

OHIO V. CLARK: A BIT OF CONFRONTATION CLARIFICATION, A FEW TANTALIZING HINTS

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The United States Supreme Court decision in *Ohio v. Clark*² has been heralded by many prosecutors and legal scholars³ as significantly broadening the admissibility of evidence under the Confrontation Clause,⁴ as interpreted by *Crawford v. Washington*⁵ and its progeny. The decision does not break startling new ground; rather, the Court's decision is one that flows more or less naturally from the Court's previous pronouncements about what it is that makes a hearsay statement "testimonial," and therefore inadmissible at trial unless the witness is subject to cross-examination, either at trial or (in the case of a witness unavailable for trial) at a prior proceeding. Nevertheless, the Court's opinion provides some welcome direction and guidance to trial courts (and prosecutors) about the admissibility of statements made to individuals not affiliated with law enforcement, as well as statements made by children or others who may be limited in their ability to grasp the notion of potential future prosecution. Still, the language of the decision departs in some respects from previous decisions in ways that fuel the ongoing debate about the future of Confrontation Clause jurisprudence.⁶

Prior to *Crawford*, a hearsay statement of an unavailable witness could be admitted if the statement fell within a "firmly rooted" hearsay exception, or otherwise bore sufficient indicia of reliability.⁷ Under this *Roberts* standard, cross-examination was not the *sine qua non* of the right of confrontation; rather, admissibility of hearsay statements by an unavailable witness depended upon the reliability of the statement. Under that standard, many forms of hearsay could be admitted to substitute for a victim's in-court testimony. All of that changed with the 2004 *Crawford* decision, which required courts to consider, in the first instance, whether the hearsay statement of a non-testifying witness was "testimonial" or "non-testimonial."⁸ If the statement is nontestimonial, the only strictures on admissibility are the jurisdiction's hearsay rules.⁹ But for statements deemed testimonial in nature, the defendant must be afforded the opportunity to cross-examine the witness; if the witness does not testify at trial, the testimonial statement will be admissible only if the witness is actually unavailable to testify *and* the defendant had a prior opportunity to cross-examine the witness.¹⁰

In the vast majority of confrontation cases arising in the wake of *Crawford*, the issue presented is whether the statement in question is testimonial or nontestimonial. There are a few certainties: statements made in the course of formal court proceedings, affidavits or similar sworn statements, and statements in response to formal police stationhouse questioning are always considered testimonial.¹¹ Determination whether other statements are testimonial or not tends to be fact-sensitive. Statements made for the primary purpose of memorializing a witness's account of events or information for purposes of potential future prosecution are testimonial,¹² but the "primary" purpose of a given statement is not always clear—particularly when questioning or responses veer from topic to topic, or where the questioner may have multiple roles that involve providing medical treatment or making safety decisions, as well as collecting evidence (*e.g.*, interviews conducted by medical professionals in connection with sexual assault forensic examinations, or statements to child protection workers). The divergent results in cases around the country have made it difficult to predict, with any certainty, whether certain statements will be deemed testimonial or nontestimonial.

OHIO V. CLARK: THE FACTS

Darius Clark sent his prostituted girlfriend, T.T., across the country to “work” for him while he stayed home to care for her three-year-old son, L.P., and 18-month-old daughter, A.T.¹³ The boy attended pre-school and a teacher, Whitley, observed an apparent injury to his eye. When Whitley asked about it, the boy initially told her nothing had happened, but eventually said that he “fell down.” A short time later, with the opportunity to view the child in better light, Whitley noticed what appeared to be whip marks on L.P.’s face. She brought the injuries to the attention of the lead teacher, Jones, who asked L.P., “Who did this? What happened to you?” The child responded, “Dee, Dee.” When Jones asked if “Dee” was “big or little,” the boy answered, “Dee is big.” Jones took the child to her supervisor, who lifted the boy’s shirt and observed multiple injuries.¹⁴ The supervisor instructed Whitley to report the suspected child abuse. While a responding social worker was speaking with L.P., Clark arrived at the school to pick up the child. Denying that he had caused the injuries, Clark left the school with the boy. The next day, after locating the children at the home of Clark’s mother, a social worker took the children to the hospital where both were examined.¹⁵ L.P. had a black eye, belt marks on his back and stomach, and bruises all over his body. The little girl, A.T., had two black eyes, a swollen hand, and a large burn on her cheek; two braids had been ripped out at the roots.¹⁶

