

District Court Criminal Update

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Adventures in the Fifth Amendment: Domestic Violence Trials in District Court

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The First Trial

- Bill and Jane are boyfriend and girlfriend. Bill is charged with assaulting Jane, and Jane is charged with assaulting Bill. Both charges arose out a single incident at their house.
- Enthusiastic but woefully inexperienced ADA Pat decides to try the two cases together. Jane is representing herself and is really good at it. An attorney represents Bill, but he never says much of anything of importance.

Does Jane have the right NOT
to take the stand?

1. Yes
2. No

Defendant's Rights

- A defendant in a criminal case has the right not to take the stand.
 - The State may not call a defendant at his or her own trial
 - A co-defendant may not call another co-defendant as a witness at their joint trial.

The Second Trial

- After being acquitted for lack of evidence against them, Bill and Jane get in another fight. Bill is again charged with assaulting Jane, and Jane is again charged with assaulting Bill.
- Somewhat wiser ADA Pat decides to try Jane and Bill one after the other. ADA Pat calls Jane's case first. Jane is not represented by counsel again, having easily bested ADA Pat the first time. Bill is not represented by counsel either.

Does Bill have the right NOT
to take the stand?

1. Yes
2. No

Does Jane have the right NOT
to answer the question?

1. Yes
2. No
3. I need more
information

Witness's Rights

- A witness has the right to refuse to answer questions that may be incriminating.
 - If, on its face, a question calls for an answer that may incriminate a witness, the judge must uphold the witness's refusal to answer.
 - If it is unclear whether a question calls for an incriminating answer, the judge may conduct a limited inquiry into the basis for the refusal but must stop once it is apparent that answering the question may incriminate the witness.

After Acquittal

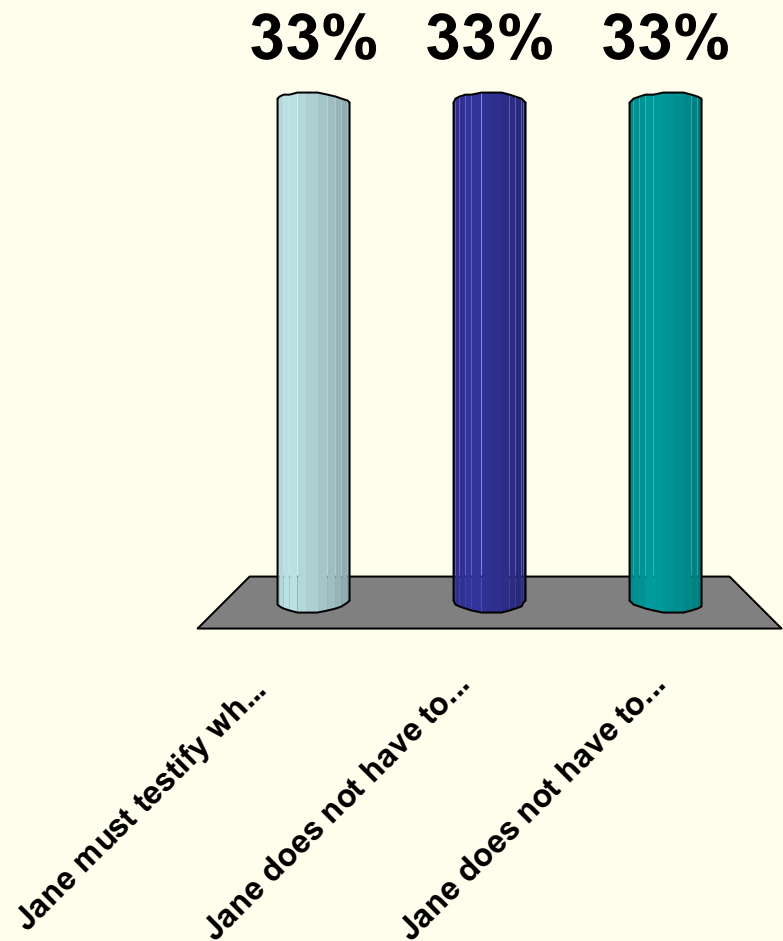
- If acquitted of a charge, a person is immune from prosecution for that charge and does not have the right to refuse to answer questions regarding that charge.
 - But, if the question calls for information that may be incriminating regarding conduct for which the person has not been acquitted, the person may still refuse to answer.
 - The judge may conduct a limited inquiry if necessary.

