

CRIMINAL LAW

CALIFORNIA
LAWYERS
ASSOCIATION

presents

Annual Trial Skills Update Seminar

Introduction of Evidence

Saturday, April 6, 2024
10:20am - 11:20am

Speakers: Julian Andre and Kevin Lally

Conference Reference Materials

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INTRODUCTION OF EVIDENCE AT TRIAL

California Lawyers Association
2023 Trial Skills Update Seminar

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Kevin M. Lally, McGuireWoods LLP

November 4, 2023

INTRODUCTION OF EVIDENCE AT TRIAL

- The evidence admitted at trial is the foundation of any jury trial and should be at the core of any effective trial strategy.
- Before any trial you should be asking the following questions:
 - What evidence do you *actually* need admitted at trial to tell your story?
 - How will you get your key exhibits admitted at trial?
 - How will you use your evidence to support your case themes during opening statement, direct examination, cross examination, and closing?
 - How will you handle and respond to bad evidence?

UNITED STATES v. PELLICANO, ET AL.

CR 05-1046(E)-DSF

GOVERNMENT'S EXHIBIT LIST

No.	DATE ID'D	DATE ADMITTED	EXHIBIT
41		3/18/08	Audio recording 01_10_18@15.39.32 (excerpt) (Pellicano & Turner) ✓
41A			Transcript of Exhibit 41
42	3/13/08	3/13/08	Audio recording 02_04_11@09.09.23 (excerpt) (Pellicano & Turner) ✓
42A			Transcript of Exhibit 42
43		3/18/08	Audio recording 04_06_07@00.26.02 (excerpt) (Pellicano & Turner) ✓
43A			Transcript of Exhibit 43
44		3/18/08	Audio recording (Tom Gores & Lisa Gores) ✓
44A			Transcript of Exhibit 44
45		3/18/08	Audio recording 01_03_15@13.16.13 (Pellicano & Stevens) ✓
45A			Transcript of Exhibit 45
46		3/18/08	Audio recording 01_04_03@15.10.47 (Pellicano & Stevens) ✓
46A			Transcript of Exhibit 46
47		3/18/08	Audio recording 01_04_25@17.37.40 (excerpt) (Pellicano & Carradine) ✓
47A			Transcript of Exhibit 47
48		3/18/08	Audio recording 01_05_17@09.57.03 (excerpt) (Pellicano & Carradine) ✓
48A			Transcript of Exhibit 48

EXHIBIT	DESCRIPTION	IDENTIFIED	ADMITTED
26	Celerity Cardinal September 16, 2015, Charter Renewal Petition		
27	Celerity Palmati September 16, 2015, Charter Renewal Petition		
28	Celerity Exa Charter Petition April 9, 2012		
29	LACOE Monitoring and Oversight Memorandum July 1, 2011 to June 30, 2016		
30	Celerity Sirius Charter School Board Review Submission		
31	Celerity Dyad SSD Plan - July 7, 2010 [Rule 902(4) Dec. at Ex. 40]		
32	Celerity Troika SSD Plan - July 7, 2010 [Rule 902(4) Dec. at Ex. 40]		
33	Celerity Octavia SSD Plan - November 12, 2010 [Rule 902(4) Dec. at Ex. 40]		
34	Celerity Cardinal SSD Plan - November 7, 2011 [Rule 902(4) Dec. at Ex. 40]		
35	Celerity Palmati SSD Plan - November 7, 2011 [Rule 902(4) Dec. at Ex. 40]		
35a	Celerity Palmati SSD Plan - November 7, 2011 [Relevant Excerpts Only] [Rule 902(4) Dec. at Ex. 40]		
36	Celerity Sirius SSD Plan [Rule 902(4) Dec. at Ex. 40]		

WHAT EVIDENCE WILL BE PRESENTED AT TRIAL?

- Witness Testimony
- Physical evidence
- Audio/visual evidence
- Written evidence (emails, letters, text messages)
- Business records
- Public records
- Summaries
- Transcripts

HOW ARE YOU GOING TO GET YOUR EXHIBITS ADMITTED INTO EVIDENCE?

- You need a clear game plan to get your evidence into the record:
 - Identify the witness you will use to get the evidence admitted.
 - Evaluate the admissibility of the evidence in advance.
 - Ensure that you are able to lay a foundation and authenticate the exhibits.
 - Effectively incorporate the evidence into witness examinations.
 - Utilize the exhibits to tell a compelling and unified story.
- Use Motions *In Limine* to resolve evidentiary issues before trial.
- Get key pieces of evidence into the record early.
- Know the proper mechanics for admitting and publishing evidence.

HOW ARE YOU GOING TO GET YOUR EXHIBITS ADMITTED INTO EVIDENCE?