STATE COURT PROCEEDINGS

Clark was charged with felonious assault and related offenses arising from the injuries to the two children. Ohio’s rules of evidence on competency precluded L.P. from testifying in court.¹⁷ L.P.’s statements to the teachers that “Dee” had caused the injuries were admitted at trial, through the teachers’ testimony, on the theory that the child’s statement was nontestimonial.¹⁸ Clark was convicted on all but one of the charged counts. The Ohio Court of Appeals reversed the conviction, holding that because teachers are mandatory reporters of child abuse under Ohio law, the child’s statements to his teachers were testimonial in nature, akin to those provided during police questioning.¹⁹

The State petitioned for review of only that portion of the decision holding the child’s statements to the teachers to be testimonial.²⁰ The Ohio Supreme Court, over a strongly-worded dissent, affirmed the decision of the Court of Appeals. The majority agreed that the absence of an ongoing emergency, together with the teachers’ status as mandatory reporters of child abuse, meant that L.P.’s statements in response to their questions were testimonial and, therefore, improperly admitted at trial.²¹ The dissenting justices vehemently disagreed, observing that the decision amounted to a “beneficial catch-22 for pedophiles and other abusers of children,” by prohibiting testimony of “[t]he very people who have the expertise and opportunity to recognize child abuse” whenever a child victim is unable to testify.²² The dissenters had no doubt that the primary purpose of the teachers’ questioning was to protect the child, rather than to bring the abuser to justice.²³ They found that precluding the statements undermined the very purpose of the mandatory-reporting statutes, which are intended to compel those in the best position to observe the effects of abuse to report their suspicions to the police.²⁴

UNITED STATES SUPREME COURT

The Court, in a majority opinion by Justice Alito (joined by the Chief Justice and five other Justices), reversed the Ohio Supreme Court’s decision. The Court rejected the argument that as mandatory reporters of child abuse, the teachers were acting as agents of law enforcement in questioning the child about his injuries.²⁵

After recounting the development of the “primary purpose” test announced in *Davis v. Washington*²⁶ and further refined in *Michigan v. Bryant*,²⁷ the Court observed that there were also certain types of testimonial hearsay that were historical exceptions to the rule of confrontation from the time of the founding, including dying declarations and statements admissible under the doctrine of forfeiture by wrongdoing.²⁸

Noting that none of the *Crawford*-era confrontation cases theretofore considered by the Court had involved statements to individuals not affiliated with law enforcement, the Court declined to categorically exclude the possibility that some such statements might “conceivably raise confrontation concerns,” but said that such statements were “much less likely” to be testimonial than would statements to law enforcement officers.²⁹

Turning to the facts of the case before it, the Court observed that the statements were made in the context of an “ongoing emergency involving child abuse,” requiring the teachers to determine whether it was safe to allow the child to go home at the end of the day. The questions were focused on “identifying and ending the threat.” Nothing said by the teachers suggested to the child that his statements would be used by police or prosecutors. The questions, and the setting, were spontaneous and informal.³⁰

The child’s age “fortifie[d the Court’s] conclusion that the statements in question were not testimonial. Statements by very young children will rarely, if ever, implicate the Confrontation Clause.” The Court noted that preschool children understand little, if anything, about the justice system and are unlikely to contemplate that their statements might be used in court. In addition, the Court noted that there was historical pre-Constitutional precedent for admitting the statements of child witnesses without cross-examination.³¹

Finally, the Court stressed the importance of context in determining whether a statement is testimonial, pointing out that the identity of the questioner is part of that context. “Statements made to someone who is not principally charged with uncovering and prosecuting criminal behavior are significantly less likely to be testimonial than statements given to law enforcement officers.”³²

The Court explicitly rejected the notion that the teachers’ status as mandatory reporters of child abuse made them agents of law enforcement for purposes of confrontation analysis. “[M]andatory reporting statutes alone cannot convert a conversation between a concerned teacher and her student into a law enforcement mission aimed primarily at gathering evidence for a prosecution.” The Court also rejected the arguments that the statements were testimonial because they had the “natural tendency” to lead to prosecution, observing that the same could be said for the nontestimonial statements in *Davis* and *Bryant*; that it was unfair to admit the statements because state law made the child incompetent to testify; and that the jury’s perception of the statements as equivalent to court testimony had any significance in the determination.³³

