

JAN 14 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**UNITED STATES OF AMERICA,**

Plaintiff - Appellee,

v.

**KEVIN LEE DAVIS, aka Slow and  
Yellow Dude,**

Defendant - Appellant.

No. 07-17194

D.C. Nos. CV-05-03756-DLJ  
CR-98-40082-DLJ

**MEMORANDUM\***

Appeal from the United States District Court  
for the Northern District of California  
D. Lowell Jensen, Senior District Judge, Presiding

Submitted January 12, 2011\*\*  
San Francisco, California

Before: **KOZINSKI**, Chief Judge, **NOONAN** and **SILVERMAN**, Circuit  
Judges.

Davis's case was not yet final on direct appeal when the Supreme Court  
decided Crawford v. Washington, 541 U.S. 36 (2004). See Caspari v. Bohlen, 510

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision  
without oral argument. See Fed. R. App. P. 34(a)(2).

U.S. 383, 390 (1994) (“[A] conviction and sentence become final for purposes of retroactivity analysis when . . . a timely filed petition [for writ of certiorari] has been finally denied.”). Under Crawford, the admission of Medina’s statement violated Davis’s Confrontation Clause rights—a point the government now concedes. See Crawford, 541 U.S. at 68. We therefore remand for the district court to determine if the error was prejudicial.

**REVERSED AND REMANDED.**