

HANDLING/MARKING EVIDENCE

PHOTOGRAPHS

- The predicate for a photograph is perhaps the simplest predicate for admission of evidence. The witness needs not have taken the photograph or even understand the photographic process.
 - Are you personally familiar with the object (or location) contained in the photograph that is State's Exhibit Number ___?
 - Does the photograph fairly and accurately represent the object (or location) as you personally observed it?

SPONTANEOUS ADMISSION OF PARTY OPPONENT

- For this predicate, simply establish that the defendant spontaneously uttered a confession, regardless whether the defendant was in or out of custody, without any interrogation and apply the predicate for the admission of a party opponent.
 - Did you personally hear the defendant make any statements?
 - At the time you heard him make the statements, was he being questioned by a law enforcement official or anyone else?
 - What did you see or hear that led you to believe that the statements made by the defendant were spontaneous and not the result of being questioned by anyone?
 - What did the defendant admit?

CHARTS (Parent Visitation Chart)

- Charts are helpful to summarize complex evidence. They must be prepared well in advance of trial to provide the defense with access to the original information that is summarized by the chart.
 - Are you personally familiar with the (numbers, objects, etc.) contained in the chart?
 - Did you participate in the preparation of the chart?
 - Do the compilations contained in this chart contain information generally used and relied upon by the public or persons in _____ (name occupation of person relying upon specific information)?
 - Does it fairly and accurately list (insert purpose of chart)?

CONFESSION

- Admission of one parent is still hearsay on the other parent potentially

OUTCRY OF SEXUAL ABUSE

- A very young child's initial outcry of sexual abuse is admissible as substantive evidence.
 - Are you 18 years of age or older?
 - Do you know ____ (child victim)?
 - How do you know ____ (child victim)?
 - Is _____ (child victim) 12 years of age or younger?
 - Did _____ (child victim) make any statements to you about being sexually abused?
 - When were those statements made?
 - Where were those statements made?
 - How did _____ (child victim) behave when making the statements?
 - To your knowledge, were you the first person, other than the defendant, who ____ (child victim) told about these acts of sexual abuse in any serious detail?
 - In detail, what were the statements made by _____ (child victim) regarding the sexual abuse?
 - Is _____ (child victim) available to testify in this trial?

EXCITED UTTERANCE

- A common source for excited utterance statements are 911 phone calls. Given the urgency of the circumstances, there is little likelihood that such statements are subject to a Crawford objection as testimonial. However, statements made at the scene of an investigation may raise a Crawford issue. The predicate questions in the latter circumstance should focus on establishing that the declarant would not have thought the statements were not testimonial.
 - When you were present with the witness, did he make any statements that were not in response to questions?

- What was the witness' emotional state at the time?
- Did he appear excited?

STATEMENT AGAINST INTEREST/ADMISSION

- This exception to the hearsay rule is applied to persons other than the defendant. A defendant's statements against interest are not hearsay; they are admissions of a party opponent.
 - Was the witness free to leave at the time she made the statement?
 - Did you ask the witness any questions that caused her to make a statement?
 - What incriminating statement did she make?

RECORDED RECOLLECTION

- The statements of a person who no longer has a recollection of the statements may be admissible if there was a contemporaneous record made of those statements.
 - Did you witness _____ (described event witnessed)?
 - After witnessing that event, did you make a written statement at or near the time the event occurred?
 - When you made that written statement, were you able to recall the details of the event clearly and accurately?
 - Can you still remember the event?
 - Why are you having trouble remembering the event?
 - Let me show you State's Exhibit Number ____ (recorded recollection statement).
 - Is this the statement you made after witnessing the event?
 - Is this written statement an accurate description of the event as you recalled it at the time you wrote it?
 - Did you sign the statement?
 - Would you have signed it if it was inaccurate?
 - Is it your habit or practice to record an event soon after it happens in an accurate manner?

IMPEACHMENT

- Prior inconsistent statements
 - Do you recall making a statement on _____ (date of inconsistent statement)?
 - Do you recall making the statement at _____ (place of inconsistent statement)?
 - Do you recall making the statement to _____ (person who heard statement)?
 - Do you recall saying _____ (contents of inconsistent statement)?
- Prior conviction (not arrests – felonies or crimes of moral turpitude)
 - Have you been convicted of a felony in the last 10 years?
 - Have you been convicted of a crime involving moral turpitude in the last 10 years?
 - Where?
 - What was the crime?

RECORDING

- Audio
 - I hand you what has been marked as State's Exhibit Number _____ (recorded statement). Do you recognize it?
 - What is it?
 - Have you listened to the recording?
 - Was this recording prepared on a device capable of making an accurate recording?
 - On what medium was the original recording saved?
 - On what medium was the recording saved for presentation to the court?
 - Was the operator competent to operate the device?
 - Is the recording an accurate representation of the conversation/statement that took place?

- Has the recording been altered in any manner?
- Would you identify all of the voices on the recording?
- When was the recording made?

○ Audio Transcript

- Do you recognize this document?
- What is it?
- Have you listened to the recording that this transcript is taken from?
- Would you describe how you prepared the transcript from listening to the audio recording?
- Did anyone else verify that your transcript accurately reflected the conversation on the recording?
- Is this document a fair and accurate transcription of the conversation on the recording?
 - Note: An audio transcript may be presented to the Judge at the time the audio is introduced. An audio transcript doesn't go in as evidence – it is merely an aid to be used while the Judge is listening to the audio recording. Be sure to give the defense attorney a copy of the proposed transcript well ahead of trial and request in writing any challenges to the accuracy of the transcript.

□ DIGITAL INFORMATION

○ Email/Text Messages

- I hand to you what has been marked as GAL's Exhibit Number ____ (a printout of the email or text onto paper). Do you recognize it?
- What is it?
- Is GAL's Exhibit Number ____ an exact duplicate of the contents of the email or text you found on the digital device (specify: e.g., computer, cell phone)?
- What specific identifying information was contained on the device or in the email/text that justifies a conclusion that a individual sent the message?

- Based on the identifying information, who do you believe sent this email or text?

- Website/Social Networking Sites

- I'll show you what has been marked as State's Exhibit Number ____ (printout of website).
- How was it prepared?
- Does it accurately reflect what appeared on your computer screen when you accessed this website?
- Does GAL's Exhibit Number ____ contain the website address (URL) along with the date and time you accessed the website?

- EXPERT TESTIMONY

- Bite Mark

- How are you employed?
- Would you tell us what educational background and professional training you have?
- Are you certified in any specialty of psychiatry/social work?
- What exactly is _____?
- Would you tell us what additional training and experience you have that qualifies you in the field of psychology/social work?
- Have you taught any courses in the field of psychology/social work?
- Have you published any articles in this field?
- Have you testified in court before as an expert in the field of psychology/social work?
- Has that been on few or many occasions?
- Are you familiar with (name of person evaluated)?
- How so? How often have you interviewed or counseled with _____?
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