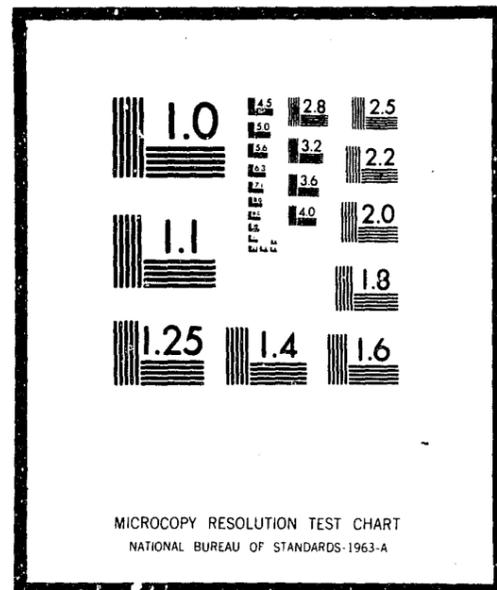


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RULES OF EVIDENCE PART II

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RULES OF EVIDENCE,

PART II 2



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Sponsored by:

South Carolina Law Enforcement Division

in co-operation with

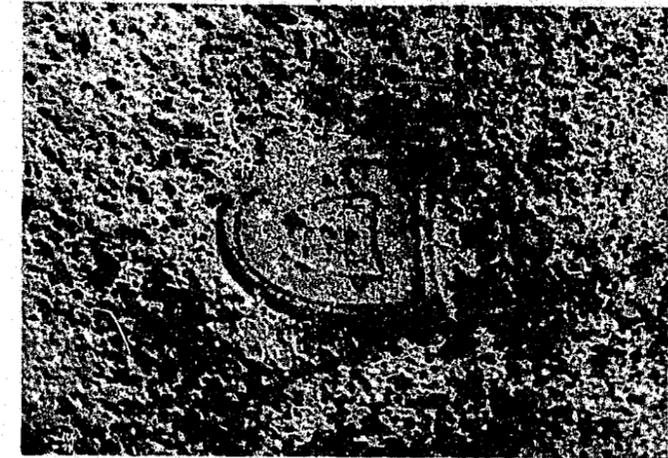
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South Carolina Law Enforcement Officers' Association
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South Carolina F.B.I. National Academy Associates
South Carolina Southern Police Institute Associates

PROGRAM OBJECTIVE:

This material will present information relative to Rules of Evidence.



LECTURE OUTLINE:

1. CAN PENALTIES BE IMPOSED ON A PROSECUTOR OR AN ATTORNEY FOR VIOLATIONS OF THE RULES OF EVIDENCE?

A. Yes.

(1) Mistrials can be declared on the basis of an improper question (example: an improper question would be one asked by the prosecutor which infers some point that should not enter into the case and which is prejudicial).

OBSERVATION: Once a member of the jury has heard a point, it is very difficult to remove same from his mind. It is impossible to unscramble an egg or unring a bell.

(a) Mistrials result in a case being thrown out of court with a possibility of a new trial beginning at a later date.

(2) Contempt of court charges can be imposed by the presiding judge on an attorney guilty of violation of the rules of evidence.

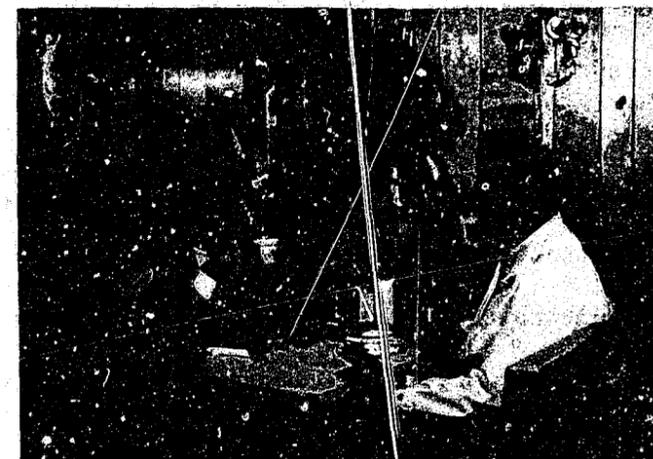
2. WHAT ARE THE BROAD TESTS THAT EVIDENCE MUST MEET IN ORDER FOR IT TO BE ACCEPTED BY THE COURT?



A. Evidence must be material to the case and evidence must have proper identification to be accepted by the court.

EXAMPLE 1 (material evidence): A witness saw a victim in a murder case drink coffee from a cup shortly before his death. The murder cup, or one that appears to be the same, has had poison in it as determined by a lab expert.

