

Evidence Issues in District Court

Self-Test

1. Defendant is being tried for assault on a child. During questioning by the police at the station house, Defendant made incriminating statements, which the State seeks to introduce at trial. The defense lawyer objects, saying: "My client has a right not to testify. Introducing these statements would in effect force him to testify against himself and would violate *Crawford* and the confrontation clause."

How do you rule? Why?

2. At Defendant's trial for assault on a child, the State calls Witness to testify to the defendant's involvement in the alleged assault. After giving his name and other background information, the prosecutor asks Witness what he was doing outside of Child's house on the morning of the assault. Witness takes the 5th as to that and all subsequent questions. Witness is allowed to step down. The State then calls Officer, to testify about what Witness told Officer during an interview. When defense counsel makes a *Crawford* objection, the State responds: "This witness has appeared at trial and Defendant has had an opportunity to cross-examine. The constitution guarantees a right to confrontation but not a right to perfect or ideal confrontation."

How do you rule? Why?

3. Child, an alleged victim of sexual abuse, is referred to Psychologist for treatment. Child's first session with Psychologist occurs five days after the alleged abuse. While crying and shaking, Child identifies her mother's live-in boyfriend the person who committed the abuse. At a proceeding on abuse and neglect, Child does not testify and the DSS lawyer

seeks to admit Child's statement to Psychologist to identify the person responsible. When there is a hearsay objection, the DSS lawyer argues that the statement falls within the excited utterance exception. How do you rule? Why?

4. Defendant is alleged to have committed sexual battery against the 16-year old daughter of the defendant's girlfriend. Defendant does not testify. The prosecutor offers into evidence a certified judgment of defendant's 2002 conviction for indecent liberties with a minor. The defendant objects on the ground that the conviction is improper "propensity" evidence and therefore inadmissible under Evidence Rule 404(b). How do you rule?
5. During trial of child custody case, mother testifies that the child is often upset when child returns from staying at the father's house. Can the mother testify that the child told her that the child doesn't like being at her father's house because his girlfriend often spends the night while the child is present? Why or why not?

6. In an alimony case, defendant has stipulated to marital misconduct. Plaintiff seeks to introduce a videotape showing defendant together with his paramour. Defendant objects, arguing that the tape is not relevant. Sustained? Why or why not?

7. Child custody modification case. Primary custodial parent dad is moving to Oregon because his employer is transferring him to a new location.
Dad testifies that he purchased a house in the new town and that the house is located within a school district with very high quality schools. He testifies that he knows the schools are high quality because of the research he has done "on line".
Mom objects, arguing dad has no personal knowledge of the quality of the schools in the new town. Sustained? Why or why not?

8. In same custody case, Dad testifies that mother has been saying inappropriate things to the child about the move to Oregon. He offers a digital recording he made of a telephone conversation between the mother and the child. Dad testifies that the telephone conversation occurred while the child was at the father's home, on dad's home telephone. Dad heard the conversation and he can identify mom's voice on the recording. Dad's

lawyer asks permission to play the recording. Mom objects, arguing the recording was made in violation of federal law. Sustained? Why or why not?

9. During an abuse and neglect proceeding, Psychologist testifies, as an expert for DSS, that Child is a “truthful child.” There is an objection asserting that this is impermissible opinion testimony on the credibility of a witness. Is Psychologist’s testimony admissible?
10. On cross examination in the same case, Psychologist is asked whether Child had been coached by others involved in the case. On redirect, the DSS lawyer asks Psychologist: “Did you pick up on anything suggesting that someone had told Child what to say or that Child had been coached?” There is an objection, arguing that this opinion testimony impermissibly goes to credibility of child. Is this testimony admissible? Why or why not?

11. Carol Cruise is charged with driving while impaired. Officer Brown testifies at trial that he conducted a Horizontal Gaze Nystagmus (“HGN”) test at the scene of the stop. He states that he had taken a forty-hour training course in administering the HGN test and in interpreting its results. He states that he learned the following procedures in his training: “First, I ask the subject to cover one eye and use the other eye to follow the pen as I move it at eye level in his field of vision. I watch his eye for nystagmus – that’s a jerking of the eyeball. The person can’t control it. If the person’s eyeball starts jumping before the pen is at a 45 degree angle, then that’s evidence the person is impaired. And depending upon what level that nystagmus kicks in at, I can estimate the level of alcohol in the person’s blood.” The defendant’s attorney objects to any further testimony from Officer Brown regarding the results of the HGN test. How do you rule on the objection? Why?