No. 4-422

IN THE

Supreme Court of the United States

Larry Bridges, *Appellant,*

v.

The State of Texas *Appellee.*

On Writ of Certiorari from the Texas Court of Criminal Appeals

Bench Brief

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Statement of Facts

Larry Bridges and Thomas Hutton are inmates at Shepard Correctional Complex. On January 2, 2013, Hutton was fulfilling laundry porter duties in the laundry room. This room does not have a security camera. Bridges was alone in an adjoining room. At approximately 10:40 am, a security officer allowed Bridges to return to his cell. Shortly afterward, Hutton was seen staggering out of the laundry room in distress, reaching toward something wrapped around his neck. After several security officers arrived, Hutton gasped the word "Bridges." Hutton's condition was then assessed. According to the testimony of a security officer, Hutton stated that while attempting to pull the sheet off his neck, he saw Bridges behind him. While being assessed and treated by security officers and later a medical team, Hutton repeated multiple times that he had been strangled and that Bridges was responsible. After treatment, Hutton was given a pencil and paper by a police sergeant and asked to write a detailed statement. Based on security footage, the total time elapsed between Bridges' entry to the laundry room and initial treatment of Hutton was approximately 11 minutes.

Hutton declined to testify against Bridges at trial and stated during a pre-trial hearing that he did not consider himself a victim and suffered from an obsessive-compulsive disorder. After another hearing in which multiple security guards testified that Hutton had implicated Bridges while receiving medical care, the court ruled that the statements Hutton made were not testimonial because they were made during an emergency and further were an excited utterance. Bridges was convicted at trial. After Bridges appealed, the lower court of appeals and the Texas Court of Criminal Appeals affirmed the judgment.

Issues and Applicable Law

Bridges appealed the verdict on two grounds: (1) that the admission of Hutton's out-of-court statements violated his Sixth Amendment right to confrontation because those statements were testimonial and (2) that even if the statements were not testimonial, the court abused its discretion in admitting the statements under the excited utterance hearsay exception.

Issue 1: Sixth Amendment Right to Confrontation.

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall have a right…to be confronted with the witness against him." U.S. CONST. amend. VI. Because a confrontation clause violation is a constitutional issue, it is reviewed *de novo,* with no deference to the lower court. The applicable legal test is found in *Crawford v. Washington,* in which this Court held that "where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is…confrontation." 541 U.S. 36 (2004). Thus, the question in this case is whether Hutton's out-of-court statements were "testimonial." The court in *Crawford* did not define "testimony," although the Court stated that "police interrogations" are testimonial. *Id.*

In later cases, this Court clarified the definition of testimonial evidence under *Crawford*. In *Davis v. Washington,* the Court decided two cases involving statements made on 911 calls. 547 U.S. 813 (2006). The court distinguished between questions by 911 operators that established "what was happening" and questions that determined "what had happened," holding that statements made during a police investigation are nontestimonial when made "under circumstances objectively indicating that the primary purpose of the interrogation is to enable

police assistance to meet an ongoing emergency." *Id.* On the other hand, statements are testimonial when a police investigation is "solely directed at establishing a past crime." *Id*. The Court further clarified the definition of an "emergency" in *Michigan v. Bryant,* concluding that statements made to police officers to identify a shooter were nontestimonial because their "primary purpose" was to allow the officers to assess and respond to the situation rather than to gather evidence for a later criminal proceeding. U.S. 131 S.Ct. 1143 (2011). In *Bryant,* the Court laid out several factors to examine when determining whether statements are testimonial. This involves examining the "statements and actions of all participants," the overall "formality" of the interrogation, and "the type and scope of danger posed to the victim, the police, and the public." *Id.*

Therefore, determining whether Hutton's statements to police officers violated the confrontation clause requires evaluating whether an emergency existed when the statements were made and the degree of formality of the interrogation. These factors must be used to establish the "primary purpose" of the interrogation. If the primary purpose was to gather evidence for a later criminal proceeding, the statements are testimonial and violate the confrontation clause. If the primary purpose was to respond to an ongoing emergency, then the statements are nontestimonial and do not violate the confrontation clause.

Issue 2: Excited Utterance Hearsay Exception.