If Not Charged

- Suppose Jane was never charged with anything. The only charge is against Bill for assault on a female against Jane. The prosecutor calls Jane to the stand, and she asserts her Fifth Amendment rights.
- Are the principles any different?

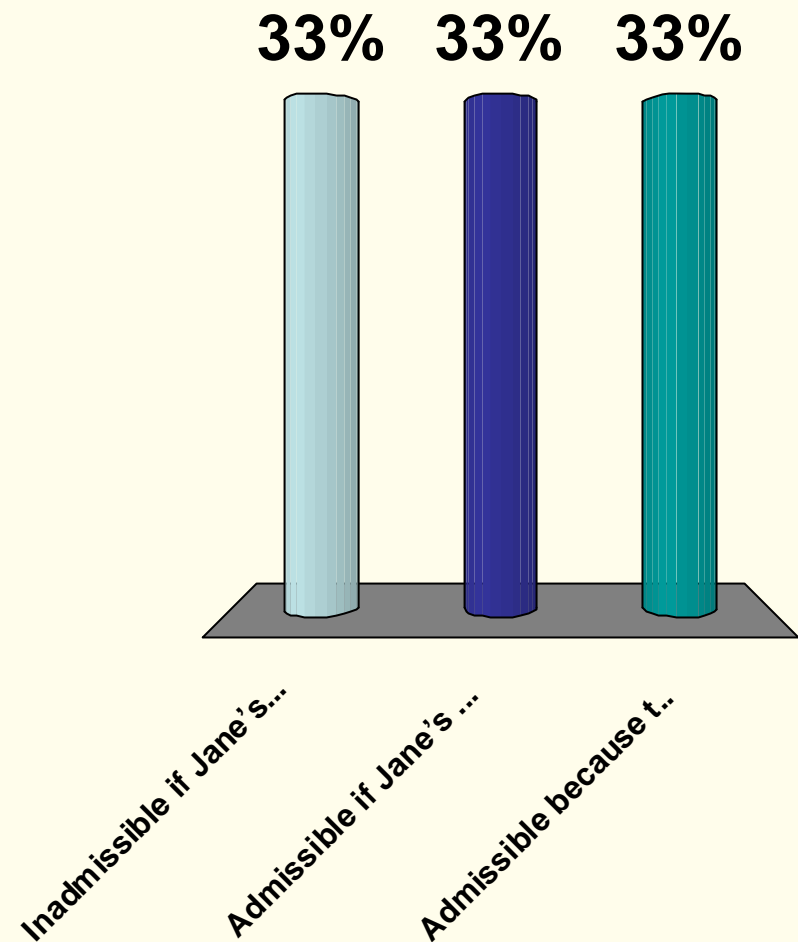
If the elected DA grants immunity during trial...

1. Jane must testify whether or not she accepts the offer
2. Jane does not have to testify because the DA didn't follow the correct statutory procedures
3. Jane does not have to testify because state immunity wouldn't protect her against federal prosecution



The officer's testimony about Jane's statements is...

1. Inadmissible if Jane's statements are testimonial
2. Admissible if Jane's statements are non-testimonial or fit within a *Crawford* exception
3. Admissible because the evidence is necessary



