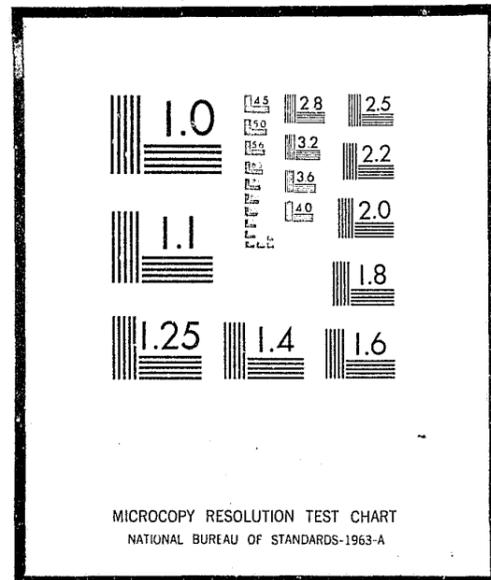


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SOUTH CAROLINA LAW ENFORCEMENT ETV TRAINING PROGRAM

17391

RULES OF EVIDENCE

PART I

Prepared by SOUTH CAROLINA LAW ENFORCEMENT DIVISION in cooperation with SOUTH CAROLINA EDUCATIONAL TELEVISION NETWORK

RULES OF EVIDENCE

PART I



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South Carolina Law Enforcement Division

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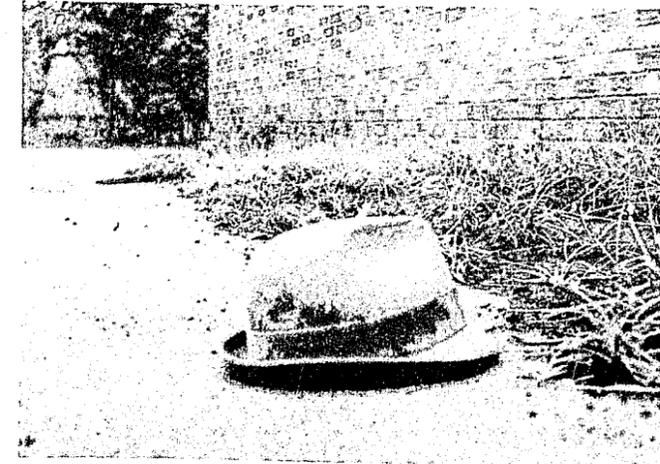
South Carolina Educational Television Network

Endorsed by:

- South Carolina Governor Robert E. McNair
- South Carolina Sheriffs' Association
- South Carolina Law Enforcement Officers' Association
- South Carolina Police Chiefs' Executive Association
- South Carolina F.B.I. National Academy Associates
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PROGRAM OBJECTIVE:

This material will present information relative to Rules of Evidence.



LECTURE OUTLINE:

1. AFTER CONVICTION AND SENTENCE DOES A PERSON HAVE THE LEGAL RIGHT TO HAVE A CASE REVIEWED BY A HIGHER COURT BECAUSE OF LEGAL ERRORS?

A. Yes. After a person has been convicted and sentenced he is entitled under the law to have a higher court go over the record of the trial to determine whether or not the trial was conducted strictly according to law. (This is referred to as an appeal.)

2. WHEN AN APPEAL IS TAKEN FROM A CONVICTION IN A MAGISTRATE'S COURT, WHAT COURT HANDLES THE APPEAL?

A. Either the county court (if there is one in the county) or the circuit court (usually referred to as the general session court) will handle the appeal.

3. WHAT HAPPENS WHEN A MAGISTRATE'S COURT VERDICT IS REVERSED?

A. The appropriate judge (either of the county or circuit court) signs an order stating that the conviction is reversed, giving the reasons, and usually calls for a new trial. (Sometimes, though, new trials may not be ordered. If, for example, the reversal was for insufficient evidence.)

NOTE: Almost all reversals arising from magistrate's court verdicts are for improperly admitted evidence, and when this is true, the case may be tried again in the magistrate's court.