Ex. #	Description	Witness(es)	Purpose	Evidentiary Basis
1	2022.10.22 CitiBank Wire Transfer	Mike Jones (Victim) Agent Smith (Summary) Defendant (Cross)	Defendant's receipt of victim's money Interstate wire transfer	FRE 902(11)
2	2020.10.22 Text Messages from Defendant to Jones	Mike Jones (Victim) Agent Williams (Authentication) Defendant (Cross)	False representation Defendant's intent	FRE 801(d)(2)



HOW ARE YOU GOING TO GET YOUR EXHIBITS ADMITTED INTO EVIDENCE?

- You need a clear game plan to get your evidence into the record:
 - Identify the witness you will use to get the evidence admitted.
 - Evaluate the admissibility of the evidence in advance.
 - Ensure that you are able to lay a foundation and authenticate the exhibits.
 - Effectively incorporate the evidence into witness examinations.
 - Utilize the exhibits to tell a compelling and unified story.
- Use Motions *In Limine* to resolve evidentiary issues before trial.
- Get key pieces of evidence into the record early.
- Know the proper mechanics for admitting and publishing evidence.

HOW ARE YOU GOING TO GET YOUR EXHIBITS ADMITTED INTO EVIDENCE?

- Proper mechanics for admitting evidence:
 - Mark exhibit
 - Show the exhibit to opposing counsel
 - Request permission to show the exhibit to the witness
 - Establish foundation and admissibility for exhibit
 - Offer exhibit into evidence
 - Request permission to publish exhibit to the jury
 - Once admitted, don't need permission to publish with other witnesses
- The practices of each judge and court will vary.

STANDARD FOUNDATIONAL QUESTIONS: PHYSICAL EVIDENCE

- Please examine govt/def. exhibit X (outside view of the jury)
- Do you recognize this document/this item (e.g., item of clothing/contraband; photo)?
- What is it?
- How are able to recognize it as such (e.g. drafted e-mail; unique aspects of item)
- If applicable, is the item in substantially the same condition as when you previously observed/handled it/took the photo, etc.?
- Offer into evidence

HOW WILL YOU USE YOUR EVIDENCE TO ENHANCE YOUR TRIAL PRESENTATION?

- Now that you have plan to admit the evidence, how will you use it?
- Opening statements
 - Beware that referencing inadmissible evidence will lead to a mistrial.
- Direct examinations
 - Use the evidence to tell your story and corroborate your witnesses.
- Cross examinations
 - Documentary evidence should be used to hammer away at witnesses.
- Closing argument
 - Emphasize and highlight key pieces of evidence using compelling visuals.

