

DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 322

August 9, 2007

ADMISSIBILITY OF NON-TESTIMONIAL STATEMENTS AS EXCEPTION TO HEARSAY

Reference:	Joseph L. Anderson	
	v.	
	State of Alaska	

Alaska Court of Appeals Opinion No. 2113 _____P.3d____ August 3, 2007

FACTS:

Anchorage police were dispatched to the scene of a reported assault. They were directed to an apartment building where a witness said that a man was injured. Police Officer Pamela Nelson entered the apartment and saw a man lying on the floor, covered with what appeared to be a piece of carpet. She asked the man what happened and he told her that "Joe hit him with a pipe." The ambulance was called to transport the victim, Carroll Nelson (no relation to the officer), to the hospital. He underwent immediate abdominal surgery. The surgeon described his injuries as "life-threatening."

Joseph Anderson, who was at the scene, was arrested for felony assault. The victim in this case did not appear at trial to testify. The State offered the hearsay testimony of Officer Nelson.

ISSUE:

Was the victim's statement (Joe hit me with a pipe) to Officer Nelson non-testimonial?

HELD: Yes--the circumstances surrounding the making of that statement objectively indicate that the primary purpose of Officer Nelson's question was to enable her to respond to an on-going emergency. (emphasis added)

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REASONING:

1. As the Supreme Court explained in <u>Davis v. Washington</u> and <u>Hammon v. Indiana</u>, <u>Legal Bulletin No. 311</u>, hearsay statements made during the course of a police interrogation are non-testimonial if the circumstances objectively indicate that the <u>primary purpose the interrogation was to</u> <u>enable police to respond to an on-going emergency.</u> (emphasis added)

2. The Supreme Court explained the differing results in the <u>Davis</u> and <u>Hammon</u> (see <u>Legal Bulletin No. 311</u>) cases as follows:

The victim in <u>Davis</u> was alone, unprotected by the police, and in immediate danger. In contrast, the victim in <u>Hammon</u> was in the presence of police officers, who were investigating a domestic violence case, and was protected from immediate danger. The victim in <u>Davis</u>, who did not appear at trial, was speaking in the present tense--as in this case--and her hearsay statements were allowed. The victim in <u>Hammon</u>, who did not testify at trial, gave police a "narrative of past events-delivered at some remove in time from the danger she described." Police were not allowed to testify as to what she told them.

3. Carroll Nelson's statement to Officer Nelson that "Joe had hit him with a pipe" was non-testimonial under the tests set forth in <u>Crawford v. Washington, 541 U.S. 36,</u> 124 (no Bulletin), and <u>Davis</u> (see Legal Bulletin No. 311) and did not violate Anderson's right of confrontation.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

File Legal Bulletin No. 322 numerically under Section R of the manual.

EFFECTIVE AUGUST 2007

The Cover Page, Acknowledgments, Foreword, Table of Contents, Text and Case Law Citations Index of the Alaska Legal Briefs Manual have been revised. Updates may be reviewed and printed from the Alaska Police Standards Council website:

http://www.dps.state.ak.us/Apsc/legalbulletin.aspx