

**Ohio v. Roberts, 448 US 56 (1980) – Indicia of Reliability Test**

Police arrested defendant for forgery of check. State sought to introduce the transcript of witness preliminary hearing testimony at trial. *Former testimony* under the *unavailability* (i.e., not firmly rooted) rule of hearsay. Two-prong test to determine whether such hearsay violates the right of confrontation: (1) State must produce witness or demonstrate that the witness is unavailable and (2) the hearsay must demonstrate “adequate indicia of reliability.” To meet that test, the evidence must either fall within a “firmly rooted hearsay exception” or bear “particularized guarantees of trustworthiness.”

**White v. Illinois, 502 U.S. 346 (1992)**

Court retreated from the strict *Roberts* unavailability requirement, holding that firmly rooted excited utterance and medical statement hearsay of child who was abused do not require a showing of unavailability because of “substantial guarantees” of trustworthiness.

**Crawford v. Washington, 541 US 36 (2004) – New Standard: Testimonial Statements**

Crawford stabbed man for allegedly raping his wife. Wife gave prior statements that rebut defendant’s theory of defense of others. She invoked her spousal privilege and prosecution used hearsay exception which was not firmly rooted of *against interest statement*. Court rejects *Roberts* test and create new standard. Testimonial hearsay statements by a person who does not testify at trial is inadmissible unless there was a prior opportunity to cross-examine.

**Davis v. Washington, Hammon v. Indiana, 547 US 813 (2006) – Primary Purpose distinction**

Davis used of 911 recording of domestic violence call where victim and told the operator that defendant had beaten her with his fists and then left. Hammon was domestic violence call where police arrive on scene and got excited utterances and witness statement from victim. Neither victim testified in court. Court developed a primary purpose test. Davis was not testimonial because “circumstances objectively indicating that the primary purpose of the interrogation is to enable police to meet an ongoing emergency.” Hammon was testimonial because there was no “ongoing emergency” and “the primary purpose ... is to establish or prove past events potentially relevant to later criminal prosecution.”

**Giles v. California, 554 U.S. 353 (2008) – Forfeiture by Wrongdoing**

Giles was charged with murdering his girlfriend. During the trial, prosecutors used former statement of the deceased to police about a domestic violence and threats to kill her. Court upheld forfeiture by wrongdoing doctrine but stated that this hearsay testimony would not be admitted without a showing that the defendant had specific intent to prevent the witness from testifying.

**Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009) – Affidavits**

State admitted chemical drug test report stating that the substance was cocaine, without the testimony of the person who performed the test. Confrontation Clause aimed at addressing two abuses: (1) out-of-court statements that have a primary purpose of accusing a targeted individual of criminal conduct and (2) formalized statements, such as affidavits. This affidavit was the “core class of testimonial statements” which sole purpose was to provide “prima facie evidence” for trial.

**Michigan v. Bryant, 562 U.S. \_\_\_\_ (2011) – Dying Declarations**

Victim shot outside his house and then drove himself to a gas station and called police, as he was dying in the parking lot, he identified the shooter in response to police questions. Court held the statements were non-testimonial. Court held that it must make an objective determination whether the “primary purpose” of the interrogation was to meet an ongoing emergency or to prove past events. Court placed great weight on fact that place was in an informal setting (i.e., not police station), shooter was still at large, and victim continued to ask about when emergency medical services would arrive. (Justice Scalia wrote a bitter dissent claiming this was return to *Roberts*.)

**Bullcoming v. New Mexico, 564 U.S. \_\_\_\_ (2011) – Surrogate Testimony**

Analyst did not testify because on unpaid leave for undisclosed reasons. Supervisor for analyst was called to testify to non-testifying analyst’s records. Court held that “surrogate” analyst could not testify about the testimonial statements in the forensic report of the certifying analyst under the Confrontation Clause.

**Williams v. Illinois, 567 U.S. \_\_\_\_ (2012) - Experts**

Rape case where defendant’s DNA profile generated by non-testifying analyst. The DNA expert relied upon this profile to determine profile matched rape kit evidence. Fractured plurality decided that there was no Confrontation Clause violation because (1) the report was not used for the truth of the matter asserted (i.e., that the report contained an accurate profile of the defendant’s DNA, rather that the report contained a DNA profile that matched the DNA profile deduced from the defendant’s blood) and (2) it was non-testimonial (DNA profiles have the ability to incriminate and exonerate and the analysts preparing them “generally have no way of knowing whether it will turn out to be incriminating or exonerating—or both.”