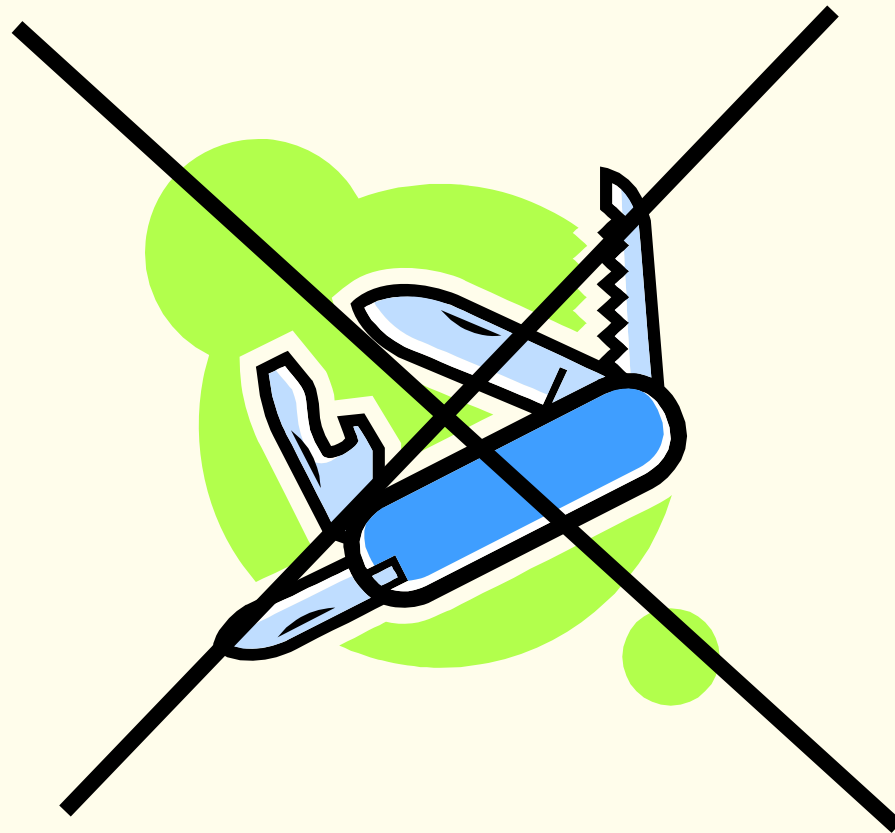
Judge Rubin...

1. Gave Jane de facto immunity by forcing her to testify
2. Violated Jane's Fifth Amendment rights
3. May have to worry about Judicial Standards
4. All of the above

Summing Up

- Defendant has right NOT to take stand at own trial
- Witness has right NOT to answer if all of following apply:
 - Answer may tend to incriminate witness
 - Judge may conduct limited inquiry of witness
 - Witness is not immune from prosecution
 - By, ex., acquittal, formal grant of immunity, pardon
 - Witness has not waived privilege

**Is possession of a closed pocket knife
on school grounds a crime?**



Does the ruling apply to adults?

- GS 14-269.2(d) states that it is a Class 1 misdemeanor for
 - “any person . . . to possess or carry . . . any sharp-pointed or edged instrument”
- Court in B.N.S. also said:
 - “It is well established that the purpose of N.C. Gen. Stat. § 14-269.2 is to deter students from bringing a weapon onto school grounds.”

Meaning of Assault

- Assault by “strangulation”
 - Closure by external pressure
- Assault inflicting “serious bodily injury”
 - Serious permanent disfigurement, including loss of tooth
- Assault with “dangerous weapon”
 - In some instances, use of hands and feet

Habitual Offenders

- Habitual offender laws are NOT unconstitutional
- Use of prior conviction to make defendant habitual does not violate double jeopardy
- Penalties apply to
 - Habitual DWI
 - Habitual misdemeanor assault
 - Habitual felon



New *Crawford* Decisions!



Crawford Map



For an expert to testify that a child was sexually abused, there must be physical evidence...

1. Yes
2. No

Juvenile Petitions

- GS 7B-1801
 - “The pleading in a juvenile action is the petition.”
- GS 7B-2400
 - “The court may permit a petition to be amended when the amendment does not change the nature of the offense alleged.”