Justice Scalia, joined by Justice Ginsburg, filed a concurring opinion, agreeing that under standards applicable to informal police questioning, the child’s statements to his teachers were nontestimonial because the child could not have understood that they might be used for prosecution purposes, the teachers’ concern was not to release the child back into imminent harm, and the circumstances lacked the “solemnity” that normally attends testimonial statements. However, he strongly objected to the perceived implication in the majority opinion that the defendant bore the burden of establishing that a particular type of statement would not have been admitted, without confrontation, at the time of the founding.³⁴

Justice Thomas filed a separate concurring opinion, agreeing with the propositions that mandatory reporting statutes do not make a person an agent of law enforcement and that statements made to private parties or by young children will rarely implicate the Confrontation Clause. He disagreed with the “primary purpose” analysis and would instead have applied the test that he alone advocates: whether the statement was made with the requisite “solemnity” to make the statement testimonial.³⁵

DISCUSSION—AND UNANSWERED QUESTIONS³⁶

The most helpful propositions to be gleaned from the opinion are that “[s]tatements by very young children will rarely, if ever, implicate the Confrontation Clause,” that “[s]tatements made to someone who is not principally charged with

uncovering and prosecuting criminal behavior are significantly less likely to be testimonial than statements given to law enforcement officers,” and that the legal duty to report abuse does not transform a private party into an agent of the state merely because that report may find its way into a future prosecution.

The Court’s view of the admissibility of statements by very young children suggests that on-the-scene interviews with very young children (at the scene of a domestic violence incident, for example) *may* yield statements that will be admissible in court even if the child is incompetent to testify or if the prosecutor does not wish to put the child on the stand. Responding police officers should interview the children at the scene,³⁷ even if it appears they will be too young to testify in court. The significance of the declarant’s ability to comprehend the potential future use of the statement as an aid in prosecution further suggests that statements by witnesses with developmental disabilities or with severely diminished cognitive capacity (*e.g.*, some elderly witnesses) might also be treated as “rarely, if ever” testimonial, which could greatly aid in the prosecution of certain cases of abuse and neglect of these vulnerable victims.

Although the Justices unanimously agreed that L.P.’s statements to the teachers were nontestimonial, the Supreme Court never had the opportunity to consider the admissibility of the statements made by the child to the police officer and to the two social workers.³⁸ Although the social workers, who were employed by the child protective agency, were also undoubtedly similarly focused on the child’s safety, they did not have day-to-day responsibility for supervising and caring for the child in the same way that his teachers did, nor did they have an established relationship with the child apart from the report of abuse.³⁹ It appears likely that the youth of this particular victim would, under the Court’s analysis, make the child’s statements to the social workers—and perhaps even the investigating police officer—nontestimonial. If the child were older—a pre-teen, for example—it might well be a closer question, particularly if the child were in a place of temporary safety pending the investigation.

It is unclear how much law enforcement involvement would be necessary before a statement to a “private party” will be deemed testimonial. Courts have held that statements deliberately elicited by law enforcement informants, at the direction of the police, were nontestimonial because the witness-declarant had no knowledge of police involvement and, thus, had no knowledge their statements might later be introduced at trial.⁴⁰ Would the Supreme Court agree? Would a parent or other family member, asking questions at the direction of the police, be eliciting a testimonial statement just because the questions were suggested by the police? Or would the statements given in response be nontestimonial due to the declarant’s belief they were having an ordinary family discussion? On the other hand, when officers are present, during questioning by a sexual assault nurse examiner (SANE), or a family member, a witness old enough to understand the role of the police is arguably aware s/he might be speaking “for the record.” Is the mere presence of the officer enough to make the statement testimonial?

Part of the problem is that the Court has never made it entirely clear how the balance should be weighed between the questioner’s intent and the declarant’s belief as to whether the statement could potentially be used for future prosecution. When those two interests align, it is easier to determine whether the statement is testimonial than it is when they diverge. The majority’s opinion in *Clark* speaks of the “‘primary purpose’ of the *conversation*,”⁴¹ but the *Clark* opinion shifts, in a slippery manner, between considering the purpose of the teachers in asking the questions and the purpose of the child in responding to their questions. The teachers’ purpose, the Court noted, was to protect the child; the child’s purpose is not discussed, other than to note that he was too young to understand the concept of prosecution. It thus was clear that neither party was considering possible prosecution at the time of the statement.

