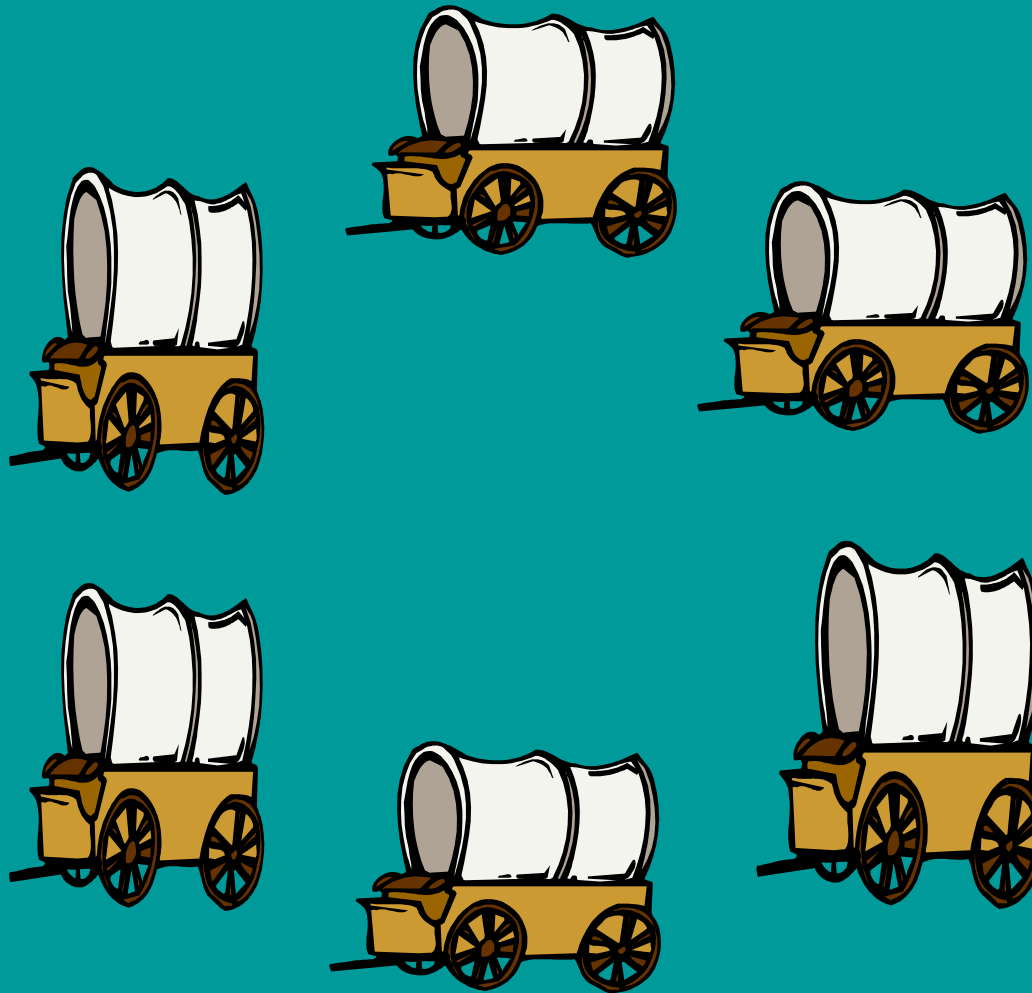


Circle the Wagons: Out-of-Court Statements by Children



Issues

1. Is statement admissible under confrontation clause?
 - If no, you should win (but beware step 3)
 - If yes, go to step 2
2. Is statement admissible under hearsay rules?
 - If no, you should win (but beware step 3)
 - If yes to 1 and 2, you lose
3. Is statement admissible to corroborate (or impeach)?

