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"I CAN'T BELIEVE THE BITCH SHOT ME!"

- Crawford vs. Washington
- Forfeiture by wrongdoing
- Spousal privilege

Sixth Amendment U.S. Constitution

"In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him."

CRAWFORD v. WASHINGTON

- Supreme Court held the confrontation clause of the Sixth Amendment bars the admission, at criminal trial, of **testimonial statements** of a witness who did not appear at trial, unless the witness was unavailable to testify and the defendant had had a prior opportunity for cross-examination.

TESTIMONIAL

- Police interrogation after emergency situation has ended – Davis v. Washington, 547 U. S. 813 (2006)
- Lab reports – Melendez-Dias v. Massachusetts, 129 S. Ct. 2527; 174 L. Ed. 2d 314; 2009 U.S. LEXIS 4734 (2009)
- Preliminary Hearing, grand jury, former trial - Crawford v. Washington, 124 S. Ct. 1354 (2004)

TESTIMONIAL (ADMISSIBLE)

- Sixth amendment does not bar admission of testimonial statements for purposes other than establishing the truth of the matter asserted. U. S. V. Jiminez, 564 F 3d 1280 (2009)
- Dying declarations – Common law exception.
- Forfeiture by Wrongdoing – Extinguishes confrontation claims on equitable grounds.

NON-TESTIMONIAL

- 911 Calls when interrogation is to gather information to meet an ongoing emergency situation. Davis v. Washington, 547 U. S. 813 (2006)
- Business records are non-testimonial.

NON-TESTIMONIAL

- Excited utterance Davis v. Washington, 126 S. Ct. 2266, 2276 – not always non-testimonial Hammon v. Indiana, 126 S. Ct. 2266, 2277 (2006)
- Present sense impression by declarant to another civilian

TESTIMONIAL vs. NON-TESTIMONIAL

- A statement is testimonial when it is made under circumstances that would lead the declarant to believe reasonably that the statement would be available for use at a later trial.

FEDERAL RULE OF EVIDENCE 804(b)(6)

- Forfeiture by wrongdoing

  A statement offered against a party that has engaged or acquiesced in wrongdoing that was **intended to**, and did, procure the unavailability of the declarant as a witness is not excluded as hearsay. (1997)
- Forfeiture of the hearsay and confrontation clause objection.

FEDERAL RULE OF EVIDENCE 804(b)(6)

- The equitable maxim underlying the doctrine of forfeiture by wrongdoing is a defendant should not be permitted to benefit from his own wrong. Giles, at 2686.

UNAVAILABLITY

- Burden on government to establish
- Must show good faith effort to obtain witness' presence at trial

Reynolds v. U. S., 98 U.S. 145 (1879)

- Reynolds was charged with Bigamy.
- Reynolds procured absence of 2nd wife in 2nd trial.
- Testimony from 1st trial admitted.
- Lord Morley's Case (1666)

WILLIAMS v. STATE, 19 GA. 402 (1856)

- Theft of watch
- Defendant settled w/ victim
- Victim left town allegedly at defendant's urging
- Lord Morley's Case
- State lost – Couldn't prove procurement.

GILES V. CALIFORNIA, 128 S. Ct. 2678 (2008)

- Murder of ex-girlfriend
- Statements to police of prior abuse
- Trial court allowed statements in holding defendant can't benefit from his wrong of killing her.
- Supreme Court held **specific intent** to silence the witness from testifying.

SPOUSAL PRIVILEGE

- There are certain admissions and communications excluded on grounds of public policy. Among these are communications between husband and wife. O.C.G.A. § 24-9-21

SPOUSAL PRIVILEGE

- Husband and wife shall be competent but shall not be compellable to give evidence in any criminal proceeding for or against each other. This privilege shall not apply in proceedings in which the husband or wife is charged with a crime against the person of a minor child, but such person shall be compellable to give evidence only on the specific act for which the defendant is charged. O.C.G.A. § 24-9-23

SPOUSAL PRIVILEGE

- Adverse testimonial privilege – witness can refuse to testify against their spouse who is a criminal defendant. O.C.G.A. § 24-9-23
- Confidential communications privilege – The right of either spouse in a civil or criminal case to refuse to reveal confidential communications between them. O.C.G.A. § 24-9-21

SPOUSAL PRIVILEGE

- Adverse testimonial privilege – In Georgia, testifying spouse holds the privilege.
- Confidential communications privilege – In Georgia, Both spouses hold the privilege.

SPOUSAL PRIVILEGE

- Georgia is one of four (4) States plus the District of Columbia that do not have a spousal crime exception to the adverse testimonial privilege.
- Georgia is one of only five (5) states that do not have a spousal crime exception to the confidential communications privilege.