Another unanswered question is how the Court would view statements made by a victim to parties such as SANEs, child protective services workers, or adult protective services workers. Such professionals often serve a dual role—providing

medical care, protective services, or placement, while also collecting evidence or documenting statements and observations that may be used later in court. These professionals typically, and rightly, view their primary function as the provision of care and protection to their patients or clients, with their role in collecting or preserving evidence of secondary importance.⁴² Although *Clark* does not address statements made to such professionals, the opinion provides some hope that a majority of the Court would find such statements nontestimonial, at least to the extent that there are valid safety or medical concerns that still need to be addressed at the time of the statements.

In the time since the case was decided (June 2015), state and federal courts have relied on *Clark* in admitting several types of statements as nontestimonial, including statements of a child victim to a child protective services social worker;⁴³ statements of an elder abuse victim to her adult daughter;⁴⁴ a statement of a child victim to a detective and a social worker during an interview wherein the detective actually asked the questions (which were the same that the social worker would have asked);⁴⁵ statements of prisoners during classification interviews regarding prior gang affiliation;⁴⁶ a videotaped statement of 15-year-old child abuse victim to a nurse at a Child Advocacy Center;⁴⁷ a statement of a four-year-old child abuse victim to a physician at a Child Protection Response Center;⁴⁸ statements of an adult battering victim to a paramedic and to a forensic nurse;⁴⁹ statements of a three-year-old child to his mother's boyfriend about his mother's having been assaulted by two acquaintances;⁵⁰ and statements of a four-and-a-half-year-old child victim of sexual assault to a SANE.⁵¹ A New Jersey court concluded, however, that the hearsay statement of a seven-year-old child victim of sexual assault (who was developmentally disabled, functioning at the level of a three-year-old) to a police officer in a forensic interview was testimonial, although the court found the child's statements to a cousin just after the offense were nontestimonial.⁵² Noting that *Clark* stopped short of holding that statements of "very young children" were invariably nontestimonial, the court observed that the police interview, conducted 18 days after the incident and report, was specifically aimed at preserving the child's statement for future prosecution.⁵³

CONCLUSION

Although the *Clark* decision will undoubtedly facilitate admission of statements made by children too young to understand the criminal justice system (and, most likely, others who have severely limited cognitive capacity), as well as statements made to third parties with no connection at all to the criminal justice system, the "primary purpose" test will continue to confound prosecutors and judges in cases where statements are made to professionals with a dual role of collecting evidence and providing services. Determinations in such cases will continue to be highly fact-sensitive, and prosecutors must carefully research the law in their own jurisdictions for precedent that will help them argue for admissibility of statements as nontestimonial.⁵⁴

