

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 6 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

OSCAR MORALES,

Petitioner-Appellant,

v.

ANTHONY HEDGPETH, Warden,

Respondent-Appellee.

No. 16-16537

D.C. No.

2:12-cv-00544-TLN-KJN

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Troy L. Nunley, District Judge, Presiding

Submitted October 11, 2017**
San Francisco, California

Before: THOMAS, Chief Judge, and REINHARDT and O'MALLEY,*** Circuit Judges.

1. The California Court of Appeal's decision regarding the trial court's exclusion of hearsay statements made by a 911 caller was not contrary to or an

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

*** The Honorable Kathleen M. O'Malley, United States Circuit Judge for the U.S. Court of Appeals for the Federal Circuit, sitting by designation.

unreasonable application of *Davis v. Washington*, 547 U.S. 813 (2006). *Davis* held: “Statements are nontestimonial [for the purposes of the Confrontation Clause] when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency.” *Id.* at 822. Here, the defense sought to introduce the 911 call, and thus there was no Confrontation Clause issue. *Davis* is inapposite.

2. The state court did not unreasonably determine the facts. For the reasons stated above, the state court did not need to make findings regarding an “ongoing emergency” because the testimonial/nontestimonial distinction is only relevant to a Confrontation Clause analysis. Moreover, the state court did not need to determine the identity of the 911 caller to conclude that the caller’s statements were inadmissible hearsay.

AFFIRMED.