Under Texas Rule of Evidence 803(2), "[a] statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused" is "not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness." Tex. R. Evid. 803(2). Determining whether

a statement falls under this exception for excited utterances requires examining the circumstances surrounding the statement. Because the excited utterance inquiry is an evidentiary issue, deference is given to the lower court, whose judgment is only overturned if it abused its discretion in admitting the evidence—that is, if the trial court judge's decision to admit Hutton's statements was plainly wrong.

In *U.S. v Brito,* the First Circuit court laid out a two-part test for determining whether a statement meets the requirements of the exception. The statement must (1) qualify as an excited utterance and (2) be made at a time that a reasonable person would not have retained or regained the capacity to make a testimonial statement. 427 F.3d 53 (2005). If a statement does not qualify as an excited utterance, the exception does not apply. Even if a statement qualifies as an excited utterance, it must also satisfy the second part of the test to be admissible. *Id.*

The courts in *Brito* and several Texas Court of Criminal Appeals cases have created guidelines for determining whether a statement satisfies the second part of the test. In general, the excited utterance exception presumes that some statements are reliable because they represent "the event speaking through the person rather than the person speaking through the event." *Zuliani v. State,* 97 S.W.3d 589 (Tex. Crim. App. 2003), citing *Ricondo v. State,* 475 S.W.2d 793 (Tex. Crim. App. 1971). To determine whether this is the case, courts have considered "the immediacy of the threat" and "the existence of a clear and present danger," (*Brito,* 427 F.3d); the "time…elapsed since the event" (*Id.* and *Salazar v. State,* 38 S.W.3d 141); and whether the statement was a response to a question (*Salazar,* 38 S.W.3d). Although these factors are important, the key question is "whether the declarant was still dominated by the emotions, excitement, fear, or pain of the

event." *Zuliani,* 97 S.W.3d, citing *Lawton v. State,* 913 S.W.2d 542.

In this case, the decision revolves around the time elapsed between the events in the laundry room and Hutton's statements, the presence or absence of continued danger—real or perceived—during the time Hutton was receiving medical care, and the impulsive or reasoned nature of Hutton's statements. If Hutton's statements were the impulsive result of a traumatic experience, they fall under the excited utterance exception. If they were instead reasoned accusations produced by reflection, they do not fall under the exception.

Questions to Appellant

1. No prior precedent has examined the interrogation of prisoners by security guards. What analogies can be drawn between security guards and police officers (*Crawford*) or 911 operators (*Davis*)? Does questioning by security guards constitute formal interrogation?
2. Should this Court's analysis of Hutton's original, voluntary statements be different from our analysis of his later statements in response to questions by security officers? How do the changing circumstances comply with the court in *Davis'* distinction between questions about "what was happening" and questions about "what had happened"?
3. If the Court rules in your favor today, are we departing from the need for an "emergency" in a confrontation clause analysis as established by *Davis* and *Bryant*?
4. The standard of review for examining the court's decision about the excited utterance is abuse of discretion. Is there evidence to show that the lower court made an egregious enough mistake to be an error under that standard?

5. While Hutton made his statements, he was experiencing pain, distress, and anxiety, and there was clear evidence to demonstrate that he had recently undergone a traumatic experience. What about these circumstances is insufficient to establish an exception to the hearsay rule?

Questions to Appellee

1. None of the individuals who testified at Bridges' trial stated that their investigations were designed to elicit testimony. Each of them emphasized the voluntary nature of Hutton's statements and the distress he was experiencing when he made them. How should this Court use this information? Under *Crawford, Davis,* and *Bryant,* what other factors should we look toward to determine the "primary purpose" of an investigation?
2. Is establishing the existence of an emergency a subjective or objective task? That is, should this court look at whether an emergency was actually occurring or whether individuals involved *believed* that an emergency was occurring?
3. *U.S. v. Brito* originated in the First Circuit, so it is not directly relevant to Texas' rules of evidence. Is *Brito's* two-part test applicable here? If it is not, what alternate test do you propose?
4. Each case in the lower courts provides a slightly different definition of "excited utterance." Even within *Zuliani,* the court provides two different definitions—an excited utterance may be a statement where the speaker was still "dominated by emotions" or perhaps a statement that originated from "impulse." What definition should the Court use in this case?

5. If the court rules in your favor today, what prevents police officers from interrogating individuals under the guise of assisting with an emergency? Can and should we have a bright-line rule separating testimonial and nontestimonial statements?