ENDNOTES

- 1 Teresa M. Garvey is an Attorney Advisor with AEquitas: The Prosecutors' Resource on Violence Against Women.
- 2 135 S.Ct. 2173 (2015).
- 3 See, e.g., Joan Meier, *Response, Ohio v. Clark*, GEO. WASH. L. REV. DOCKET (June 22, 2015), <http://www.gwlr.org/ohio-v-clark/>; A. ANN RATNAYAKE, THE PATH TO REINVIGORATING EVIDENCED-BASED PROSECUTION IN INTIMATE PARTNER VIOLENCE CASES, NATIONAL DISTRICT ATTORNEYS ASSOCIATION (2016), available at <https://form.jotform.com/61306009118143>.
- 4 U.S. CONST. Amend. VI.
- 5 541 U.S. 36 (2004).
- 6 See, e.g., PAUL ROTHSTEIN, GEORGETOWN UNIVERSITY LAW CENTER, A COMMENT ON THE SUPREME COURT'S DECISION IN OHIO V. CLARK: THE COURT'S CONFRONTATION CLAUSE JURISPRUDENCE EVOLVES (2015), <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2504&context=facpub>; Julien Petit, *The Road to Understanding the Confrontation Clause: Ohio v. Clark Makes a U-Turn*, 77 LA. L. REV. 175 (2016).
- 7 *Ohio v. Roberts*, 448 U.S. 56, 66 (1980).
- 8 *Crawford*, 541 U.S. at 51-52.
- 9 *Crawford* did not explicitly address the admissibility of nontestimonial statements; the inapplicability of the Confrontation Clause to such statements was clarified in *Whorton v. Bockting*, 549 U.S. 406, 420 (2007).
- 10 *Crawford*, 541 U.S. at 68.
- 11 *Id.* at 51-52; *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 310 (2009).
- 12 *Davis v. Washington*, 547 U.S. 813, 822 (2006).
- 13 Although *Clark* was not prosecuted as a human trafficking case, it is not unusual for sex traffickers to coerce their victims into compliance with their demands by using the victims' children as hostages. See, e.g., *Trafficking Terms* (entry on "Seasoning"), SHARED HOPE INTERNATIONAL, <http://sharedhope.org/the-problem/trafficking-terms/> (last visited Feb. 13, 2017).
- 14 *Clark*, 135 S.Ct. at 2177-78.
- 15 *State v. Clark*, 999 N.E.2d 592, 595 (Ohio 2013).
- 16 *Clark*, 135 S.Ct. at 2178.
- 17 *Id.*; see OHIO R. EVID. 601(A).
- 18 An Ohio rule of evidence created a hearsay exception for reliable statements made by a victim of child abuse. OHIO R. EVID. 807. In addition to the teachers, a police officer and two social workers, as well as the child's grandmother and great-aunt, were permitted to testify about statements the child made to them.
- 19 *State v. Clark*, No. 96207, 2011 WL 6780456 *6 (Ohio Ct. App. 2011). The Court of Appeals also held that L.P.'s statements to the police officer and two social workers were testimonial and improperly admitted by the trial court. *Id.* at 4-5. While the statements to the child's grandmother and great-aunt were not challenged on confrontation grounds, the appellate court did hold that the statements were improperly admitted under Rule 807 because the statements lacked sufficient "particularized guarantees of trustworthiness" under the totality of the circumstances. *Id.* at 6-9. The defendant's Rule 807 challenges to the other statements (to the teachers, the social workers, and the police officer) were found to be moot due to the rulings on the confrontations issues. *Id.* at 11.
- 20 *Clark*, 999 NE.2d at 595-96.
- 21 *Id.* at 596-600.
- 22 *Id.* at 614 (O'Connor, C.J., dissenting).
- 23 *Id.* at 609-12.
- 24 *Id.* at 612-14.
- 25 *Clark*, 135 S.Ct. 2177-83.
- 26 547 U.S. 813 (2006). *Davis* held that statements reporting an ongoing assault were nontestimonial but that statements recounting events to police after the emergency had abated were testimonial. "Statements are nontestimonial 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. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Id.* at 822.

27 562 U.S. 344 (2011). In *Bryant*, the Court held that on-the-scene statements of a shooting victim to the police were nontestimonial because they were made to enable the officers to respond to the ongoing emergency. The Court noted that the ongoing emergency was merely one factor in establishing the primary purpose of the statement, but that other factors, including formality or informality, were important in determining primary purpose. *Id.* at 366.

28 *Clark*, 135 S.Ct. at 2179-81 (citing *Crawford*, 541 U.S. at 56 & n.6, 62 and *Giles v. California*, 554 U.S. 353, 358-59 (2008)).

29 *Id.* at 2181.

30 *Id.* at 2181.

31 *Id.* at 2181-82.

32 *Id.* at 2182.

33 *Id.* at 2182-83.

34 *Id.* at 2183-85 (Scalia, J., concurring).

35 *Id.* at 2185-86 (Thomas, J., concurring).

36 For one analysis of the questions addressed or left unanswered in the *Clark* opinion, see *Rothstein*, *supra* n. 6.

37 Officers must use great caution in interviewing children at the scene. Officers must ensure that the child is physically safe and be careful to interview the child in private for the child's continued safety and to enhance the likelihood of a truthful statement. In addition, children who have witnessed an act of violence involving a parent have been traumatized; a trauma-informed approach to speaking with the child is essential. The State of Vermont has developed a protocol of best practices for interviewing child witnesses at the scene of a domestic violence incident. See VERMONT CRIMINAL JUSTICE TRAINING COUNCIL, VERMONT DEPARTMENT FOR CHILDREN & FAMILIES VERMONT NETWORK AGAINST DOMESTIC AND SEXUAL VIOLENCE, VERMONT'S MODEL PROTOCOL: LAW ENFORCEMENT RESPONSE TO CHILDREN AT THE SCENE OF A DOMESTIC VIOLENCE INCIDENT (rev. ed. 2010), <http://www.vtnetwork.org/wp-content/uploads/Kids-and-Cops-Protocol2010.pdf>.

