

ORIGINAL

NO. 2012-0215

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
NO. 96207

STATE OF OHIO

Plaintiff-Appellant

-vs-

DARIUS CLARK

Defendant-Appellee

APPELLANT'S REPLY BRIEF

Counsel for Plaintiff-Appellant

WILLIAM D. MASON (#0037540)
CUYAHOGA COUNTY PROSECUTOR

MARK J. MAHONEY (#0041928)
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7877

Counsel for Defendant-Appellee

ROBERT TOBIK (#0029286)
Cuyahoga County Public Defender
JOHN T. MARTIN (#0020606)
ERIKA CUNLIFFE (#0074480)
Assistant Public Defender

3310 Lakeside Avenue, Suite 200
Cleveland, Ohio 44113

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**Counsel for Amicus Curiae
On Behalf of Appellant,**

**MICHAEL DEWINE (0009181)
Ohio Attorney General**

Alexandra T. Schimmer (0075732)

Solicitor General

*Counsel of Record

Elisabeth A. Long (0084128)

Deputy Solicitor

Samuel Peterson (0081432)

Assistant Attorney General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

**Ohio Public Defender,
Counsel for Amicus Curiae,
On Behalf of Appellee**

Jeremy James Masters

Assistant State Public Defender

250 East Broad St., 14th Fl.

Columbus, Ohio 43215

Jeremy.masters@opd.ohio.gov

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STATEMENTS OF THE CASE AND FACTS

Plaintiff-Appellant the State of Ohio relies on its statements of the case and facts as set forth in its merit brief.

LAW AND ARGUMENT

PROPOSITION OF LAW NO. I: STATEMENTS MADE TO TEACHERS BY CHILDREN DURING AN INTERVIEW TO IDENTIFY SUSPECTED CHILD ABUSE AND PROTECT THE FUTURE SAFETY AND WELFARE OF THAT CHILD, ARE NON-TESTIMONIAL AND THUS ARE ADMISSIBLE WITHOUT OFFENDING THE CONFRONTATION CLAUSE.

Appellee first contends that this Honorable Court erred in conferring jurisdiction and that this appeal was improvidently allowed. On the contrary, appellant submits that this appeal provides an excellent opportunity to review and decide an issue that both parties agree is one of great significance. The issue raised by appellant is narrow and well-defined. Importantly, the Eighth District Court of Appeals recognized the lack of case law treatment when it stated that “It is a case of first impression for this court whether statements made to teachers may be testimonial in nature, and thus subject to analysis under *Crawford*.” *State v. Clark*, 8th Dist. No. 96207, 2012011-Ohio-6623; referring to *Crawford v. Washington* (2004), 541 U.S. 36, 52, 124 S.Ct. 1354, 158 L.Ed.2d 177.

Moreover, the fact pattern herein is likely to be repeated throughout Ohio as teachers may well be the first persons to notice and/or observe signs of child abuse. Thus, both the State of Ohio and accused persons have a great interest in the issue raised herein. The trial courts should be provided with clear guidance when analyzing these evidentiary questions.

Lastly, the appellate court herein reversed and remanded this case for a new trial. The State of Ohio fully intends to proceed with that court ordered new trial. Hence this issue is ripe for determination so that both parties may proceed accordingly. Obviously, both sides would have a great interest in preparing for this second trial having this Court decide the important issue raised in this appeal. Appellee asserts that the Eighth District made findings and conclusions regarding the trustworthiness of the child victim's statement "Dee did it." However, this analysis was conducted using Evid.R. 807 and while analyzing the child's statement to his grandmother and great aunt. The appellate court did NOT review the statement by the child under Evid. R. 807. The court of appeals reviewed the statement to teachers under *Crawford* and its progeny. Appellee's arguments regarding this Court's exercise of jurisdiction are thus without merit and should be rejected.

As to the actual merits of this appeal, the appellee basically argues that the teacher's status as mandatory reporters under prevailing statutes makes them agents of law enforcement. Appellee thus contends that as law enforcement agents, teacher interviews with children are testimonial in nature. Appellee supports this conclusion with a series of citations to cases here in Ohio and in other jurisdictions. None of these cases are relevant to this case because they all concern persons or professionals but not teachers. For example, appellee relies on cases where the child's statements were to forensic examiners, child protective service employees and social workers. Those cases are thus not directly on point with the issue herein: statement to teachers.