EXAMPLE (immaterial evidence): A witness testifies that he saw the victim drink a cup of coffee shortly before his death. He is unable to state that the death cup is the one or similar to the one that he saw the victim drinking from.



EXAMPLE 2 (improper evidence): A doctor testifies that in his opinion the wound which killed the victim was caused by a .38 caliber bullet. The bullet was removed from the body of the victim by the doctor and not marked for identification nor was it marked for identification by the officer who was present when the bullet was removed.

EXAMPLE (proper evidence): A bullet was removed from a victim by the doctor in the presence of an officer. The officer witnessing the removal of the bullet from the victim's body marked the bullet for identification and subsequently made ballistics tests. In view of the fact that every single stage of the proceedings on the bullet was marked for identification, there was no break in the chain of evidence and the bullet was accepted as proper evidence.

B. Evidence must be relevant to the case.

C. Evidence must be considered competent testimony.

3. WHAT IS MEANT BY RELEVANT EVIDENCE (OR TESTIMONY)?



DATE	CHARGE	DISPOSITION
1-7-64	PUBLIC DRUNK	F.P. \$15.00
7-4-65	DRUNK	PAID \$5.00
10-7-65	DRUNK & DISORDERLY	10 DAYS
4-11-66	DRUNK	SUSPENDED
11-30-66	F. DRUNK	B.F. \$8.00

A. To be relevant, evidence must relate to the charges against the accused. If evidence is absolutely true but is not related to the charge against the accused, it is not considered to be relevant.

EXAMPLE: The fact that a person was charged with drunk driving in the past and had been convicted of being a public drunk is not relevant to the current charge of drunk driving. The fact that the accused in the past has been convicted as a public drunk cannot be told to the jury.

4. WHAT IS MEANT BY "GOOD EVIDENCE"?

A. Good evidence is that evidence which will stand up on an appeal. Good evidence is that which tends to show, beyond a reasonable doubt, that an accused is guilty.

EXAMPLE: In the case of a drunk driver, good evidence would be that which showed the accused was driving after having a drink plus the fact that his ability to drive was appreciably lessened by having drunk some alcoholic beverages.

5. ARE CHEMICAL TESTS TO DETERMINE THE ALCOHOLIC CONTENT IN THE BLOOD LEGAL?

A. Yes.

(1) Chemical tests to determine alcoholic content in the blood are not only legal but they are, when properly administered, a most effective piece of evidence that can be presented to a jury in a drunk driving case. (It is a method of measuring that a juror doesn't have to guess about).

OBSERVATION 1: Many times a verdict of "not guilty" is returned on a drunk driving case because of some doubt in a juror's mind which would not have been there had the testimony of the officer been supported by the results of a chemical test.

OBSERVATION 2: Caution must be exercised to see that trained individuals are available to administer chemical tests. Obviously the results of many tests have been thrown out due to the fact that the officer administering the tests was not qualified and became confused on the witness stand.

6. WHAT KINDS OF EVIDENCE SHOULD A POLICE OFFICER LOOK FOR IN A DRUNKEN DRIVING CASE OTHER THAN THE RESULTS OF A CHEMICAL TEST?



A. The manner in which the accused was driving before he was stopped by the officer, and what prompted the officer to become suspicious of the accused which resulted in his having been stopped.

B. Whether or not the defendant had an odor of alcohol on his breath at the time he was stopped and faced the accusing officer.

C. Whether or not the speech of the accused was slurred or distinct.

D. Whether or not the accused could walk steadily.

E. The location of whiskey either on the person of the accused or in any part of the automobile not locked or fastened, which would make the availability of the whiskey easy.

OBSERVATION: Many police departments require that their officers utilize a check-off list record which reflects other observations by the officer such as the appearance of wearing apparel and other related observations which would be persuasive to the jury in arriving at the appropriate verdict.

7. IS THE PERSONAL OBSERVATION BY THE POLICE OFFICER REGARDING WHAT HE OBSERVED CONCERNING THE DRUNKEN DRIVER AS WELL AS THE RESULT OF THE CHEMICAL TEST CONSIDERED TO BE DIRECT EVIDENCE?

A. Yes. The opinion of the officer as to whether or not the accused was too intoxicated to drive safely or not is also to be considered as good evidence.

8. WHAT IS OPINION EVIDENCE OR EXPERT TESTIMONY?

A. Opinion evidence and expert testimony are evidence and testimony received from specifically trained, qualified people.

