

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

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?