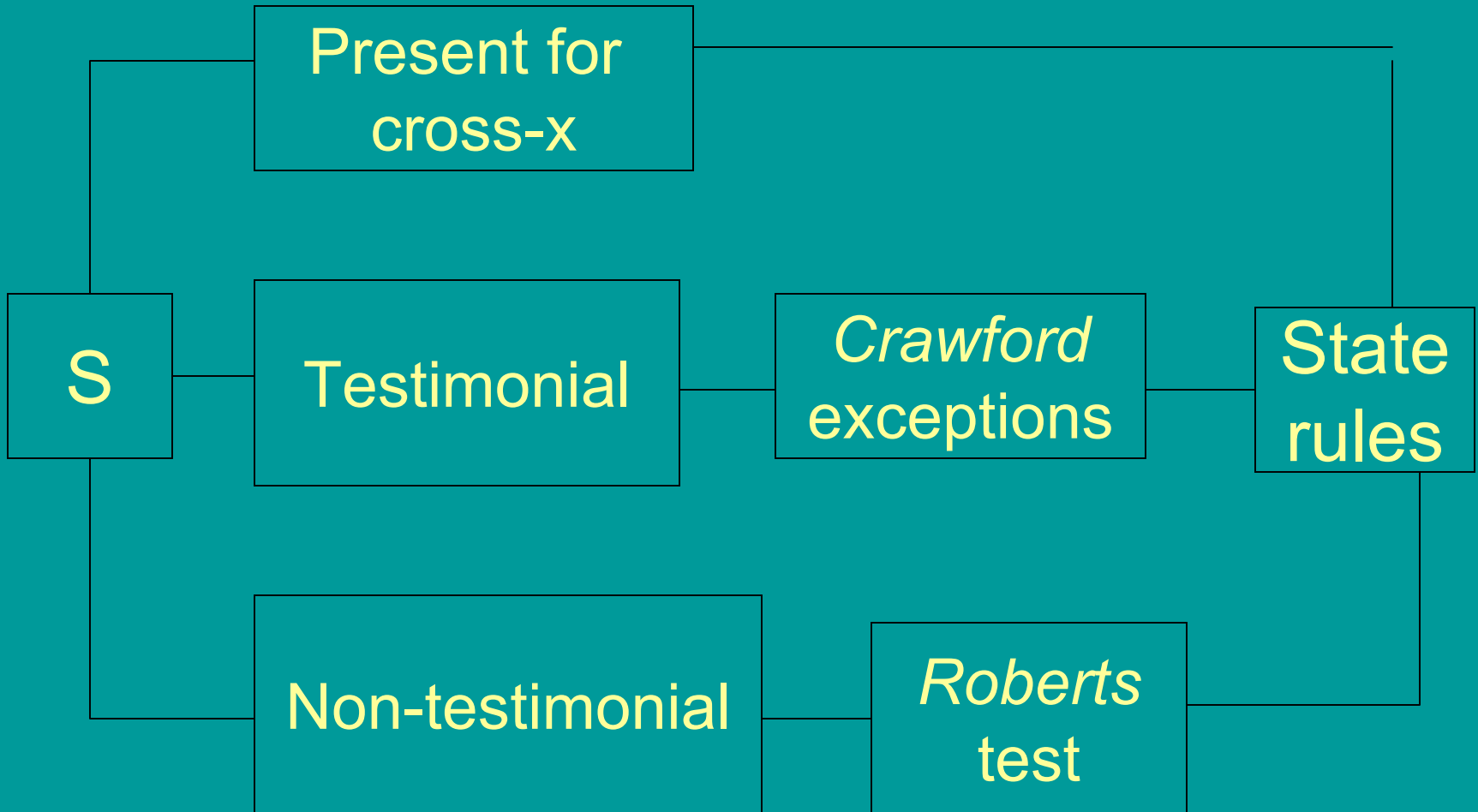
Corroboration in NC

1. Witness testifies to X
- ~~2. Witness impeached~~
3. Prior consistent statement admissible to support witness's credibility

