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6th Amendment Confrontation Rights in New Mexico Domestic Violence Cases

The 6th Amendment's confrontation clause is crucial in criminal trials because it allows defendants to have a fair trial which the framers spelled out in the Constitution of the United States. The 6th Amendment of the Constitution protects an individual's right to confront their accuser at trial in a criminal case.

The confrontation clause bars the admission of hearsay evidence unless the out of court declarant testifies at trial. In other words, the statements of a witness or alleged victim cannot be admitted into court without the witness' or alleged victim's in-court testimony.

This is particularly important in domestic violence cases. When an alleged victim accuses a person of domestic violence, the alleged victim's and any other witness' statements can only be used against the defendant if they show up to court and testify. There are few exceptions to the rules prohibiting hearsay testimony. These rules would rarely apply in the typical domestic violence case.

At trial, the defendant has a right to cross examine the alleged victim and other State witnesses to determine the truthfulness of their statements. When an alleged victim does not show up to trial, the State usually does not have the necessary evidence to present their case.

By only presenting evidence of a crime without actually having a victim appear in court, the prosecution is attempting evidence based prosecution. Evidence based prosecution which is often attempted by prosecutors in domestic violence cases faces many challenges due to hearsay objections and confrontation issues under the 6th Amendment.

For example, prosecutors will frequently obtain the alleged victim's 911 call. As part of evidence based prosecution, the State may attempt to use the 911 tapes to prove that the defendant committed the alleged act of domestic violence such as battery or assault on a household member. In doing so, the State may argue that this is public record and try to admit this evidence.

The State is attempting to recreate the drama of the alleged incident to a jury through the 911 call. The State is also attempting to illicit statements from the 911 call which may implicate the defendant in wrong-doing. However, once

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the 911 operator begins to engage in any type of questioning, the statements are then testimonial hearsay and the confrontation clause bars this evidence from use at trial. Perhaps just as problematic is the identification of the caller. This issue would be raised as an objection for failure to authenticate the caller's identification.

If the State's only case is evidence based prosecution without eyewitness testimony, the State has an uphill battle when presenting its case. The prosecution will have a hard time overcoming the evidentiary objections to hearsay and authentication.

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