CASE NO. 2023-1204

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE FIRST DISTRICT COURT OF APPEALS
HAMILTON COUNTY, OHIO
CASE NO. C-220472

STATE OF OHIO
Plaintiff-Appellant

v.

QUANTEZ WILCOX
Defendant-Appellee

CUYAHOGA COUNTY PROSECUTOR'S OFFICE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT

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STATEMENT OF AMICUS INTEREST

Cuyahoga County Prosecutor Michael C. O'Malley is the elected prosecutor of Cuyahoga County, Ohio. The Confrontation Clause issue in this case is of particular interest due to Confrontation Clause issues in appellate cases that have arisen in Cuyahoga County, Ohio in domestic violence prosecutions. "The term "evidence-based prosecution" in domestic-violence cases refers to the practice of using independent corroborative evidence to prove elements of the crime without relying on the victim's testimony." See Erin L. Claypoole (2005). Evidence-Based Prosecution: Prosecuting Domestic Violence Cases Without a Victim. *Prosecutor*, Volume 39 (1), 18,20-21,26,48. Evidence based-prosecutions are under attack in Cuyahoga County, Ohio. Panels of the Eighth District referred to such prosecutions as "victimless prosecutions." In *State v. Jones*, 2023-Ohio-380, 208 N.E.3d 321 (8th Dist.), the defendant set the elderly victim on fire and hit her in the face. By the time of trial, the victim had dementia and was in a nursing home. Yet, the State's prosecution of the case, without the victim's testimony, was "reprehensible." *Id.* at ¶151, 163. In *State v. Johnson*, 2023-Ohio-445, 208 N.E.3d 949 (8th Dist.), the victim called 911 and said she had been "choked" by her child's father. She also reported having her head bashed into a wall and that she blacked out. There was vomit on the ground. She did not testify. This prosecution was an "abhorrent" practice. *Id.* at ¶13, 21-22, 81.

Most recently the Court granted review in *State v. Smith*, 2023-Ohio-603, 209 N.E.3d 883 (8th Dist.), discretionary appeal allowed by 2024-Ohio-163 (Jan. 23, 2024). *Smith* involves a victim of domestic violence who was receiving treatment in ambulance. Her face was swollen, a piece of her hair missing, and any medical concern was compounded out of concern for her unborn baby. *Id.*, at ¶21-22. This case was described as being part of a "disturbing trend." *Id.*, at ¶95.

Because the decision here may have bearing on *Smith*, either directly or indirectly, the Cuyahoga County Prosecutor's Office submits this amicus curiae brief to draw attention to its concerns. In the Cuyahoga County Prosecutor's Office, the Eighth District majority opinions in *Smith*, as well as in *State v. Jones*, 2023-Ohio-380, 208 N.E.3d 321 (8th Dist.) and *State v. Johnson*, 2023-Ohio-445, 208 N.E. 3d 949 (8th Dist.) views an "ongoing emergency" too narrowly. But this case also implicates intimate partner violence as the defendant killed his ex-girlfriend's current boyfriend. The State's merit brief also references prior incidents of violence. As discussed below, violence committed by domestic abusers are not limited to their partners.

The amicus brief addresses the Cuyahoga County Prosecutor's Office concerns about intimate partner violence and its Confrontation Clause analysis. While addressed here briefly (relatively speaking), these concerns will be addressed more comprehensively in the forthcoming merit briefs to be filed in *State v. Smith*, Sup. Ct. Case No. 2023-1289, a case that has already drawn national amici curiae interest.

STATEMENT OF THE CASE AND FACTS

The Cuyahoga County Prosecutor's Office adopts the statement of the case and facts as set forth in Appellant's Brief.

LAW AND ARGUMENT

Proposition of Law: Video footage of the response of a witness in the immediate aftermath of a shooting is not "testimonial" and does not interfere with a defendant's right to confrontation.

The Confrontation Clause of the Sixth Amendment states, "In all criminal prosecutions, the accused shall enjoy the right…to be confronted with the witnesses against him…" The First District found the admission of body worn camera to violate the Confrontation Clause. For three reasons, the Court should reverse the judgment of the First District Court of Appeals and hold that

the Confrontation Clause was not violated here. First, the statements of Monroe as captured on the body worn camera were made in police response to the ongoing emergency rendering the statements non-testimonial. Second, Monroe's statements were excited utterances an important consideration for the analysis. Third, the statements were neither formal nor solemn and were not the type of statements. Taken together, the statements which happened to be recorded on body worn camera are non-testimonial and their admission does not violate the Confrontation Clause.