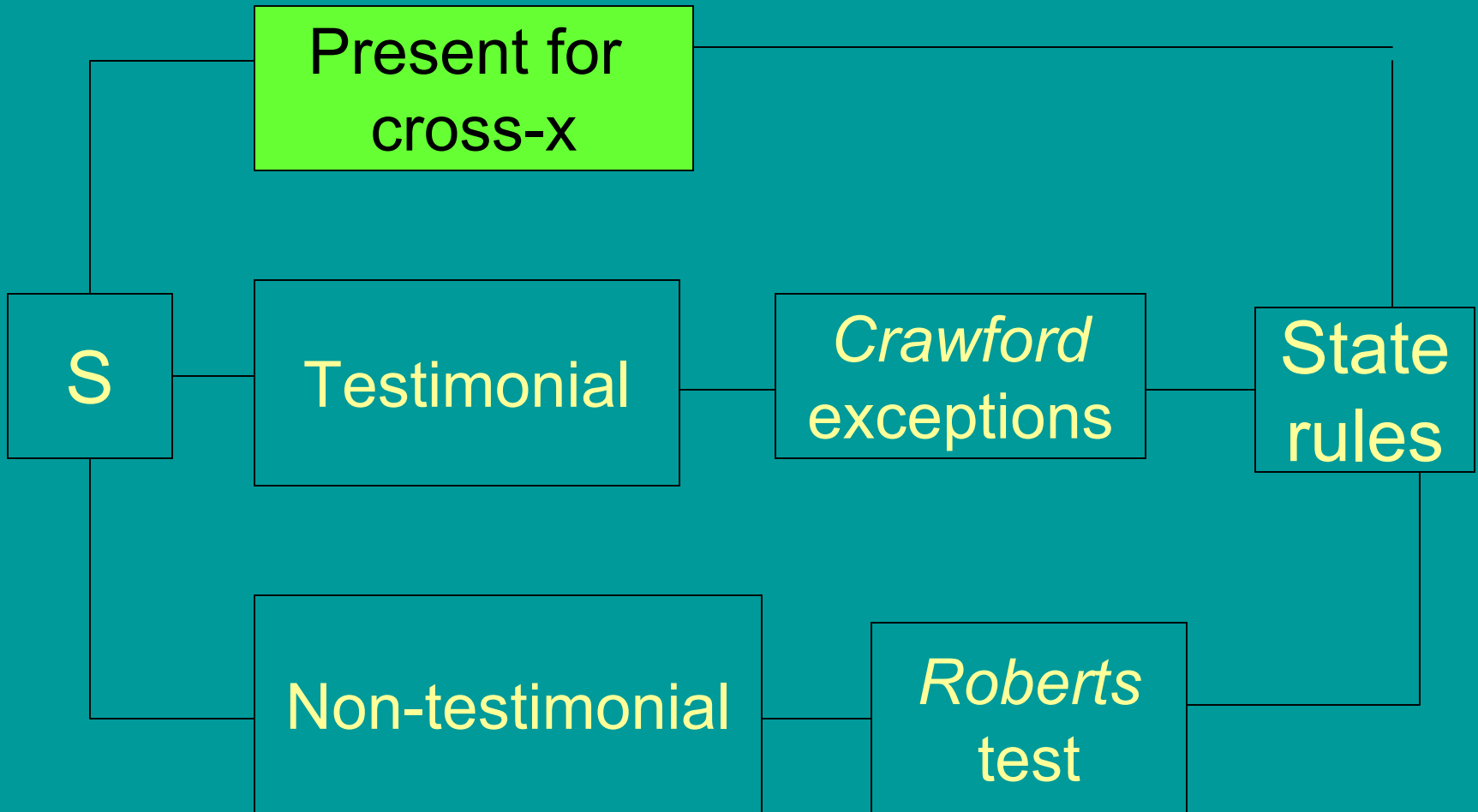
Circle the Wagons



Crawford Map



Crawford Map



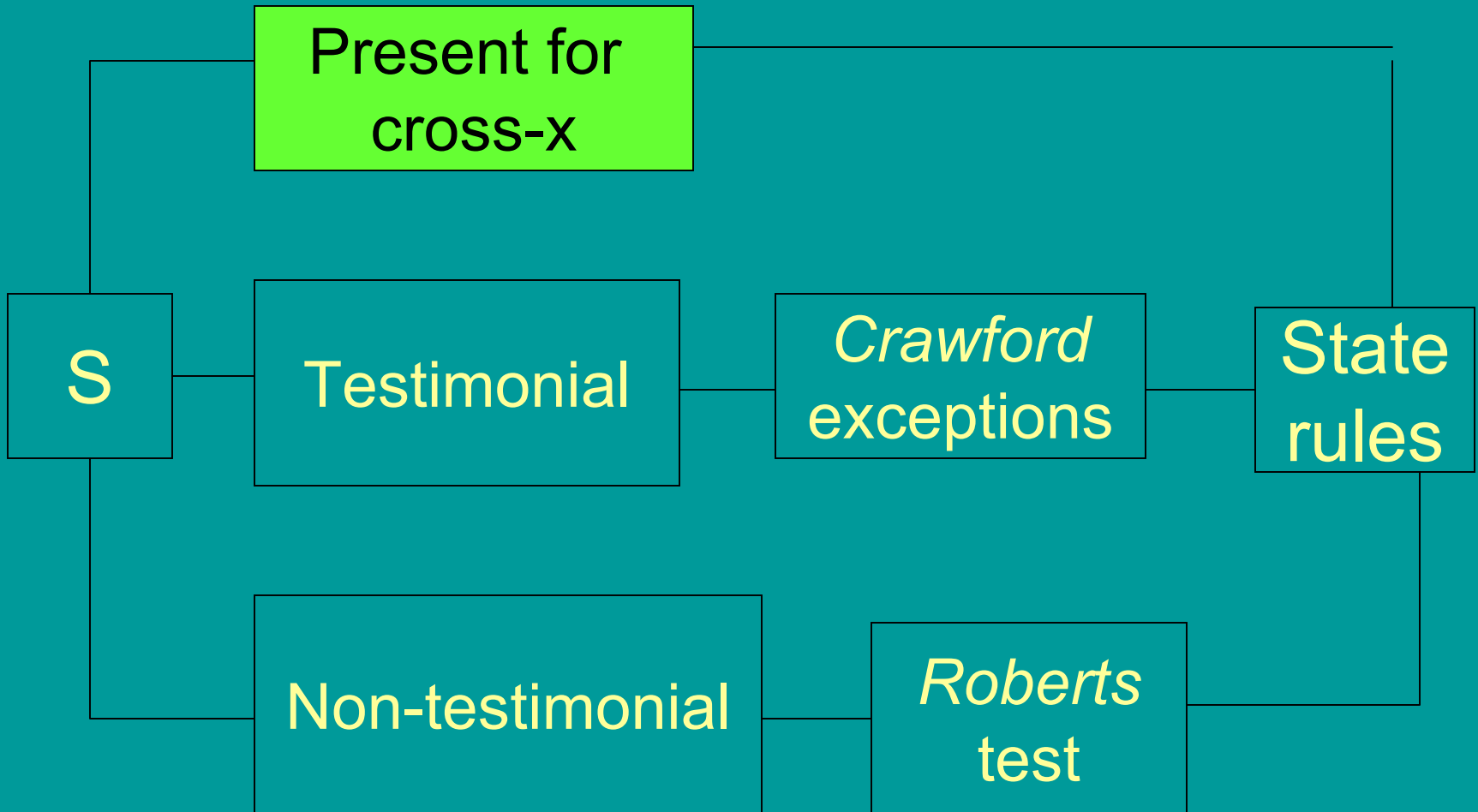
Green Light

- No violation if the declarant is subject to cross at trial within meaning of *Crawford*
- Is declarant “subject to cross at trial” if:
 - called to the witness stand by the state but successfully invokes a privilege?
 - not present but could have been subpoenaed by the defendant?
 - not called to the witness stand by the state but is present in the courtroom and could be called as a witness by the defendant?

