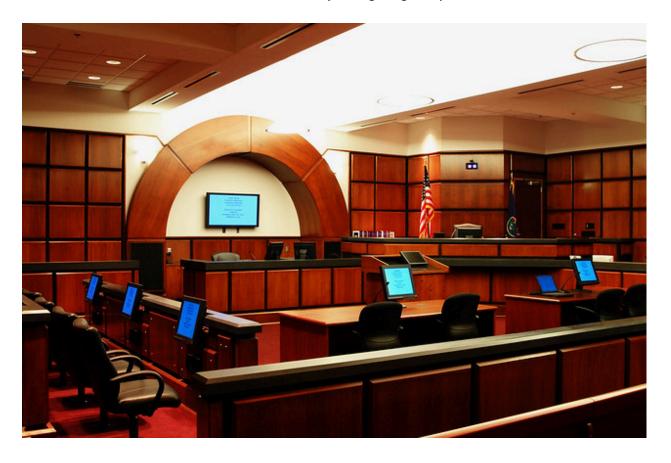
## Confrontation Clause & the Forfeiture-By-Wrongdoing Exception in Minnesota

In our criminal justice system, a defendant has the constitutional right to confront their accusers at trial. If the accuser does not appear for trial, then the prosecution may not have as strong of a case, if any case at all. Knowing this, some defendants will attempt to tamper with the prosecution's witnesses by trying to get them to not testify. Besides witness tampering being illegal, a defendant's actions in getting their accusers to not show up to testify may also allow the prosecution to get the witness's statements admitted at trial under the forfeiture-by-wrongdoing exception to Confrontation Clause.



Recently, attempts to tamper with a witness backfired in State v. Shaka. In this case, the defendant was in custody while awaiting trial. As the trial approached, he made phone calls (which were recorded by the jail) asking people to seek out his accuser and make sure she did not come to court. The accuser ultimately did not appear at trial to testify. This prompted the prosecutor to ask that the accuser's prior statements be admitted through the forfeiture-by-wrongdoing exception to the Confrontation Clause. Davis v. Washington determined that defendants "have the duty to refrain from acting in ways that destroy the integrity of the criminal-trial system."

To use the forfeiture-by-wrongdoing exception, Minnesota requires the prosecution to prove four elements by a preponderance of the evidence: (1) the declarant is unavailable; (2) the defendant engaged in wrongful conduct; (3) the wrongful conduct procured the unavailability of the witness; and (4) the defendant intended to procure the unavailability of the witness. State v. Cox; and Minn. R. Evid. 804(b)(6). Shaka only disputed element three, which prompted the Minnesota Court of Appeals to address whether the prosecution could rely on circumstantial evidence when trying to prove a defendant's wrongful conduct caused the unavailability of a witness. Circumstantial evidence is entitled to the same weight as direct evidence. Here, the court stated the record supported the inference that the defendant convinced his family members to cause his accuser's absence from trial. Therefore, the court concluded that the forfeiture-by-wrongdoing exception to the Confrontation Clause applied and there was no error in admitting the accuser's statements at trial.

Robert H. Ambrose is a <u>Criminal Defense Attorney Woodbury MN</u> criminal defense attorney and DWI lawyer in Minnesota. Super Lawyers named him a Rising Star for the past four years; and the National Trial Lawyer's Organization named him a Top 40 Under 40 Trial Lawyer the past six years. DWI Lawyer Woodbury; Criminal Trial Attorney Minnesota; and Minnesota DUI Lawyer.

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## **Contact Details**

Ambrose Law Firm, Criminal Defense Attorneys 680 Commerce Drive #271 Woodbury, MN 55125 (651) 800-4842

https://ambroselaw247.com https://goo.gl/maps/V7AgSCgytPr AMBROSELEGAL@ICLOUD.COM

Website: <a href="https://ambroselaw247.com">https://ambroselaw247.com</a>

Google Site: <a href="https://sites.google.com/site/criminaldefenseattywoodburymn">https://sites.google.com/site/criminaldefenseattywoodburymn</a>

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