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# Recent Developments: State v. Snowden: Hearsay Statements Made by Child Abuse Victims to a Social Worker May Not Be Admitted at a Criminal Trial through the Social Worker under Maryland's "Tender Years" Statute

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STATE v. SNOWDEN:

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*Hearsay Statements Made by Child Abuse Victims to a Social Worker May Not Be Admitted at a Criminal Trial Through the Social Worker under Maryland's "Tender Years" Statute*

By: Erica C. Mudd

In light of the United States Supreme Court's ruling in *Crawford v. Washington*, 541 U.S. 36 (2004), the Court of Appeals of Maryland held certain hearsay statements may not be admitted at a criminal trial through a social worker's testimony under MD. CODE ANN., CRIM. PROC. § 11-304 (2001). *State v. Snowden*, 385 Md. 64, 68, 867 A.2d 314, 316 (2005). In affirming the intermediate appellate court's decision, the Court found statements made by child abuse victims to a social worker were improperly admitted through the social worker in violation of the defendant's Sixth Amendment right to confrontation, as the statements were testimonial in nature and the declarants were available to testify. *Id.* at 74, 867 A.2d at 319.

In late January 2002, three girls between the ages of eight and ten-years-old accused Michael Conway Snowden ("Snowden") of inappropriate touching. Snowden denied the girls' allegations, although police were contacted and a joint investigation by the Montgomery County Police Department and Child Protective Services for Montgomery County ensued.

As part of that investigation, the girls were separately interviewed by Montgomery County Department of Health and Human Services sexual abuse investigator, Amira Abdul-Wakeel ("Wakeel"). At the beginning of each interview, the girls expressed awareness that the interviews were being conducted as a result of the accusations made against Snowden. Subsequent to the interviews, Snowden was arrested on a warrant issued upon information obtained by Wakeel during her interviews with the girls.

Snowden was indicted on one count of child abuse and six counts of third-degree sexual offense. Prior to trial, the State filed a motion to invoke Maryland's "tender years" statute, codified at MD. CODE ANN., CRIM. PROC. § 11-304 (2001). That statute allows the State to substitute a health or social work professional's testimony in place of a child's where the court determines the child's statements

possesses “specific guarantees of trustworthiness.” *Id.* at 73, 867 A.2d at 319.

In accordance with the statute’s framework, the trial judge examined the girls and ruled that Wakeel’s testimony of their accounts satisfied the requirements necessary to invoke the statute. The girls were permitted to depart, and their accounts of abuse were admitted into evidence through Wakeel.

Based largely on Wakeel’s testimony, Snowden was found guilty on all counts following a bench trial in the Circuit Court for Montgomery County. He appealed to the Court of Special Appeals of Maryland, which held, in light of the recent decision by the United States Supreme Court in *Crawford v. Washington*, 541 U.S. 36 (2004), that (1) Wakeel’s testimony violated Snowden’s right to confrontation, as the girls were available to testify, and (2) the girls’ interview statements to Wakeel were sufficiently testimonial in nature. *Id.* at 74, 867 A.2d at 319 (citing *Snowden v. State*, 156 Md. App. 139, 157, 846 A.2d 36, 47 (2004)).

The Court of Appeals of Maryland granted certiorari to consider whether the Court of Special Appeals erred in holding the introduction of hearsay evidence, pursuant to MD. CODE ANN., CRIM. PROC. § 11-304, violated Snowden’s right to confrontation under the Sixth Amendment of the United States Constitution in light of *Crawford v. Washington*. *Id.* at 74, 867 A.2d 319-20.

The Court began its analysis with brief explanations of the Confrontation Clause (“Clause”) and Maryland’s “tender years” statute. *Id.* at 75, 867 A.2d at 320. The Court explained that the Clause, which provides, “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him,” falls short of proclaiming a defendant’s right to confront his accuser face-to-face at trial absolute. *Id.* at 75, 867 A.2d at 320 (citing *Maryland v. Craig*, 497 U.S. 863 (1990) (holding the Clause is not violated when the State presents the testimony of a child victim by way of closed circuit television)). The Court further explained, by way of the United States Supreme Court holding in *Ohio v. Roberts*, 448 U.S. 56 (1980), this less-than-absolute right allows the admission of hearsay statements in a criminal trial when the declarant is unavailable and the statement bears adequate “indicia of reliability.” *Id.* (quoting *Ohio v. Roberts*, 448 U.S. 56, 66 (1980)).