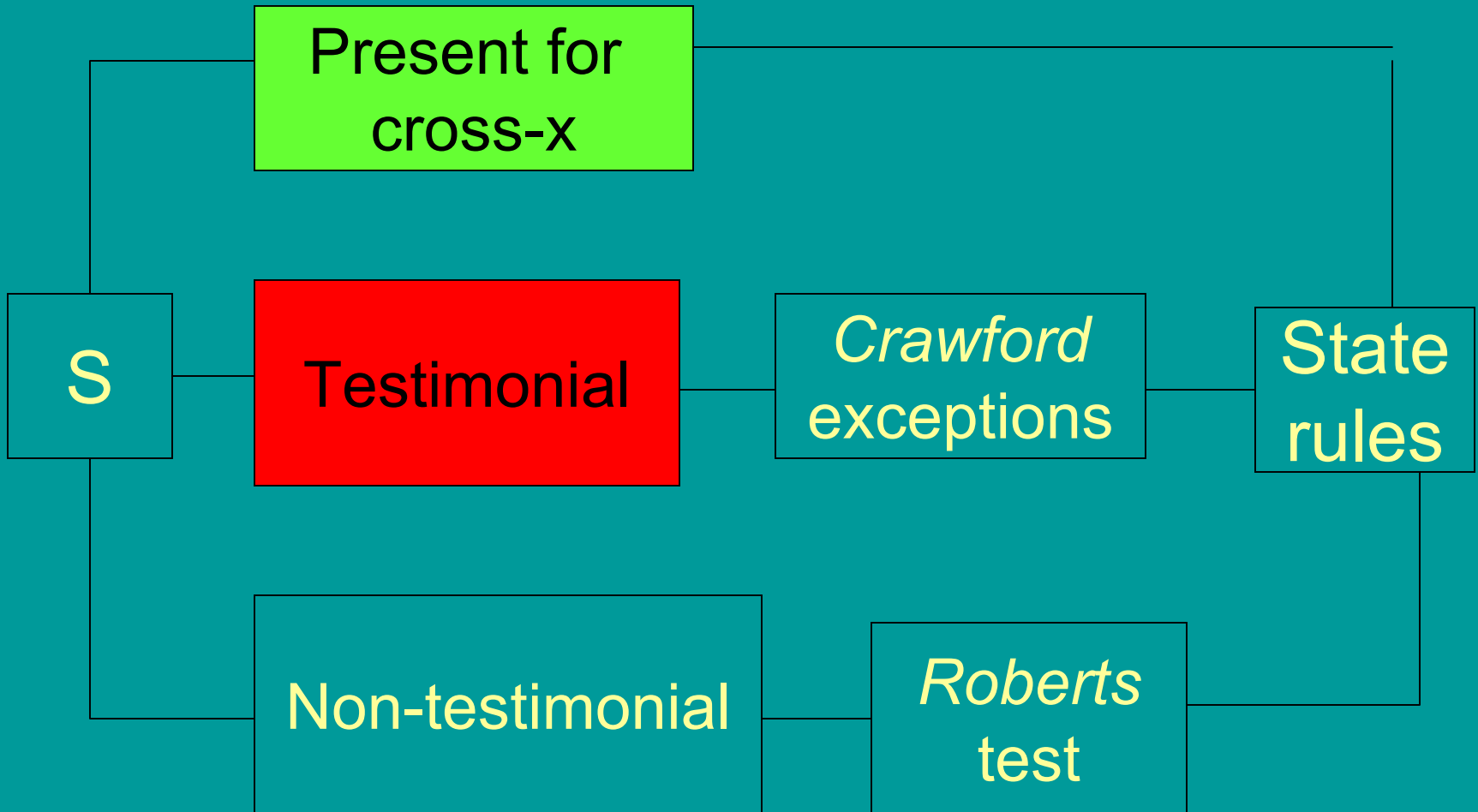
Green Light?

- Teenage girl testifies at first trial that her mother's boyfriend molested her. Before retrial, girl advises prosecutor that she made it all up to get back at mom. State calls girl to stand, offers prior testimony, and tenders witness to defense for cross-x. Result?
 - Not confrontation clause violation. *See Clark* (p. 5 of handout)
 - But, improper impeachment. *See Hunt, Riccard* (p. 2 of handout)

Crawford Map



Crawford Map



Red Light

- Are the following testimonial?
 - Defendant's alleged accomplice signs written confession implicating defendant during in-custody interrogation
 - *See Pullen, Morton* (p. 5 of handout)
 - Accomplice voluntarily makes oral statements to police in own home
 - In-custody interrogation not required
 - Formal statement not required

Red Light

- Law enforcement officers rescue woman who was being held at knifepoint by kidnapper. Immediately after rescue, without any questioning by officer, and while shaking, crying, and nervous, woman starts talking about what happened.
- Law enforcement officers rescue woman who was being held at knifepoint by kidnapper. She is taken to secure area, where she is no longer in peril, and she gives statement about what happened to detective who is there for purpose of taking her statement.

Red Light

- During DSS investigation, social worker interviews child to obtain information about alleged abuse. State offers child's statement in criminal prosecution.
 - Listener does not have to be law enforcement officer

Red Light

- Child tells mom about sexual abuse by dad. Mom takes child to doctor, and child tells doctor about sexual abuse, including that dad was the abuser.
 - Does listener have to be government agent?
 - How important is listener's purpose?
 - How important is speaker's awareness of purpose?
 - Can some parts of statement be testimonial?