I. This case implicates domestic violence or intimate partner violence concerns.

The death of the victim in this case can be considered a consequence of domestic violence or intimate partner violence. It is easy to recognize domestic violence as involving abusive partner used by one partner over another. But acts of domestic violence in the colloquial sense can happen with ex-partners. The dynamic of domestic violence is implicated here and are more prominent in Smith. Nonetheless, the former relationship between Ms. Monroe and Wilcox are important considerations in how the police responded to the ongoing emergency.

The Eighth District in *Smith* and in *Jones* cited the respective domestic violence incidents as private disputes. *Johnson*, ¶54; *Smith*, ¶92. It cannot be assumed that all incidents of domestic violence are private disputes without a risk to others including strangers. Whatever the circumstances were that ended the relationship between Ms. Monroe and Wilcox now turned deadly for Ms. Monroe's new boyfriend and there was an ongoing threat to others given Wilcox's possession of firearm. Consider the following: one study of domestic violence victims in North Carolina found that, "the relationship between the suspect and the victim changes the likelihood

of suicide and of additional homicide victims in [intimate partner homicide]…A review of incident reports revealed that most additional victims were children or current partners of the victim."[1]

But the death of the victim did not end concern for potential harm to others. Domestic violence abusers can pose dangers to the public including innocent bystanders. One study shows that 45 percent of women whose abusers threatened them with a gun had threatened others.[2] Studies also indicate the dangers domestic abusers pose to law enforcement as well. Responding to calls of domestic violence can be dangerous to law enforcement as well.[3] Indeed, one 2018 analysis looked at identified officers deaths in 2017. The "research found that 33 out of 44 (75 percent) officers killed in the line of duty were murdered by men with a history of domestic violence."[4]

Therefore, while *Smith* involves a victim's abuse at the hands of an intimate partner, this case involves an "additional victim" of intimate partner violence. These considerations undermine any notion that domestic violence at the hands of an intimate partner is solely a "private dispute."

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[1] Smucker S, Kerber RE, Cook PJ. Suicide and Additional Homicides Associated with Intimate Partner Homicide: North Carolina 2004-2013. J Urban Health. 2018 Jun;95(3):337-343, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5993704/

[2] T.K. Logan & Kellie Lynch, Exploring Abuser Firearm-Related Attitudes, Behaviors, and Threats Among Women with (Ex)Partners Who Threatened to Shoot Others, 8 J. Threat Assessment & Mgmt. 20, 27 (2021) available at https://psycnet.apa.org/record/2021-56696-001

[3] Nick Breul & Mike Keith, Deadly Calls and Fatal Encounters: Analysis of U.S. Law Enforcement Line of Duty Deaths When Officers Responded to Dispatched Calls for Service and Conducted Enforcement, 2010-2014, at 13 (2016) available at https://www.nationalpublicsafetypartnership.org/Clearinghouse/Resource/379/Deadly-Calls-and-Fatal-Encounters.

[4] Casey Gwinn, Gael Strack, & Craig Kingsbury, A Dangerous Link - From Stranglers to Cop Killers available at https://www.familyjusticecenter.org/resources/a-dangerous-link-from-stranglers-to-cop-killers/.

II. Precedents from the United States Supreme Court provides multiple lines of inquiry to determine whether a statement is testimonial and implicates the Confrontation Clause.

Under a former test the Court allowed hearsay evidence if it fell within a "firmly rooted hearsay exception" or bore "particularized guarantees of trustworthiness. *Ohio v. Roberts,* 448 U.S. 56 (1980). The Court rejected the reliability-based approach in favor of an analysis based on whether a statement was testimonial or nontestimonial. The Court described this approach in *Crawford v. Washington,* 541 U.S. 36 (2004) as being faithful to the Confrontation Clause's original meaning and noted, "the principal evil at which the Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly its use of ex parte examinations as evidence against the accused." *Id.* at 50. The case involved a spouse's recorded statement made during what is best described as a formal interview involving structured questions. The Court determined that the proper inquiry should be on, "those who bear testimony" but left for another day a "comprehensive definition" of what constitutes a testimonial statement. *Id.*, at 51, 69. *Crawford* was significant because it overruled *Roberts*.