Conflicts of Interest

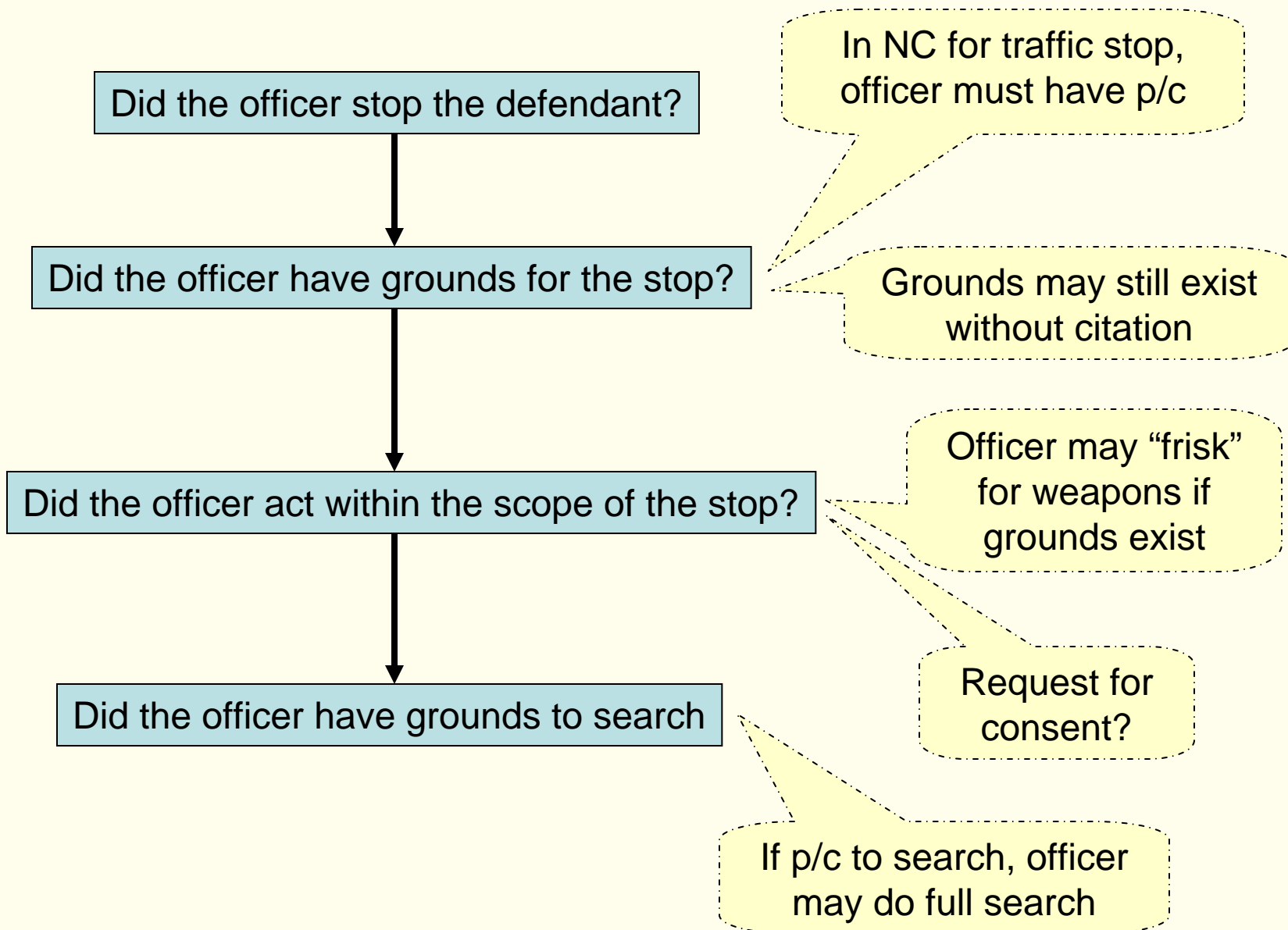
- Court should conduct hearing when it becomes aware of potential conflict of interest
- Avoiding conflict is:
 - Ethical requirement AND
 - Sixth Amendment right

Ethics Rules Involving Former Clients

- Basic standard
 - Counsel must represent the current client diligently while maintaining the confidences of the former client
- Subsidiary principles
 - Same or substantially related matters
 - Confidential information of former client
 - Zealous representation of current client

Unpublished Opinion

- A conflict exists, requiring withdrawal or client consent, if attorney would need to cross-examine former client about prior conviction resulting from case in which attorney represented former client
- Imputed disqualification rule would result in disqualification of entire office or firm
- **TOO BROAD???**



Sentencing Scenario

- A judge finds a defendant guilty of two Class 1 misdemeanors. The defendant has no prior criminal record.
- The judge sentences the defendant on one of the misdemeanors and then calls a lunch break.
- After lunch, the judge sentences the defendant on the second misdemeanor, counts the morning misdemeanor as a prior, and gives the defendant 45 days active time.

Can you do that?

1. Yes
2. No