Red Light

- Some factors in determining whether statement is testimonial
 - Formality of statement and questioning
 - Affiliation with government
 - Purpose of production of statement
 - Declarant's awareness of purpose of statement
 - Nature of information provided

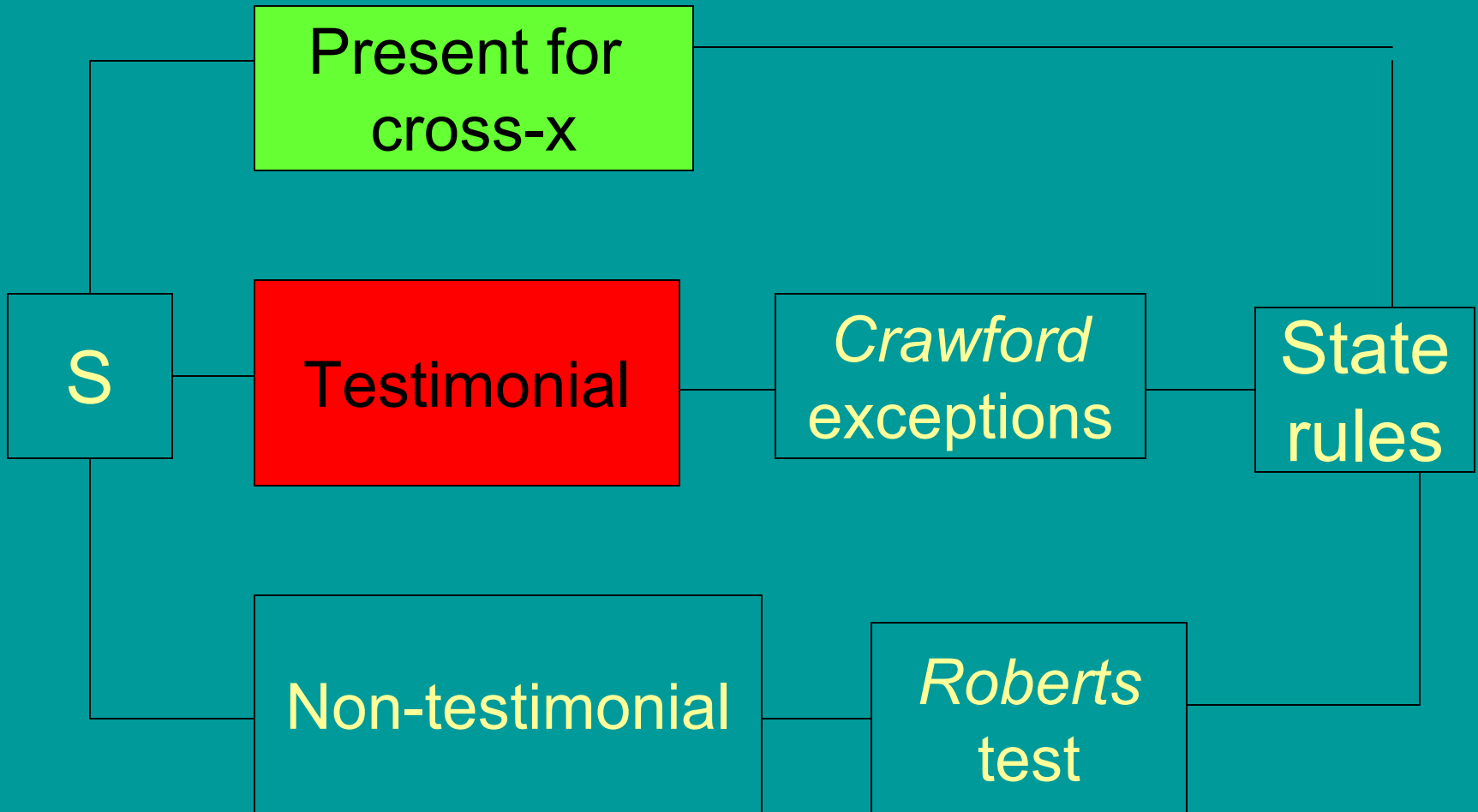
Red Light?