According to the Court, subsequent to the establishment of the *Roberts* “indicia of reliability” standard, many states, including Maryland, enacted statutes permitting the admission of certain hearsay

statements in criminal trials. *Id.* The Maryland “tender years” statute, first codified in 1988, is among this group, and was designed to ensure the adequate prosecution of child abuse and sexual offense crimes. *See Id.* at 75-76, 867 A.2d 320-21. To comport with *Roberts*, the statute requires the out-of-court statement to possess “particularized guarantees of trustworthiness.” *Id.* at 76, 867 A.2d 321 (quoting MD. CODE ANN., CRIM. PROC. § 11-304 (2001)).

As the Court of Appeals aptly recognized, however, the *Crawford* decision has fundamentally altered Confrontation Clause jurisprudence. *Id.* at 78, 867 A.2d 322. Specifically, the *Crawford* Court held the introduction of a defendant’s wife’s tape-recorded statements at trial violated the defendant’s right to confrontation. *Id.* (citing *Crawford*, 541 U.S. 36). That decision effectively overruled the *Roberts* “indicia of reliability” standard. *Id.* at 79, 867 A.2d at 322. In doing so, the *Crawford* Court determined the *Roberts* standard thwarted both the Framers’ goal and vision of the Clause: insuring reliability of evidence. *Id.* Thus, the *Crawford* Court set forth a new test, that the “testimonial” statements of an unavailable witness may be offered into evidence at a criminal trial only when the defendant had a prior opportunity to cross-examine the declarant. *Id.*

Although failing to define “testimonial,” the *Crawford* Court enumerated characteristics of testimonial statements. *Id.* at 80, 867 A.2d at 323. The *Crawford* Court explained, such statements share a common nucleus in that each involves a formal or official statement made or elicited for the purpose of being introduced at a criminal trial. *Id.* at 81, 867 A.2d at 324. (citing *Crawford*, 541 U.S. 36). The Court of Appeals interpreted this to mean that when a statement is made in the course of a criminal investigation initiated by the government, the Clause forbids its introduction unless the defendant had prior opportunity to cross-examine the declarant. *Id.*

Applying the objective standards of *Crawford* to the instant case, the Court of Appeals explained, an ordinary person in the girls’ positions would have anticipated that statements made to a sexual abuse investigator would be used in a subsequent prosecution. *Id.* at 84, 867 A.2d at 325. As such, the Court determined that the interviews with Wakeel were the functional equivalent of formal police questioning, and therefore, the girls’ statements were testimonial in nature. *Id.*

In support of this determination, the Court pointed to the interviews being conducted as part of a formal police investigation, the presence of law enforcement during the interviews, and the girls’

awareness of the interview(s) purpose. *Id.* at 84-85, 867 A.2d at 325-26. Further, the Court found Wakeel's role as an interviewer akin to a police officer in a routine police interrogation, likening her to an agent of the police department. *Id.* at 86, 867 A.2d 326-27. Moreover, the Court reasoned that even if the statements were made for the sole purpose of satisfying the requirements of the tender years statute, they remained testimonial in nature. *Id.* at 85, 867 A.2d 326.

Although the Court of Appeals recognized potential situations where a child is too young or immature to understand the testimonial nature of his or her statements, it concluded young children's statements can possess the same testimonial nature as those of other more competent declarants. *Id.* 89, 867 A.2d 328-29. In that regard, the Court declared the appropriate test for determining whether a statement is testimonial in nature is based on an objective person, not that of an objective child of similar age. *Id.* at 90-91, 867 A.2d at 329.

While sympathizing with public policy concerns aimed at limiting child victims' exposures to potentially traumatizing courtroom experiences, the Court expressed it, "must be faithful to the Constitution's deep concern for the fundamental rights of the accused." *Id.* at 90, 867 A.2d at 829. The Court clearly noted, however, that the holding in this case does not render Maryland's tender years statute useless. *Id.* at 92, 867 A.2d at 330. The Court explained that the statutory framework certainly contemplates other circumstances in which a child's non-testimonial statements could be supplied constitutionally by a health or social work professional. *Id.* Further, the court was silent as to whether non-investigatory statements could be admissible in light of *Crawford*. *Id.*

The Court of Appeals' opinion in *Snowden* clearly stands for the proposition that preserving the fundamental rights of the criminally accused is of preeminent importance. The opinion, however, is not without bittersweet undertones. Protecting child sexual abuse victims and preserving their accounts of abuse is hardly a peripheral concern. While the Court carefully crafted its opinion with the intent of preserving Maryland's tender years statute, the law appears to be destabilized. As such, future prosecutorial invocation of MD. CODE ANN., CRIM. PROC. § 11-304 will likely pose a sizable challenge. Nevertheless, whether a proponent of defendants' or victims' rights, the future of Confrontation Clause jurisprudence, especially as it relates to the tender years statute, will be worth tracking.