B. A new trial granted pursuant to a reversal from a magistrate's court verdict does not constitute double jeopardy.

NOTE: The law reasons that if the first trial was illegal for improperly admitted evidence, the defendant was never in legal danger of being imprisoned or fined as a result of that trial.

OBSERVATION: The Constitutions of the United States and of South Carolina says, "a person may not be placed in danger of being imprisoned or fined--in otherwords, placed in jeopardy, more than once for the same offense."

4. WHAT IS EVIDENCE?



A. Evidence is all means by which an alleged matter of facts is established or disproved. (Anything that is pertinent and which tends to make a disputed matter clear is evidence.)

(1) Evidence includes testimony from witnesses, records, such as a copy of a driver's license, documents and objects like guns that can be legally presented at a trial for an evaluation by a jury as to the truth of the issues involved.

OBSERVATION: Blackstone, a noted legal authority, defines evidence as follows: "Evidence signifies that which demonstrates, makes clear or ascertains the truth of the fact or point in issue either on one side or the other."

5. ARE PRESENT-DAY METHODS OF DETERMINING GUILT OR INNOCENCE OF THE ACCUSED THE SAME AS USED IN ANCIENT TIMES?

A. No. In primitive trials the methods of determining guilt or innocence were both brutal and crude.

(1) The guilt or innocence of an individual was determined in primitive times by what was accepted at that time to be divine intervention.

(a) The truth was sought out by physical ordeals on the supposition that God would protect the innocent and punish the guilty.

(1) The individual who possessed exceptional physical strength or fighting skills, or who could obtain a sufficient number of friends to substantiate his oath of innocence, won the case.

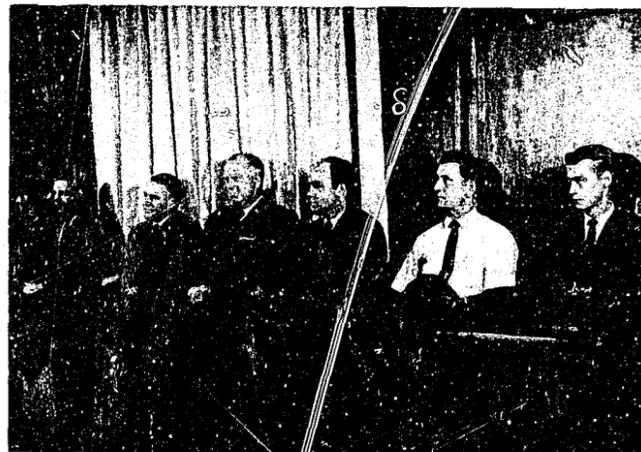
EXAMPLES OF PRIMITIVE METHODS OF DETERMINING GUILT OR INNOCENCE WERE AS FOLLOWS:

EXAMPLE 1: Trial by fire. In such a trial both the person accused and his accuser were forced to place a hand in red hot coals. The first to faint or withdraw was found to be lying. Another example of trial by fire was forcing the accused to walk over red hot coals or grasp red hot pieces of iron. If the accused accomplished these feats without injuries, he was declared innocent.

EXAMPLE 2: Physical combat. By this means two individuals would be pitted against each other in some sort of a crude physical duel either with or without weapons, and the winner would be determined to be innocent because God had given him the strength to beat his opponent.

EXAMPLE 3: Trial by water. By this means the accused was bound and thrown into a river and if he floated, he was guilty and if he sank, he was acquitted.

6. IS THE JURY SYSTEM A RECENT STEP IN THE DEVELOPMENT OF A BETTER AND FAIRER SYSTEM OF EVALUATION OF EVIDENCE?



A. Yes. The development of a jury system in common law introduced the element of persuasion through introduction of evidence to support claims and allegations.

NOTE: The system by which the court accepts or rejects evidence is through standards known as the rules of evidence.

7. WHAT IS THE MEANING OF PROOF AS IT RELATES TO THE ACCEPTANCE OR REJECTION OF EVIDENCE?



A. Proof is the effect of evidence as it is derived from considering evidence, and it leads reasonable men to fair conclusions.

EXAMPLE 1: A bar found in possession of a suspected burglar which matches tool marks on a burglarized cash register would lead reasonable men to believe that the bar was used in the commission of the crime, but not necessarily that the suspect was in possession of the bar at the time the cash register was burglarized.