- Same example as before. Child tells mom about sexual abuse by dad. Mom takes child to doctor, and child tells doctor about sexual abuse, including that dad was the abuser. Court overrules your confrontation clause objection.
 - Is statement to mom admissible as excited utterance or under another exception to hearsay rule?
 - Is statement to doctor admissible as statement for purposes of medical treatment or under another exception to hearsay rule?
 - See *Gattis* (p. 10 of handout)

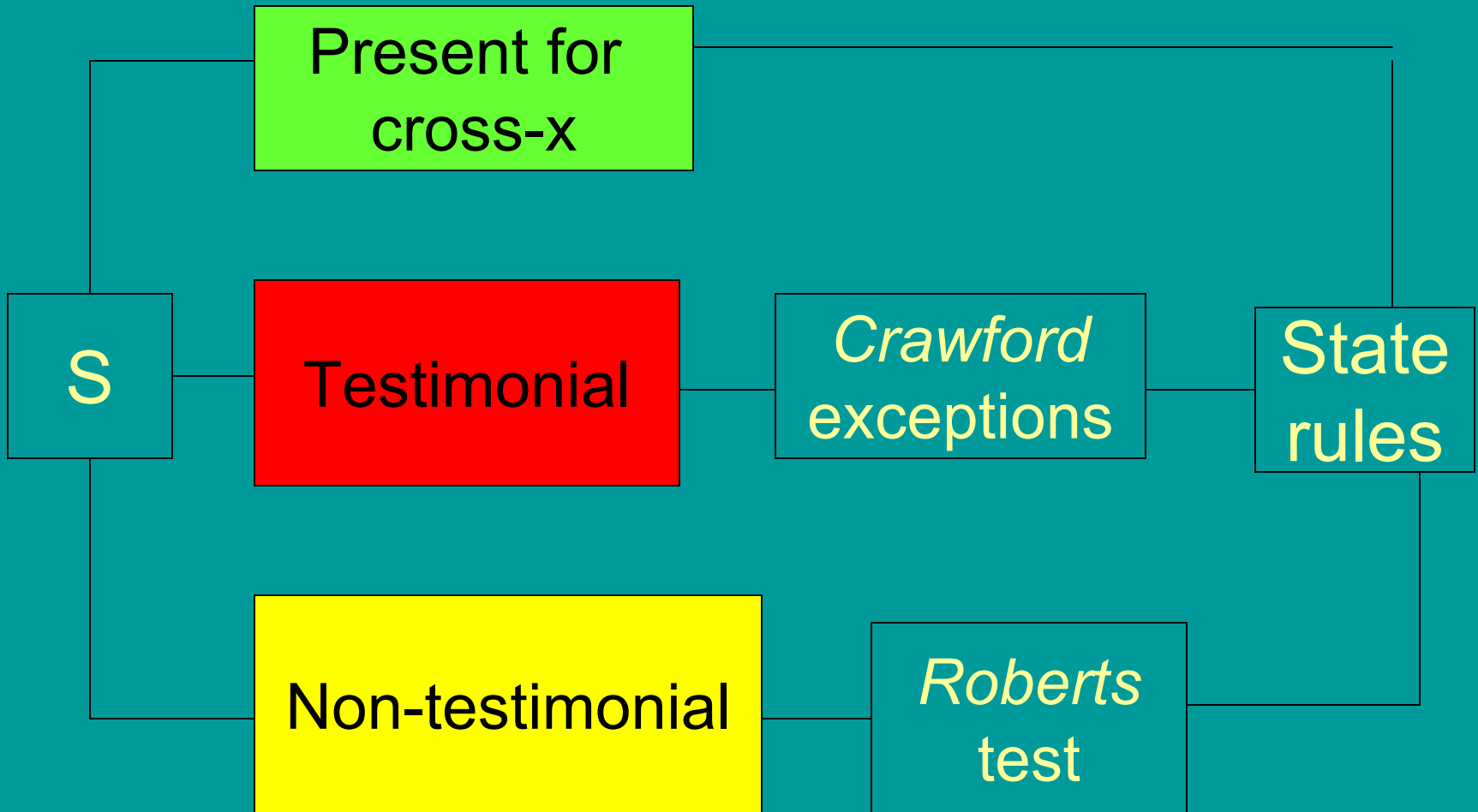
Red Light?