Since the Court decided *Crawford,* it has incrementally defined testimonial statements as the circumstance demanded. In *Davis v. Washington,* 547 U.S. 813 (2006) the Court explained that "[s]tatements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Id.* at 822. In particular, a 911 call, "and at least the initial interrogation conducted in connection with a 911 call, is ordinarily not designed primarily to "establis[h] or prov[e]" some past fact, but to describe the current circumstances requiring police assistance." *Id.* at 827. Alongside *Davis,*

the Court decide *Hammon.* And in *Hammon* the Court found the domestic violence victim's deliberate statements describing the past assault testimonial. The victim also completed an affidavit for police a fact not to be overlooked. *Id.*, at 819-820, 829.

After *Davis*, there was some confusion among the lower courts, leading the Court to provide "further explanation" of the ongoing emergency circumstance. *Michigan v. Bryant*, 562 U.S. 344 (2011) at 359. The Court reversed the Michigan Supreme Court finding the opinion "construed Davis to have decided more than it did and thus employed an unduly narrow understanding of 'ongoing emergency' that *Davis* does not require." *Id.* at 362. Indeed, "*Davis* did not even define the extent of the emergency in that case." *Id.* at 363. The Court explained that to determine whether the primary purpose of an interrogation is to meet an ongoing emergency, courts must "objectively evaluate the circumstances in which the encounter occurs and the statements and actions of the parties." *Id.* The relevant inquiry is "not the subjective or actual purpose of the individuals involved in a particular encounter, but rather the purpose that reasonable parties would have had, as ascertained from the individuals' statements and actions in which the encounter occurred." *Id.* at 360. The Court also distinguished the circumstance of a suspect at large in *Bryant* from the deliberate statements that were at issue in *Hammon v. Indiana*, 547 U.S. 813 (2006).

The analytical focus on whether a declarant intended to bear witness was reinforced in *Ohio v. Clark*, 576 U.S. 237 (2015). *Clark* involved a young child's remark to his daycare teacher identifying "D" as the person who harmed him. Darius Clark was convicted after a jury trial where the teacher testified to her conversation with the child. In resolving the Confrontation Clause issue, the Court looked to primary purpose of the conversation and noted that the Confrontation Clause did not bar out-of-court statements that would have been admissible at the time of the founding.

Id. at 245-246. The Court examined, among other things the uncertainty of the situation, concern for the child's future safety, the age of the child, and the informality of the conversation. *Id.* at 246-247. A salient point of *Clark* is that the child's description of a past event, who hit him, was considered a non-testimonial statement. Therefore, non-testimonial statements can include a statement identifying a potential perpetrator of a past assault under the appropriate circumstance. The Court in *Clark* stated that "in determining whether a statement is testimonial, 'standard rules of hearsay, designed to identify some statements as reliable will be relevant.' In the end, the question is whether, considering all circumstances, viewed objectively, the 'primary purpose' of the conversation was to 'creat[e] an out-of-court substitute for trial testimony.'" *Id.* at 244-45 citing *Bryant* at 358-359. Thus, the Court still recognizes the importance of well-established hearsay exceptions in a Confrontation Clause inquiry.

The post-*Crawford* cases might be best understood as a non-exhaustive inquiry to help determine whether a statement is testimonial. The interconnected inquiries should not be viewed in isolation or overlook the primary concerns that the Confrontation Clause was intended to protect against.

As a consequence, under *Davis* this Court could look to: (1) is there an ongoing emergency; (2) do the statements help the police assess whether there is a potential threat; (3) is the victim in immediate danger. With *Hammon,* the Court could look at whether the statement was a narrative of past events. Under *Bryant,* the Court could look to: (1) whether the statement was related to an ongoing threat to the community at large; (2) what was the declarant's actual state of mind; (3) what were the actions of the declarant; (4) what were the actions and statement of the interrogators; and (5) is the encounter formal. The Court in *Clark* looked at: (1) whether the statement was given to law enforcement; (2) was the statement intended for law enforcement; (3) how old is the

declarant; and (4) what was the relationship between the declarant and the suspect. Far from a comprehensive list or even a uniform definition of what constitutes a "testimonial" statement, these considerations are meant to guide courts to determine whether the statement at issue is intended as a substitute for in-court testimony.

