he ruled the statements testimonial. But after my attorney explained they don't come in as testimonial, he changed how he ruled to non-testimonial. SEE Attachment 1 (iv 176-180) ALSO SEE Ohio v. Roberts 448 U.S. 56 (1980) That was his thinking or so I believe, but it is not good law.

A statement during an ongoing emergency is sufficiently ~~reliable~~ reliable, "Because the prospect of fabrication is presumably significantly diminished," so it does not (need) to be subject to the crucible of cross-examination. (SEE 562 U.S. 391 id at 1157)

Here 27 to 30 minutes passed from the time of the injury and is plenty of time to reflect and fabricate a false statement/story.

"Interrogations by law enforcement officers fall squarely within (the) class of testimonial hearsay, we had immediately in mind (for that was the case before us) interrogations solely directed at establishing the facts of a past crime, in order to identify (or provide evidence to convict) the perpetrator, the product of such interrogations, whether reduced to writing signed by declarant or embedded in memory (and perhaps notes) of the interrogating officers is testimonial." SEE Davis, 547 U.S. at 829, 126 S.Ct. 2266

Here the injured person did not seek any help from a threatening situation or a physical attacker, but went to a local bar 27 to 30 minutes after the injury occurred. The 911 caller placed an emergency call for medical assistance, due to the fact an injured person knocked on the front door seeking medical assistance. The 911 caller seen a person he later told the dispatcher could be a suspect fleeing the area (running away) before he placed the call where he requested "an ambulance" as his primary purpose was to get medical assistance to an injured person. The dispatcher was informed ~~off~~ after picking up the line saying "911" (police, fire, medical) that the call was a request for medical as the caller stated "I need an ambulance" The dispatcher then asked "Do you know where it happened" (past tense) He learned the caller had no clue "I have no clue" and "some guys running down the street" and "two guys beating on the door and he's got blood all over the bar". The dispatcher said "okay, I've got help started." After a few medical questions and directing the caller to "apply direct pressure" the dispatcher again asks about the suspect "Do we know where the suspect went" (as the dispatcher understood circumstances objectively indicated that there was not an active attack in progress nor was there a

threatening situation happening) The dispatcher once again learned the "suspect went eastward" After a number of more questions about the injured persons medical symptoms. A question was asked to ask the injured person "are you hurt anywhere else" The dispatcher who is considered a police officer per Ors 401.710 to 401.816 was start-ing an interrogation. The response to the question was "a solemn declaration or affirmation made for the purpose of establishing some fact." (Citing Crawford, 541 U.S. at 51) "no he just stabbed me" Then the officer asked the caller "The Suspect, can we try for a description is he - what ~~was~~ race is he? Age? Does he know his name?" The caller understood what the officer wanted and the primary purpose of the question was "who stabbed you" was the caller's question to the injured person. The interrogation (questions) had "the primary purpose to establish the facts of an event that had passed happened in the past or to prove past events potentially relevant to later Criminal prosecution." (Davis 547 U.S. at 822, 126 S.Ct 2266) Because the responses "were neither a cry for help nor the provision of information enabling officers to end a threatening situation", id at 832, 126 S.Ct 2266 we held that they were testimonial.

Here the question asked was very deliberately a request with the only response being "a solemn declaration or affirmation made for the purpose of establishing or proving some fact" (Citing Crawford 541 U.S. at 51) As we recognized in Davis, "a conversation which begins as an interrogation to determine the need for emergency assistance" can "evolve into testimonial statements." 547 U.S., at 828, 126 S.Ct 2266. The primary purpose of the question asked to the injured person

and his response were to establish or prove past events potentially relevant to later Criminal prosecution.

Here the out of Court Interrogation (questions) asked to the injured person was clearly aimed at obtaining evidence for trial. That being said, introduction of the statements were unfair to the accused as they are untested by Cross-examination, because they ^{are} testimonial and were offered for the truth of the matter. (offer of proof) This Court must grant review and must correct this Error.

In Davis, we explained how to identify testimonial hearsay prompted by police questioning in the field. A statement is testimonial "when Circumstances objectively indicate that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later Criminal prosecution." (id. at 822, 126 S.Ct. 2266) when, however, the Circumstances objectively indicate the declarant's statements were "a cry for help [or] the provision of information enabling officers immediately to end a threatening situation," id., at 832, 126 S.Ct. 2266, they bear little resemblance to in-court testimony. "No 'witness' goes into Court to proclaim an emergency and seek help." id., at 828, 126 S.Ct. 2266.

"where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy Constitutional demands is the one the Constitution actually prescribes: Confrontation." 541 U.S. at 68-69, 124 S.Ct. 1354.

Just because a person has an injury does not mean it happened with mens-rea. SEE *Rehelf v. United States* 139 U.S. 2191

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204 LED 2D 594 (2019) also State v. Werke NO.
20-36005 6 (*4th civ) 2022

X Tyler w Nees

STATEMENT OF THE CASE

I WAS Convicted on Testimonial hearsay due to 3d^o of the profile on the knife handle being mine. Even knows my phone does not put me at the Scene nor does anyone see me coming or going from the Scene. I lived at the Scene at the time, but the victim yelled you fucking racist (my brother Forrest is self admitted racist) without the testimonial hearsay the State does not have grounds for a Conviction. He WAS Stabbed one time 28 mins before the 911 Call and was known to mistake his Sons names in less stressful times.

REASONS FOR GRANTING THE PETITION

This petition should be granted due to the unfair trial and the testimonial hearsay being what convicted me. I WAS not allowed to cross-~~examine~~ examine the person saying I stabbed them. Later I found out the drug facts on what the person was on and was not allowed

I beg this Court to Allow me due process and a second trial to allow me file and a fair trial.

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- 1) I pray and beg this Court to settle the testimonial hearsay issue as it's a good case to write an opinion as it's clearly testimonial hearsay.
- 2) I was not allowed a fair trial due to no trial file and no jury questionnaires.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Tyler A. Nees

Date: 9-18-2022