- Assuming the statement is testimonial, are any of the following admissible under a *Crawford* exception?
 - Child's statement to officer about what happened is offered to corroborate child's in-court.
 - Child does not appear for trial because defendant threatened to kill her if she testified.
 - What evidence must state produce? See Rule 104(a).
 - Probably not sufficient that child is terrified of the defendant after what allegedly happened

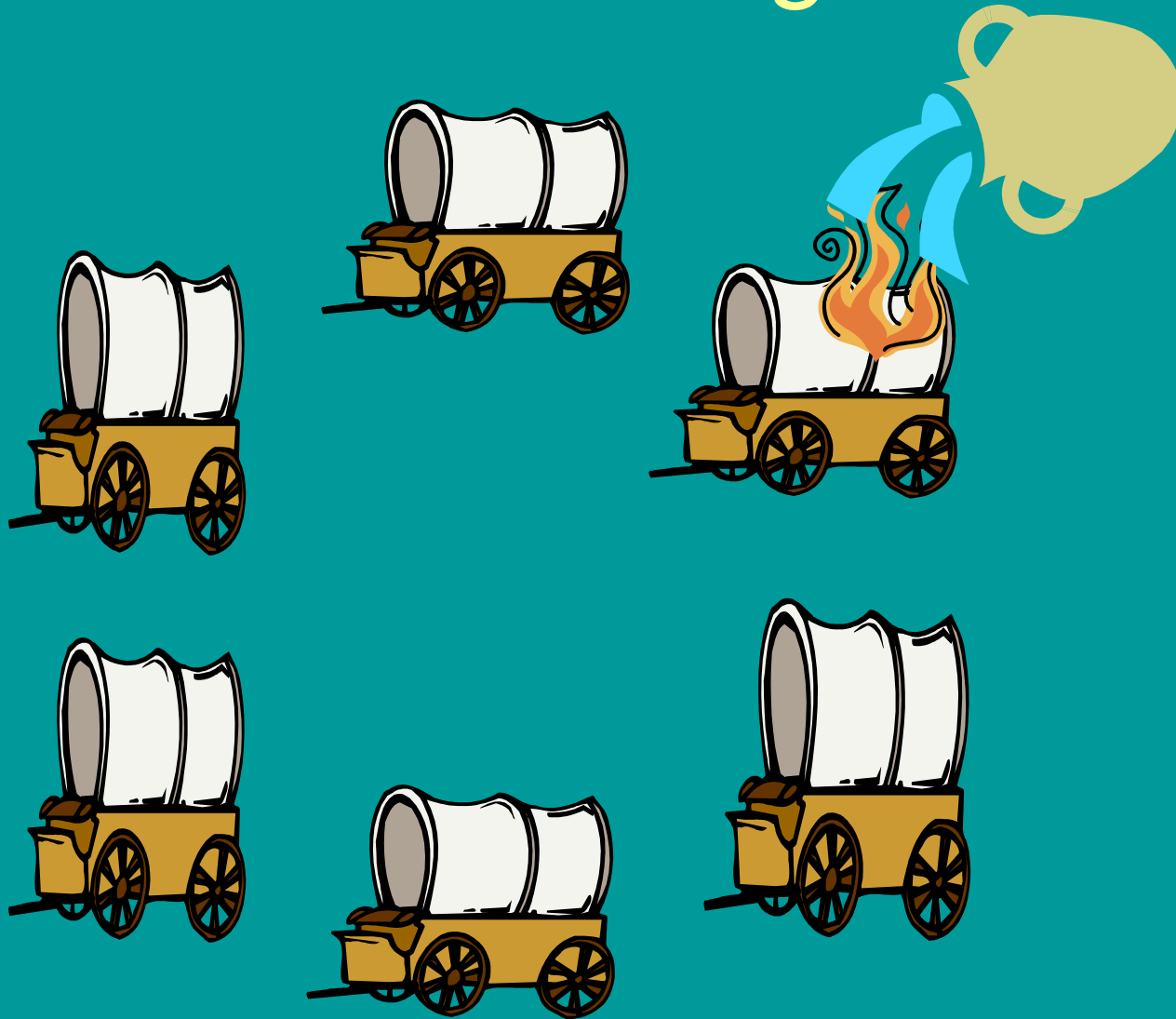
Crawford Map



Crawford Map



Circle the Wagons



Homeward Bound