III. An ongoing emergency should not be evaluated based on hindsight.

The Supreme Court has long been reluctant to define "ongoing emergency." In *Davis*, the Court emphasized that that the 911 caller was "speaking about events as they were actually happening, rather than describing past events." *Id*. at 827. The elicited statements were "necessary to resolve the present emergency, rather than simply to learn…what had happened in the past." *Id.* Finally, *Davis* considered the formality of the statements, noting that the 911 caller provided frantic answers over the phone in a situation that was neither tranquil nor safe. *Id*. Several years later, the Supreme Court noted that "deciding this case also requires further explanation of the 'ongoing emergency' circumstance addressed in *Davis*." *Bryant* at 359. *Bryant* instructed that "[a]n objective analysis of the circumstances of an encounter and the statements and actions of the parties to it provides the most accurate assessment of the 'primary purpose of the interrogation.' *Id*. at 360. The *Bryant* Court chastised the Michigan Supreme Court because it "repeatedly and incorrectly asserted that *Davis* defined 'ongoing emergency'." Id. at 363. Because the Michigan Supreme Court assumed that "*Davis* defined the outer bounds of an 'ongoing emergency,'" it "failed to appreciate that whether an emergency exists and is ongoing is a highly context-dependent inquiry." *Id.*

More recently, in *Ohio v. Clark*, 576 U.S. 237, 135 S.Ct. 2173, 192 L.Ed.2d 306 (2015), the Supreme Court again addressed ongoing emergencies, this time in the context of an abused child making statements to a preschool teacher. Once again, the Court declined to provide a

definition of an "ongoing emergency." Rather, it emphasized that even separated from his abuser at preschool, the "emergency in this case was ongoing and the circumstances were not entirely clear." *Clark* at 247. The questions were meant to "identify the abuser in order to protect the victim from future attacks." *Id*. It found that even though the conversation was not as "harried," it was "similar to the 911 call in *Davis*." Id. Although *Clark* concerned a statement by a young child, the Supreme Court noted that the child's age "fortifie[d] [its] conclusion that the statements in question were not testimonial", rather than being the sole basis for it. *Id*.

During the officer's questioning of the witness in this case, Wilcox is not on scene. *See State v. Wilcox,* 1st Dist. Hamilton No. C-220472, 2023-Ohio-2940 at ¶ 20. One of the factors that the *Wilcox* majority considered in its determination that the emergency has ended was that the officer and the witness were "notified halfway through the video that Mr. Wilcox ha[d] been apprehended, ending any ongoing emergency." *Wilcox* at ¶ 20. This conclusion appears to be based on hindsight. According to the dissent, this notification was not as clear as the majority suggested at the time that it happened. The officer "was not sure that the suspect had been apprehended." *Id*. at ¶ 59 (Winkler, J., dissenting). "The existence of an ongoing emergency must be objectively assessed from the perspective of the parties to the interrogation at the time, not with the benefit of hindsight." *Bryant* at fn 8. Much like the officers in *Bryant*, the responding officers here were required to "'assess the situation, the threat to their own safety, and possible danger to the potential victim' and to the public, including to allow them to ascertain 'whether they would be encountering a violent felon.'" *Bryant* at 376 quoting *Davis* at 827. Internal citations omitted. This was true even though the victim in *Bryant* had been shot approximately 25 minutes before the responding officers arrived. *See Id.* at 377. Under similar circumstances to *Bryant*, "there was an ongoing emergency here where an armed shooter, whose motive for and location after the

shooting were unknown, had mortally wounded [the victim] within a few blocks and a few minutes of the location where the police found [the victim.]" *Id.* at 374.

