

Criminal Investigation,
Seventh Edition

Chapter Twenty-Three
The Rules of Evidence

Evidence

- Evidence – anything that tends logically to prove or disprove a fact at issue in a judicial case or controversy.
- Proof – separate from evidence. Evidence consists of individual facts submitted to the jury for its consideration. Proof may be defined as the combination of all of the facts.

Evidence

- Testimony – is evidence given in oral form.
- Admissibility – is the evidence admissible in the trial.
- Relevance – the evidence must be relevant to the case. Does the piece of evidence have probative value? Will it aid in proving or disproving a particular point that the jury should consider in determining the guilt or innocence of the offender?

Evidence

- Materiality – if it is relevant the evidence must be material. If it is so insignificant and unimportant it may not be admissible.
- Competence – laying a foundation. For example a tape recorded conversation would have to be prefaced by testimony about the date, time, place and circumstances under which the recording was made.

Evidence

- Competence of Witness – legally insane individuals are not allowed to testify, additionally intoxicated individuals (at the time of the testimony) can not testify. Individuals who are too young may not be allowed to testify.
- Weight of Evidence – the weight of the evidence is judged by the jury, (how important is the evidence – in the mind of the members of the jury).

Evidence

- Presumptions – Conclusive presumption is one that the jury must follow without alternatives. A rebuttable presumption requires that a specific conclusion be drawn unless that conclusion has been dispelled or rebutted by evidence presented to the jury for its consideration.

Evidence

- Inferences – similar to a presumption, but the jury has more latitude about interpretation.
- Burden of proof – prosecution has responsibility of affirmatively proving the allegations on which has based its accusation.

Evidence

- Burden of going forward – the prosecution must show that it has shown enough proof that the trial should proceed.
- Preponderance of evidence – in a civil case the party allegedly wronged is called the plaintiff. The plaintiff is only required to show by a preponderance of evidence that the issue occurred and the plaintiff was wronged.

Evidence

- Order of proof – prosecuting attorney prove the existence of the corpus delicti at trial before attempting to show the guilt of the defendant. The corpus delicti is the combination of all the elements of the crime.
- Direct Evidence – usually refers to the testimony of witnesses that directly ties the defendant to the crime.
- Real Evidence – physical evidence.

Evidence

- Demonstrative evidence – refers to maps, diagrams, sketches, photographs, tape recordings, videotapes, X-rays, and visual tests and demonstrations produced to assist witnesses in explaining their testimony.
- Circumstantial evidence – all evidence that is not direct. An example is the fingerprints of the left by the defendant on the weapon used to commit the crime.

Evidence

- Opinion evidence – experts can give opinions. Non-experts can state opinions only when fact and opinion are so interwoven that they cannot be separated.
- Hearsay evidence – the defendant has a constitutional right to confront witnesses. If hearsay is admitted this voids this right. There are some exceptions:
 - The statement or testimony is offered only to show that the statement was made.
 - Testimony about reputation.

Evidence

- Hearsay evidence – the defendant has a constitutional right to confront witnesses. If hearsay is admitted this voids this right. There are some exceptions:
 - Confessions.
 - Admissions.
 - Spontaneous and excited utterances.
 - Dying declaration.
 - Former testimony.

Evidence

- Evidentiary Privileges:
 - Professional – attorney and client, etc.
 - Political privilege – diplomacy, etc.
 - Social privilege – communication between husband and wife.
 - Judicial – grand jury and similar situations.

The End