after such an emergency has ended, however, would be treated as testimonial and could not be introduced into evidence.[238]

In *Michigan v. Bryant*,[239] however, the Court appeared to extend the scope and basis of the "ongoing emergency" exception. In *Bryant*, a man dying from a gun shot wound was found by police lying on the ground next to his car in a gas station parking lot, several blocks away from where he had been shot. In response to questions from several police officers, the victim identified the defendant as his assailant, and his response was later used in the defendant's trial despite the victim's unavailability to testify. In determining whether such statements were related to an ongoing emergency (and thus were non-testimonial), the majority noted that an objective analysis of this question was "highly context-dependent,"[240] and depended on the nature of the crime, the weapon utilized, the medical condition of the victim, and the formality of the setting. Further, in determining the testimonial nature of such information, the Court considered not just the intent of the declarant, but also the intentions of the police coming upon the crime scene who, ignorant of preceding events, began seeking information to decide whether there was a continuing danger to the victim or the public.[241] Considering that there are other potential exceptions to the Confrontation Clause where the "primary purpose" for creation of evidence is not related to gathering evidence for trial,[242] the breadth of this opinion may signal a retreat from the limits of *Crawford*.

In two pre-*Crawford* cases, the Court took contrasting approaches to the Confrontation Clause regarding state efforts to protect a child from psychological trauma while testifying. In *Coy v.*

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[238] 547 U.S. at 828–29. Thus, where police responding to a domestic violence report interrogated a woman in the living room while her husband was being questioned in the kitchen, there was no present threat to the woman, so such information as was solicited was testimonial. Id. at 830 (facts of *Hammon v. Indiana*, considered together with *Davis*.)

[239] 562 U.S. ___, No. 09–150, slip op. (2011). Justice Sotomayor wrote the majority opinion, joined by Chief Justice Roberts and Justices Kennedy, Breyer and Alito. Justice Thomas file an opinion concurring in judgment, while Justices Scalia and Ginsburg filed dissenting opinions. Justice Kagan did not participate in the case.

[240] 562 U.S. ___, No. 09–150, slip op. at 16.

[241] 562 U.S. ___, No. 09–150, slip op at 20.

[242] *See* 562 U.S. ___, No. 09–150, slip op. at 15 n.9. The Court noted that many exceptions to hearsay rules rest on the belief that certain statements are made for a purpose other than use in a prosecution *See, e.g.*, Fed. Rule Evid. 801(d)(2)(E) (statement by a co-conspirator during and in furtherance of the conspiracy); 803(4) (Statements for Purposes of Medical Diagnosis or Treatment); 803(6) (Records of Regularly Conducted Activity); 803(8) (Public Records and Reports); 803(9) (Records of Vital Statistics); 803(11) (Records of Religious Organizations); 803(12) (Marriage, Baptismal, and Similar Certificates); 803(13) (Family Records); and 804(b)(3) (Statement Against Interest).