Courts across the country have dealt with the scope of an emergency after a suspect flees the scene. For example, in New Mexico, the court of appeals rejected a contention that the victim's "separation from Defendant neutralized the ongoing emergency" because it was "premised on a constrained definition of that term." *State v. Soliz*, 146 N.M. 616, 622, 2009-NMCA-079, 213 P.3d 520. The assertion that the ongoing emergency ended because the defendant had fled the scene "ignore[d] the fact that [the victim] was injured, needed medical attention, was terrified, and was crying; that a criminal offense had just occurred; and that the perpetrator remained at large." *Id*. at 623. Similarly, the District of Columbia Court of Appeals explained that "to make the actual physical presence of the alleged wrongdoer a dominant factor in determining whether there is an ongoing emergency, narrows and distorts the guiding principle to be applied in a wide range of circumstances. *Smith v. United States*, 947 A.2d 1131, 1134 (D.C. 2008). *See also Santacruz v. State*, 237 S.W.3d 822, 828 (Tex.App.2006) (concluding that domestic abuse victim's statements to 911 operator were nontestimonial even though they described events that had occurred ten to fifteen minutes earlier); *People v. Dominguez*, 382 Ill.App.3d 757, 321 Ill.Dec. 272, 888 N.E.2d 1205 (2008) (concluding that a 911 call is not testimonial even after victim fled the scene because intent was to determine where police should be dispatched and what potential threats they may face); *United States v. Arnold*, 486 F.3d 177 (6th Cir.2007) (finding that a 911 call was nontestimonial even though victim was separated from attacker when the call was made); *State v. Williams*, 2020 UT App 67, 462 P.3d 832, ¶ 16 (affirming admission of a 911 call made after an assault that provided details of the attack and the name and description of the assailant); *People v. Brenn*, 152 Cal. App. 4th 166, 60 Cal. Rptr. 3d 830, 838 (Ct. App. 2007) (same).

As the uncertainty surrounding Wilcox's apprehension illustrates, "the situation was fluid and somewhat confused[.]" *Bryant* at 377. There is no question that the emergency did "not last only for the time between when the assailant pulls the trigger and the bullet hits the victim." *Id*. at 373. Especially where a gun is involved, it is implausible to "construe the emergency to last only precisely as long as the violent act itself[.]" *Id*. at 374. The Supreme Court acknowledged that where a gun is involved, "the physical separation that was sufficient to end the emergency in Hammon was not necessarily sufficient to end the threat" of an armed assailant. *Id*. at 346. Indeed, if Hammon "had been reported to be armed with a gun…separation by a single household wall might not have been sufficient to end the emergency." *Id*. at 364. Although the *Bryant* Court thoroughly analyzed the ongoing emergency, it reiterated "that the existence *vel non* of an ongoing emergency is not the touchstone of the testimonial inquiry; rather, the ultimate inquiry is whether the primary purpose of the interrogation [was] to enable police assistance to meet the ongoing emergency." *Id.* at 374 quoting *Davis* at 822. The ongoing emergency is a fluid concept that the Supreme Court has never fully defined, even in *Bryant*. See *Id.* ("We need not define precisely when the emergency ended because [the victim's] encounter with the police…occurred within the first few minutes if the police officer's arrival[.]") The uncertainty surrounding the apprehension of the suspect at the time that it happened is insufficient to end an emergency in the chaotic aftermath of a fatal shooting. Police needed to gather information for the primary purpose of addressing the situation including the safety of others and their own. It is only with the benefit of hindsight that the Wilcox majority could have concluded that the emergency had ended.

IV. Excited utterances should be carefully considered to determine whether the declarant is capable of forming testimonial intent.

By the *Wilcox* majority's own admission, the witness "was clearly distraught—crying and her voice wrought with emotion." *Wilcox* at ¶ 21. Under such circumstances, the First District should have considered whether a distraught, crying victim was capable of forming the necessary intent for her statements to be used as an out-of-court substitute for trial testimony. After all, "[i]n making the primary purpose determination, standard rules of hearsay, designed to identify some statements as reliable, will be relevant." *Bryant* at 358-359. Even before the *Bryant* decision, the First Circuit concluded that "the excited utterance and testimonial hearsay inquiries are separate, but related." *United States v. Brito,* 427 F.3d 53, 61 (1st Cir.2005). The First Circuit stated:

> 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. *Id*.

Indeed, "[s]imilar to how an ongoing emergency presents a reason for a declarant to make a statement unrelated to future criminal prosecution, excited utterances are by definition reflexive responses to startling events, and likewise are typically not made with an eye towards future litigation." *United States v. Ayoub,* 701 F.App'x 427, 439 (6th Cir.2017).

