SUPREME COURT OF THE UNITED STATES

No. 09–150

MICHIGAN, PETITIONER *v.* RICHARD PERRY BRYANT

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN

[February 28, 2011]

JUSTICE THOMAS, concurring in the judgment.

I agree with the Court that the admission of Covington's out-of-court statements did not violate the Confrontation Clause, but I reach this conclusion because Covington's questioning by police lacked sufficient formality and solemnity for his statements to be considered "testimonial." See *Crawford* v. *Washington*, 541 U. S. 36, 68 (2004).

In determining whether Covington's statements to police implicate the Confrontation Clause, the Court evaluates the "'primary purpose'" of the interrogation. *Ante*, at 12. The majority's analysis—which relies on, *inter alia*, what the police knew when they arrived at the scene, the specific questions they asked, the particular information Covington conveyed, the weapon involved, and Covington's medical condition—illustrates the uncertainty that this test creates for law enforcement and the lower courts. *Ante*, at 25–31. I have criticized the primary-purpose test as "an exercise in fiction" that is "disconnected from history" and "yields no predictable results." *Davis* v. *Washington*, 547 U. S. 813, 839, 838 (2006) (opinion concurring in judgment in part and dissenting in part).

Rather than attempting to reconstruct the "primary purpose" of the participants, I would consider the extent to which the interrogation resembles those historical prac-

tices that the Confrontation Clause addressed. See, *e.g.*, *id.*, at 835–836 (describing "practices that occurred under the English bail and committal statutes passed during the reign of Queen Mary"). As the majority notes, Covington interacted with the police under highly informal circumstances, while he bled from a fatal gunshot wound. *Ante*, at 19–20, 31. The police questioning was not "a formalized dialogue," did not result in "formalized testimonial materials" such as a deposition or affidavit, and bore no "indicia of solemnity." *Davis*, *supra*, at 840, 837 (opinion of THOMAS, J.); see also *Giles* v. *California*, 554 U. S. 353, 377–378 (2008) (THOMAS, J., concurring). Nor is there any indication that the statements were offered at trial "in order to evade confrontation." *Davis*, *supra*, at 840. This interrogation bears little if any resemblance to the historical practices that the Confrontation Clause aimed to eliminate. Covington thus did not "bea[r] testimony" against Bryant, *Crawford*, *supra*, at 51, and the introduction of his statements at trial did not implicate the Confrontation Clause. I concur in the judgment.