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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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GILES *v.* CALIFORNIA

CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

No. 07–6053. Argued April 22, 2008—Decided June 25, 2008

At petitioner Giles' murder trial, the court allowed prosecutors to introduce statements that the murder victim had made to a police officer responding to a domestic violence call. Giles was convicted. While his appeal was pending, this Court held that the Sixth Amendment's Confrontation Clause gives defendants the right to cross-examine witnesses who give testimony against them, except in cases where an exception to the confrontation right was recognized at the founding. *Crawford* v. *Washington*, 541 U. S. 36, 53–54. The State Court of Appeal concluded that the Confrontation Clause permitted the trial court to admit into evidence the unconfronted testimony of the murder victim under a doctrine of forfeiture by wrongdoing. It concluded that Giles had forfeited his right to confront the victim's testimony because it found Giles had committed the murder for which he was on trial—an intentional criminal act that made the victim unavailable to testify. The State Supreme Court affirmed on the same ground.

Held: The California Supreme Court's theory of forfeiture by wrongdoing is not an exception to the Sixth Amendment's confrontation requirement because it was not an exception established at the founding. Pp. 3–20; 22–24.

(a) Common-law courts allowed the introduction of statements by an absent witness who was "detained" or "kept away" by "means or procurement" of the defendant. Cases and treatises indicate that this rule applied only when the defendant engaged in conduct *designed* to prevent the witness from testifying. Pp. 4–7.

(b) The manner in which this forfeiture rule was applied makes plain that unconfronted testimony would not be admitted without a showing that the defendant intended to prevent a witness from testifying. In cases where the evidence suggested that the defendant

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wrongfully caused the absence of a witness, but had not done so to prevent the witness from testifying, unconfronted testimony was excluded unless it fell within the separate common-law exception to the confrontation requirement for statements made by speakers who were both on the brink of death and aware that they were dying. Pp. 7–11.

(c) Not only was California's proposed exception to the confrontation right plainly not an "exceptio[n] established at the time of the founding," *Crawford, supra,* at 54; it is not established in American jurisprudence since the founding. No case before 1985 applied forfeiture to admit statements outside the context of conduct designed to prevent a witness from testifying. The view that the exception applies only when the defendant intends to make a witness unavailable is also supported by modern authorities, such as Federal Rule of Evidence 804(b)(6), which "codifies the forfeiture doctrine," *Davis* v. *Washington,* 547 U. S 813, 833. Pp. 11–14.

(d) The dissent's contention that no testimony would come in at common law under a forfeiture theory unless it was confronted is not supported by the cases. In any event, if the dissent's theory were true, it would not support a broader forfeiture exception but would eliminate the forfeiture exception entirely. Previously confronted testimony by an unavailable witness is always admissible, wrongful procurement or not. See *Crawford*, *supra*, at 68. Pp. 15–20.

(e) Acts of domestic violence are often intended to dissuade a victim from resorting to outside help. A defendant's prior abuse, or threats of abuse, intended to dissuade a victim from resorting to outside help would be highly relevant to determining the intent of a defendant's subsequent act causing the witness's absence, as would evidence of ongoing criminal proceedings at which the victim would have been expected to testify. Here, the state courts did not consider Giles' intent, which they found irrelevant under their interpretation of the forfeiture doctrine. They are free to consider intent on remand. Pp. 23–24.

40 Cal. 4th 833, 152 P. 3d 433, vacated and remanded.

SCALIA, J., delivered the opinion of the Court, except as to Part II–D–2. ROBERTS, C. J., and THOMAS and ALITO, JJ., joined that opinion in full, and SOUTER and GINSBURG, JJ., joined as to all but Part II–D–2. THOMAS, J., and ALITO, J., filed concurring opinions. SOUTER, J., filed an opinion concurring in part, in which GINSBURG, J., joined. BREYER, J., filed a dissenting opinion, in which STEVENS and KENNEDY, JJ., joined.