38 On remand, the Ohio Supreme Court directed the Court of Appeals to consider the questions it had previously declined to decide as moot—among them, the admissibility under Ohio Evidence Rule 807 of the child's hearsay statements to the teachers. *State v. Clark*, 48 N.E.3d 506 (Ohio 2015). Concluding that the requirements of the Rule were satisfied in this case, the Court of Appeals held that the statements were properly admitted at trial. *State v. Clark*, No. 96207, 2016 WL 2586638 (Ohio Ct. App. 2016). The Court of Appeals also rejected the other claims asserted by the defendant on appeal, and affirmed the conviction. *Id.* Inexplicably, the court never addressed the issue of its prior ruling that the statements to the police officer and social workers were improperly admitted testimonial hearsay statements. However, the State's brief opposing the defendant's second appeal to the Ohio Supreme Court suggests that, as cumulative evidence, the Court of Appeals deemed the improper admission of those statements to be harmless error. Memorandum in Response to Jurisdiction of the State of Ohio at 7, *State v. Clark*, No. 2016-1085 (Ohio Supreme Ct. Aug. 23, 2016) available at http://supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=805233.pdf. The Ohio Supreme Court ultimately denied consideration of the defendant's petition for review. *State v. Clark*, 65 N.E.3d 778 (2016).

39 While day-to-day responsibility for the child and the ongoing student-teacher relationship are not identified by the Court as critical to its decision, the majority and concurring opinions emphasized that the child's statements were a product of an exchange between a preschool-aged child and that child's teacher. See *Clark*, 135 S.Ct. at 2182-83 (Alito, J.); 1284 (Scalia, J., concurring); 1286 (Thomas, J., concurring).

40 See e.g., *State v. Smalls*, 605 F.3d 765, 778 (10th Cir. 2010) and cases cited therein.

41 *Clark*, 135 S.Ct. at 2180 (emphasis added).

42 Documentation of statements made by the client or patient is also important for further or future treatment, referral, or follow-up care.

43 *State v. Felts*, 52 N.E.3d 1223, 1230-31 (Ohio App. 2016) (further relying heavily on *State v. Arnold*, 933 N.E.2d 775 (Ohio 2010), which treats many statements serving a "dual purpose" (medical and forensic) as nontestimonial when made at a child advocacy center, which seeks to minimize the number of interviews a child must undergo).

44 *Avant v. State*, 499 S.W.3d 123, 128 (Tex. App. 2016).

45 *State v. Singleton*, No. 103478, 2016 WL 3571113 (Ohio Ct. App. 2016).

46 *People v. Leon*, 197 Cal.Rptr.3d 600, 613 (Cal. Ct. App. 2016) (concluding purpose of interview was prison security and inmate safety).

47 *State v. McLaughlin*, 786 S.E.2d 269, 276-83 (N.C. Ct. App. 2016).

48 *In re J.C.*, 877 N.W.2d 447, 452-59 (Iowa 2016) (also assuming without deciding that earlier police-arranged interview with forensic interviewer was testimonial, but finding any error in admission to be harmless).

49 *Ward v. State*, 50 N.E.3d 752, 757-64 (Ind. 2016) (noting the medical necessity of identifying the perpetrator for purposes of victim safety in domestic violence cases).

50 *United States v. Clifford*, 791 F.3d 884, 887-88 (8th Cir. 2015) (noting the statement was the product of spontaneous questioning when the boyfriend found the woman bleeding and unconscious, and the child shaking and terrified, hiding inside a bedsheet).

51 *United States v. Barker*, 820 F.3d 167, 171-72 & n.4 (5th Cir. 2016) (also concluding that admission of any statements to the SANE that might have gone beyond what was necessary for medical diagnosis or treatment would have been harmless error, if any).

52 *State in Interest of A.R.*, 149 A.3d 297, 317-19 (N.J. Super. Ct. App. Div. 2016).

53 *Id.*

54 For guidance or research assistance in arguing the admissibility of statements under *Crawford* and its progeny (including *Clark*), contact AEquitas at <http://www.aequitasresource.org/taRegister.cfm>.

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