

reprising his opinion stated in earlier cases²³² that the Confrontation Clause covers only formalized statements of a solemnity that the uncertified lab report in this case lacked.

Generally, the only exceptions to the right of confrontation that the Court has acknowledged are the two that existed under common law at the time of the founding: “declarations made by a speaker who was both on the brink of death and aware that he was dying,” and “statements of a witness who was ‘detained’ or ‘kept away’ by the ‘means or procurement’ of the defendant.”²³³ The second of these exceptions applies “only when the defendant engaged in conduct *designed* to prevent the witness from testifying.”²³⁴ Thus, in a trial for murder, the question arose whether statements made by the victim to a police officer three weeks before she was murdered, that the defendant had threatened her, could be admitted. The state court had admitted them on the basis that the defendant’s having murdered the victim had made the victim unavailable to testify, but the Supreme Court reversed, holding that, unless the testimony had been confronted or fell within the dying declaration exception, it could not be admitted “on the basis of a prior *judicial* assessment that the defendant is guilty as charged,” for to admit it on that basis it would “not sit well with the right to trial by jury.”²³⁵

In *Davis v. Washington*,²³⁶ the Court began to explore the parameters of *Crawford* by considering when a police interrogation is “testimonial” for purposes of the Confrontation Clause. *Davis* involved a 911 call in which a woman described being assaulted by a former boyfriend. A tape of that call was admitted as evidence of a felony violation of a domestic no-contact order, despite the fact that the woman in question did not testify. Although again declining to establish all the parameters of when a response to police interrogation is testimonial, the Court held that statements to the police are nontestimonial when made under circumstances that “objectively indicat[e] that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency.”²³⁷ Statements made

²³² See, e.g., *Melendez-Diaz v. Massachusetts*, 557 U.S. ___, No. 07–591, slip op. (Justice Thomas concurring).

²³³ *Giles v. California*, 128 S. Ct. 2678, 2682, 2683 (2008).

²³⁴ 128 S. Ct. at 2683.

²³⁵ 128 S. Ct. at 2686.

²³⁶ 547 U.S. 813 (2006).

²³⁷ 547 U.S. at 822.