EXAMPLE 2: A handkerchief found at a crime scene would lead reasonable men to believe that the person involved at the crime scene owned or had possession of the handkerchief. However, the laundry mark on the handkerchief might not be conclusive evidence that the person whose name was identified by the laundry mark was at the crime scene.

EXAMPLE 3: A hat belonging to a certain individual found at a crime scene would lead reasonable men to believe that a possibility existed, though no positive conclusion could be made that the owner of the hat must have been at the crime scene.

NOTE: The presence of evidence at a crime scene usually must be supported by other facts to build a good circumstantial case.

8. WHAT ARE THE GENERAL CLASSIFICATIONS OF EVIDENCE?

- A. Direct evidence.
- B. Circumstantial evidence (sometimes known as indirect evidence).
- C. Real evidence (sometimes referred to as physical evidence).

9. WHAT IS DIRECT EVIDENCE?



A. Direct evidence is that evidence which tends to show existence of the facts which a witness knows through one of his five senses, either what he saw, heard, smelled, felt or tasted.

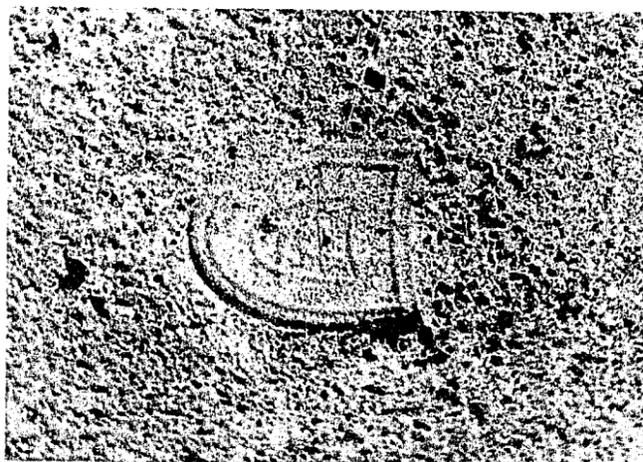
EXAMPLES OF DIRECT EVIDENCE ARE AS FOLLOWS:

EXAMPLE 1: Testimony by a police officer that he saw an individual run a stop light.

EXAMPLE 2: An eye-witness stating that he saw the defendant shoot the dead man.

EXAMPLE 3: Testimony by a ballistics expert that the findings of certain markings on a test bullet fired from a known gun was identical with a bullet removed from the body of the dead victim.

10. WHAT IS CIRCUMSTANTIAL EVIDENCE?



A. Circumstantial evidence is that evidence which in itself does not directly prove the fact in question but does establish a fact or a series of facts which tend by circumstances to prove certain elements in question. (Circumstantial evidence is frequently referred to as indirect evidence.)

EXAMPLES OF CIRCUMSTANTIAL EVIDENCE ARE AS FOLLOWS:

EXAMPLE 1: Testimony to the effect that a defendant was seen in the immediate vicinity of a crime just before the crime was committed would indicate that the defendant could have committed the crime.

EXAMPLE 2: A handkerchief belonging to a suspect was found at a crime scene. Also found at the crime scene was a heel imprint determined to match the heel imprint of a shoe heel belonging to a suspect. Stolen goods from the crime scene were recovered from the home of the suspect. These three items, the handkerchief, the heel imprint and the recovered articles point with moral certainty to the conclusion that the suspect did break into the building and steal the articles.

OBSERVATION: Circumstantial evidence in order to warrant a conviction must point to the guilt of the defendant not only beyond a reasonable doubt but to a moral certainty. Frequently circumstantial evidence that raises the strongest suspicion of guilt is not sufficient to support a conviction.

11. A POLICE OFFICER ARRIVING AT A LOCATION ON THE HIGHWAY OBSERVES A MAN AT A POSITION BEHIND THE WHEEL OF A CAR. NO ONE ELSE IS PRESENT. THE ODOR OF ALCOHOL ABOUT THE SUSPECT IS PREVALENT, HIS WEARING APPAREL DISARRANGED, HIS SPEECH SLURRED. COULD THE OFFICER TESTIFY TO WHAT HE OBSERVED AND SMELLED?