1/5/2021 12:10:19 PM

From: Kelly Meggs

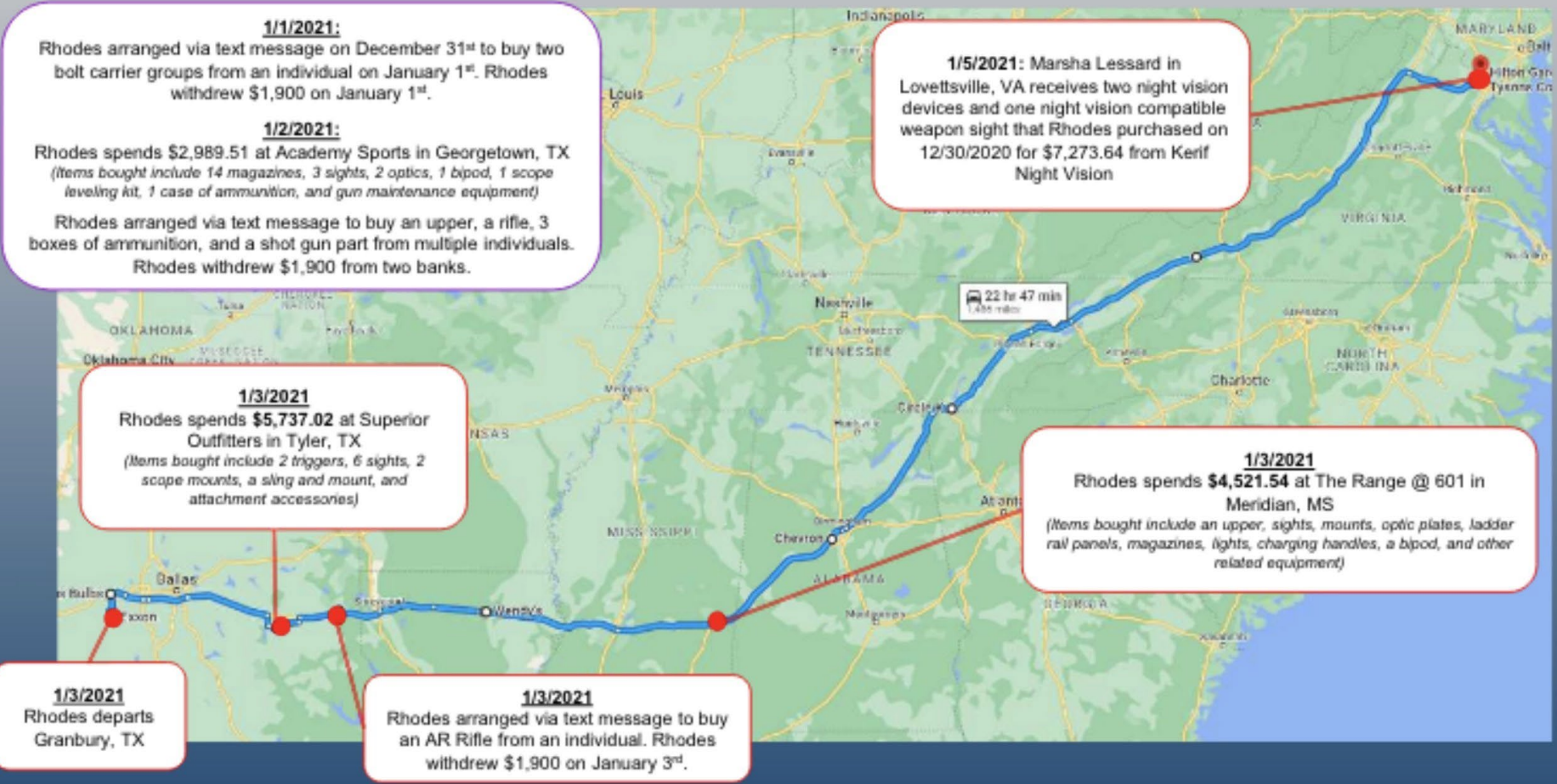
To: Stewart Rhodes

Yes we are just outside of town
unloading at QRF on our way in. Left
Rangers place at 4:30am

1.T.2315.10



RHODES' PURCHASES EN ROUTE TO DC



From: Grace Canada <gcanada@celerityschoools.org>
To: Richard R. Sizemore; eterriquez@pacificwesternbank.com
CC: Vielka McFarlane; Joseph Peña; Virgadean Richmond; Miguel Portillo; imcmahon@pacificwesternbank.com
Sent: 7/26/2013 8:57:20 AM
Subject: Wire transfer

Good morning Rich and Letty,

Please process the following wire this morning before 11:00 am, please take funds from Celerity's operating account [REDACTED]

Wire information:

Financial Institution:

Wellsfargo Bank

7030 Old Keene Mill Rd.,

Springfield, VA 22150

(703)912-6531

Payable to:

DJ Commercial Contracting, LLC

6412 Brandon Ave., Suite 101

Springfield, VA 22150

Account# [REDACTED]

Routing# [REDACTED]

Amount \$155,000.00

Thank you,

Exhibit 297
Page 1 of 2

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

USAO_01696026

Appendix
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From: Grace Canada <gcanada@celerityschoools.org>
To: Richard R. Sizemore; eterriquez@pacificwesternbank.com
CC: Vielka McFarlane; Joseph Peña; Virgadean Richmond; Miguel Portillo; imcmahon@pacificwesternbank.com
Sent: 7/26/2013 8:57:20 AM
Subject: Wire transfer

Please process the following wire this morning before 11:00 am, please take funds from Celerity's operating account [REDACTED]

Amount \$155,000.00



HOW DO YOU RESPOND TO BAD PIECES OF EVIDENCE?

- Determine what evidence the other side will need to introduce.
- Evaluate and prepare your evidentiary objections in advance.
 - Use *Motions in Limine* to try to exclude bad evidence before trial.
 - Avoid meritless objections at trial that will further emphasize the importance of the evidence.

HOW DO YOU RESPOND TO BAD PIECES OF EVIDENCE?

Ex. #	Description	Witness(es)	Purpose	Objections
1	2022.10.22 CitiBank Wire Transfer	Mike Jones (Victim) Agent Smith (Summary) Defendant (Cross)	Defendant's receipt of victim's money Interstate wire transfer	Authenticity Lack of Foundation Hearsay
2	2022.10.20 Text Messages from Defendant to Jones	Mike Jones (Victim) Agent Williams (Authentication) Defendant (Cross)	False representation Defendant's intent	FRE 106 – Rule of Completeness
3	Summary chart of text messages and calls	Agent Smith (Summary)	False representation Defendant's intent	FRE 1006 – Records are not voluminous; underlying records are not admissible



HOW DO YOU RESPOND TO BAD PIECES OF EVIDENCE?

- Embrace the bad and make it part of your story.
 - Consider presenting any bad evidence before the other side.

COMMON PITFALLS

- No clear strategy for incorporating evidence into your trial presentation
 - If you do not incorporate key pieces of evidence into your closing argument and during witness testimony, the evidence is useless.
- Too many exhibits
 - Less is always more. If there are too many exhibits, the jury will get bogged down and may not be able to focus on the key pieces of evidence.
- Failure to anticipate objections
 - There is nothing worse than having a key piece of evidence excluded. You should have responses for any potential objections ready in advance.
- Not understanding the rules of evidence