OBSERVATION: The law recognizes that we must call upon people, specially trained in particular fields in order to give the judge and jury benefit of their thoughts on certain matters.

9. WHAT ARE SOME EXAMPLES OF EXPERT EVIDENCE OR OPINION TESTIMONY?



A. Testimony given by a medical specialist (a pathologist).

In a murder case it is necessary to prove the cause of death. A jury must conclude from expert testimony that death came from a bullet wound. The jury must not reach the conclusion that death was caused just because a bullet was in the heart.

B. Testimony given by a fingerprint expert.

C. Testimony given by a ballistics expert. (This individual arrives at an opinion by examination of various markings and characteristics peculiar to a particular weapon.)

D. Testimony given by police officers in certain fields. A police officer could qualify with expert opinion testimony in most cases dealing with drunks. His qualifying point would be that he comes into contact with more drunks than the average person does.

OBSERVATION: A police officer would not be able to qualify as an expert witness with opinion or expert testimony on such things as the value of a diamond ring, because he is not qualified as a jeweler.

10. IN THEFT CASES, SUCH AS LARCENY OR ROBBERY, IS IT IMPORTANT TO PROVE THE VALUE OF THE STOLEN GOODS?



A. Yes.

(1) If the value of the goods is less than \$50 in larceny cases, the case can be held in a magistrate's court.

(2) If the value of an item in larceny cases is over \$50, the case must be handled in upper court where the fine is much stiffer.

(3) In robbery cases it must be established that the fruits of crime had some value.

11. WHAT ARE THE GENERAL QUESTIONS THAT MUST BE USED TO QUALIFY A WITNESS AS AN EXPERT WITNESS IN ORDER THAT THE JUDGE AND JURY CAN LISTEN TO OPINION TESTIMONY?

A. Question: "For whom do you work and in what capacity?"

The answer could be: "I work for the Smithville Police Department."

B. Question: "Do you specialize in any particular phase of police work?" The answer could be: "Yes, in ballistics."

C. Question: "What training, if any, have you had in the science of ballistics?" The answer could be: "I have been properly trained in ballistics work having conducted various examinations under the supervision of a ballistics expert and having read many books on the subject matter."

D. Question: "Explain to the judge and jury briefly what the science of ballistics is and what it does." The answer could be: "The science of ballistics can determine with certainty whether a particular bullet was fired from a particular gun." The witness could give any other explanation deemed advisable to convey to the jury his knowledge about ballistics.

12. WHAT IS MEANT BY A COMPETENT WITNESS?

A. A competent witness means one able or qualified to do a special thing.

OBSERVATION: If a person is competent to testify, the court will listen to what he has to say and give it what weight it wishes to.

EXAMPLE 1: Athiests can now testify in South Carolina. Previously an athiest was not permitted to testify since without any belief in God, his oath was without value because he would fear no punishment from God for lying.

EXAMPLE 2: Children. (The measuring stick is not the age of the child but whether or not he knows right from wrong.)

EXAMPLE 3: The insane.

OBSERVATION: In proper circumstances in which it can be shown to the presiding judge that a child or insane person does have the ability to observe happenings and to recount them with reasonable accuracy, children and insane persons can testify as competent witnesses.

13. WHAT IS THE RELATIONSHIP BETWEEN A COMPETENT WITNESS AND THE CREDIBILITY OF A WITNESS?



A. Competency means whether or not a witness is permitted to testify, and credibility means whether or not the witness is believable.

14. EXACTLY WHAT IS MEANT BY CREDIBILITY?

A. Credibility actually means "believability" or, in other words, how much faith a member of the jury would put in what an individual witness stated from the witness chair.

(1) The jury alone is the sole judge of whether or not any or all of what a witness says is true.

OBSERVATION: A judge is not allowed to offer a comment or the slightest suggestion as to whether or not the witness told the truth. The jury has the sole decision on these things.

15. WHAT ARE SOME OF THE MOST IMPORTANT THINGS THAT A POLICE OFFICER WHO SERVES AS A WITNESS SHOULD BE COGNIZANT OF IN HIS PRESENTATION OF ORAL TESTIMONY IN A CASE?



A. His reputation in the community for fair dealings.

B. His training in how to present testimony clearly, simply and understandably.

C. Appearance and manner while on the witness stand.

OBSERVATION: It is obvious that the most important of the three listed has to do with his reputation for fair dealings in the community. However, a shabby personal appearance on the witness chair would on occasion detract from the weight of the oral testimony.



END