In *Stat v. Stahl*, 111 Ohio St.3d 186, 2006 Ohio 5482, 855 N.E.2d 834, this court stated, "[i]n determining whether a statement is testimonial for Confrontation Clause purposes, courts should focus on the expectation of the declarant at the time of making the statement; the intent of a questioner is relevant only if it could affect a reasonable declarant's expectations." *Id.* at ¶36. In *State v. Muttart*, 116 Ohio St.3d 5, 2007-Ohio-5267, 875 N.E.2d 944, ¶63, this court held a child victim's statements to a social worker, before a doctor examined the child, were nontestimonial because

“statements made to medical personnel for purposes of diagnosis or treatment are not inadmissible under *Crawford*.”

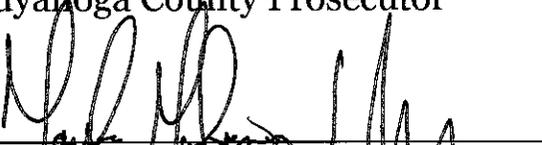
State v. Arnold, 126 Ohio St.3d 390, 2010-Ohio-2742, 933 N.E.2d 775 (2010), is clearly the leading case in Ohio relating to these issues. This court held that statements made to interviewers at child advocacy centers that are made for medical diagnosis and treatment are nontestimonial and are admissible without offending the Confrontation Clause. *Id.* at ¶43. Additionally, this Court held that statements made to interviewers at child advocacy centers that serve primarily a forensic or investigative purpose are testimonial and are inadmissible pursuant to the Confrontation Clause. *Id.* at ¶36. *Arnold* dealt with statements made at a child advocacy center, a multidisciplinary center; the center sought to “provide a comprehensive, culturally competent, multidisciplinary response to allegations of child abuse in a dedicated, child friendly setting.” *Id.* at ¶29. Significant herein, the *Arnold* court stated that “most members of the team retain their autonomy. **Neither police officers nor medical personnel become agents of the other.**” *Id.* at ¶33. Likewise, teachers should not be deemed agents of law enforcement based on the duty to report. This court should follow these cases and adopt the state’s position as the natural progression of these issues under *Crawford* and *Arnold*.

CONCLUSION

The State respectfully requests this Honorable Court adopt the Proposition of Law set forth above.

Respectfully Submitted,

William D. Mason
Cuyahoga County Prosecutor


Mark J. Mahoney (0041928)
Assistant Prosecuting Attorney
The Justice Center, Courts Tower
1200 Ontario St., Eighth Floor
Cleveland, Ohio 44113
(216) 443-7877
(216) 443-7806 fax
mjmahoney@cuyahogacounty.us email

CERTIFICATE OF SERVICE

A true copy of the foregoing Reply Brief of Appellant was sent by regular U.S. mail this 28th day of September, 2012 to:

Counsel for Defendant-Appellee

ROBERT TOBIK (#0029286)
Cuyahoga County Public Defender

Nathaniel J. McDonald (0080867)
Erika Cunliffe (0074480)
John Martin (0020606)
Assistant Public Defender
310 Lakeside Avenue, Suite 400
Cleveland, Ohio 44113

**Counsel for Amicus Curiae
On Behalf of Appellant,**

**MICHAEL DEWINE (0009181)
Ohio Attorney General**

Alexandra T. Schimmer (0075732)

Solicitor General

*Counsel of Record

Elisabeth A. Long (0084128)

Deputy Solicitor

Samuel Peterson (0081432)

Assistant Attorney General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

**Ohio Public Defender,
Counsel for Amicus Curiae,
On Behalf of Appellee**

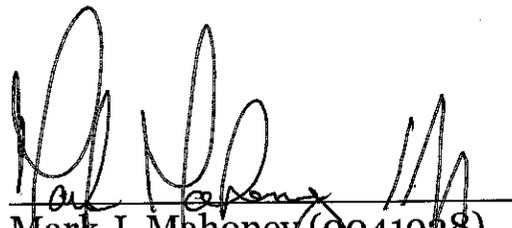
Jeremy James Masters

Assistant State Public Defender

250 East Broad St., 14th Fl.

Columbus, Ohio 43215

Jeremy.masters@opd.ohio.gov

A handwritten signature in black ink, appearing to read 'Mark J. Mahoney', written over a horizontal line.

Mark J. Mahoney (0041928)
Assistant Prosecuting Attorney