In *State v. Johnson,* 2023-Ohio-445, 208 N.E. 3d 949 (8th Dist.), the majority opinion determined that there was no "excited utterance" to the Confrontation Clause and the *Johnson* court deemed the hearsay issue as a separate inquiry from the Confrontation Clause issue. *Id.,* at ¶47. While the majority correctly acknowledges that the Court in *Clark* deemed hearsay rules "relevant", the majority failed to appreciate the interconnectedness of statements which are "excited utterances" and statements made to address the "ongoing emergency." The Seventh

District in *State v. Madison,* 7th Dist. Mahoning No. 20 MA 0047, 2021-Ohio-2358 described both the existence of an "ongoing emergency" and an "excited utterance" as factors for Confrontation Clause purposes. *Id.,* at ¶27, 34. In *Madison* the court considered the statements of S.M. who called 911 and reported that the defendant pulled out a gun on her and threatened to kill her during an argument. *Id.,* at ¶9. Police were dispatched. S.M. ran up to the police officer crying and said the father of her child "pulled a gun on her and he threatened to kill her" because he was mad. *Id.,* at ¶10. Admitted over objection in the context of a probation revocation hearing, the defendant challenged the statements to police. The court easily found the existence of an "ongoing emergency" and the primary purpose of S.M.'s statements to police were to assist officers in "quelling an ongoing emergency," and that there were indicators the statements were "excited utterance." *Id.,* at 34. Nevertheless, the court found the Confrontation Clause inapplicable to the revocation hearing. In *State v. Walker,* 10th Dist. Franklin Nos. 22AP-113, 22AP-114, 22AP-115, 2023-Ohio-3852, the Tenth District cited *State v. Taylor,* 66 Ohio St.3d 295, 612 N.E.2d 316 (1993) and found statements were "reactive" as opposed to "reflexive" and that such, "reactivity and excitement suggest that the statements were not made in the anticipation of their use at trial, but more akin to unfiltered speech." *Walker,* at ¶33.

The excited utterance exception does provide for evidentiary admissibility under Evid. R. 803, but the circumstances in which the excited utterance is made such as the case here, objectively demonstrates that the declarant was attempting to create an out-of-court substitute for trial testimony. As with Ms. Monroe's "informal" and "emotional" statements she made to Ms. Maghathe, her statements to police, which were captured on the body worn camera, were still under the influence of the startling event. Compare *Wilcox,* ¶16 (majority opinion) with ¶62

(Winkler, J., dissenting in part). These statements were not made with the intent that they be used to replace trial testimony.

V. The statements lacked a level of formality and solemnity to indicate the statements were testimonial.

Justice Thomas has expressed the view that has the requirement of "solemnity" and "formality" as important considerations in Confrontation Clause analysis. See *Davis*, 547 U.S. at 835 (Thomas, J., concurring in judgment in part and dissenting in part); see also *Clark*, at 254-255 (Thomas, J., concurring in judgment). This Court and other appellate courts have relied upon *Crawford* and looked at whether a statement was a "solemn declaration" and the "formality" of the statement to determine whether the statement was testimonial. *State v. Stahl*, 111 Ohio St.3d 186, 2006-Ohio-5482, 855 N.E.2d 834. ¶15, 17. See also *State v. Aldrich*, 12th Dist. Madison No. CA2006-10-044, 2008-Ohio-1362, ¶6, 9; *State v. Strickland*, 10th Dist. Franklin No. 06AP-1269, 2008-Ohio-1104, ¶62, 67; *State v. Love*, 4th Dist. Gallia No. 10CA7, 2011-Ohio-4147, ¶17. The statements here simply lack the formality and solemnity of the recorded police interrogation at issue in *Crawford* or the affidavit in question in the *Hammon* case that was decided alongside with *Davis*.

CONCLUSION

The First District erred in finding that the admission of the body worn camera violated the defendant's Confrontation Clause rights. The statements contained on the footage, as with the footage on the cell phone, were nontestimonial. The decision below should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing brief has been electronically filed with the Supreme Court of Ohio on February 5, 2024 and served upon Paula Adams, Assistant Hamilton County Prosecutor; Mallorie Thomas, Assistant State Public Defender; and T. Elliot Gaiser, Solicitor General.

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