STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v MICHAEL E. BELL, Defendant-Appellant.	FOR PUBLICATION October 7, 2004 9:00 a.m. No. 209269 Recorder's Court LC No. 95-004885 ON SECOND REMAND

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v MICHAEL E. BELL, Defendant-Appellant.	 No. 209270 Recorder's Court LC No. 97-001258 Official Reported Version

Before: Cavanagh, P.J., and Saad and Meter, JJ.

METER, J. (*concurring*).

I concur in the majority's decision to reverse and remand because this result is compelled by *Crawford v Washington*, 541 US ___; 124 S Ct 1354; 158 L Ed 2d 177 (2004). I write separately, however, to express my disapproval of *Crawford*.

In *Crawford*, the United States Supreme Court concluded that the main purpose of the Confrontation Clause was to prohibit the "use of *ex parte* examinations as evidence against [an] accused." *Id.* at ___; 124 S Ct 1363. The Court stated that the text of the clause itself ("[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him," see US Const, Am VI) evidences that the clause applies to "witnesses," or to those who "bear testimony." *Crawford*, *supra* at ___; 124 S Ct 1364. It then stated that a person giving a statement to the police is giving "testimony" because "[p]olice interrogations bear a striking resemblance to examinations by justices of the peace in England," and the Confrontation Clause was designed to guard against the dangers of these examinations. *Id.* at 1363-1364. The Court then held that prior testimony—including a statement given during a police

interrogation—is not constitutionally allowable as evidence unless the declarant is unavailable and there has been an opportunity for the defendant to cross-examine the declarant. *Id.* at ___; 124 S Ct 1366-1368, 1374.

I simply cannot agree with *Crawford's* conclusions that statements given during a police interrogation are "testimonial" and that the Confrontation Clause automatically requires the exclusion of these "testimonial" statements if there has been no prior opportunity for cross-examination.

Indeed, I fail to see how an accomplice's narrative statement that is given to a police officer and that implicates himself and the defendant is more "testimonial" in nature than a similar statement given to, for example, a casual acquaintance. See *id.* at ___; 124 S Ct 1364 (where *Crawford* draws a distinction between statements given to the police and statements given to mere acquaintances). In each case, the accomplice is not giving direct testimony against a defendant but is simply relating facts[1] to a third party in an extrajudicial setting.

Even assuming, arguendo, that such a statement by an accomplice to the police *is* considered "testimonial" in nature, I agree with Chief Justice Rehnquist's analysis in *Crawford* that there is no reasonable basis for automatically excluding out-of-court testimonial statements under the Confrontation Clause when there has been no opportunity for cross-examination. See *id.* at ___; 124 S Ct 1376-1378 (Rehnquist, C.J., concurring).

I believe that *Ohio v Roberts*, 448 US 56; 100 S Ct 2531; 65 L Ed 2d 597 (1980), and *People v Poole*, 444 Mich 151; 506 NW2d 505 (1993), were correctly decided. I recognize, however, that I am bound by the *Crawford* decision, and I therefore concur in the majority's opinion.

/s/ Patrick M. Meter

[1] These facts are likely to be true and often correctly deemed reliable because "the declarant and the accused are partners in an illegal enterprise . . . ." See *id.* at 1377 (Rehnquist, C.J., concurring).