A. Yes; however, the matter of whether or not the person so described was the driver of the car would have to be determined by the jury. The matter of whether or not the person was intoxicated would be a fact primarily based on the testimony of the police officer. It should be noted that in the above set of circumstances two things must be proven: one, that the accused was drunk and second, that he was the driver of the automobile on the highway.

OBSERVATION: Any spontaneous, voluntary, incriminating statement by the accused such as, "I did have a couple bottles of beer and a shot of whiskey. Then I became incapable of driving and pulled over to the side of the road to take a nap", would not be barred by the Miranda decision for two reasons. One, the defendant was not in custody when he made the statement and two, it was not made in response to police questioning.

12. WHAT IS REAL EVIDENCE?



A. Real evidence is described as that evidence which is furnished by objects which speak for themselves and require little or no explanation as to what they are.

NOTE: In order that a piece of real evidence may be accepted as evidence in court procedure, it must be properly identified for presentation.

EXAMPLES OF REAL EVIDENCE (PHYSICAL EVIDENCE) ARE AS FOLLOWS:

EXAMPLE 1: A bloody shirt.

EXAMPLE 2: A pistol.

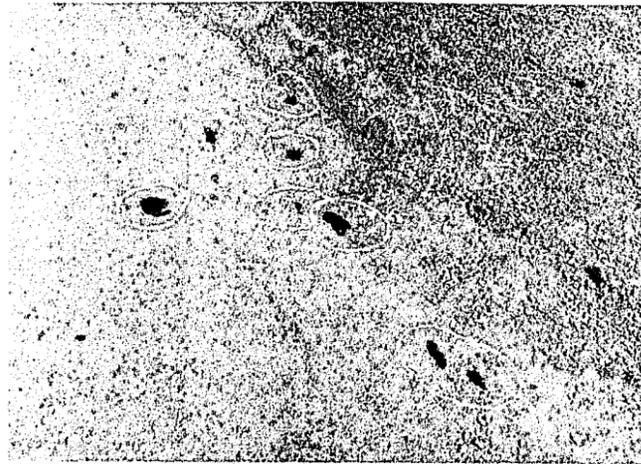
EXAMPLE 3: A hat.

EXAMPLE 4: A crowbar.

EXAMPLE 5: A handkerchief.

EXAMPLE 6: A photograph. (This could be a combination of real and indirect evidence). Photographs are real in the sense that the photograph itself is an object and indirect in the sense that they represent some other object such as a house, body or other thing.

13. ARE THERE ANY SPECIAL RULES PECULIAR TO THE HANDLING OF EVIDENCE WHICH MAY REFLECT ON ITS ADMISSIBILITY?



A. Yes.

(1) Photographs are a good example of peculiar situations regarding the admissibility of evidence. A photograph can be properly identified by any person who is familiar with the object or individual it depicts. The person who is familiar with this object or individual may identify what the picture depicts if he has accurate knowledge of it. It is not always necessary that the person who took a photograph identify it in court.

(a) The date the photograph was taken is material as well as the identity of the person who took it, plus anyone else who was present at the time it was taken. A notation on the back of the photograph as to the date it was taken is not in itself sufficient.

(2) A photograph of a scene must be taken exactly as it was found. No staging or artificial device may be used to affect the contents of the photograph.

EXAMPLE: Chalk markings on the floor of a crime scene made by the investigator or the photographer to indicate blood splashes or position of the body or other pieces of evidence most likely would rule out the use of the photograph as evidence, due to the fact that the photograph would not truly represent what the officers saw when they arrived at the scene.

OBSERVATION: In view of the importance of the satisfactory introduction of a photograph as evidence, officers should exercise much caution in photographing a crime scene as it appeared at the beginning of the investigation without the use of chalk or any type of

markings used in order to better illustrate the crime scene. In other words, artificial devices may not be used to emphasize or highlight certain objects shown in a photograph.



STATEWIDE LAW ENFORCEMENT EDUCATION THROUGH TELEVISION

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