

4)

Relevance

Logical Relevance

Logical evidence is evidence that tends to make a material fact more or less probable. Under California (CA) laws, the material fact must be in dispute in order to be admissible.

Legal Relevance

Legal Evidence is evidence that the court balances to determine whether it should be admissible. Under the California Evidence Code (CEC), the court will balance the probative value of the evidence against the unfair prejudice, waste of time, or waste of resources to determine whether the evidence should be admitted.

Personal Knowledge

Any witness who takes the stand to testify must have personal knowledge of the facts and must testify truthfully to those facts while on the stand. Personal knowledge may be gained through directly witnessing the events.

California's Proposition 8

CA's Proposition 8 allows for any criminal evidence related to the crime to be admissible, and is subject to several exceptions, including: secondary evidence (best evidence rule under FRE), Hearsay and Hearsay Exception (rule remains the same as FRE, subject to certain name differences), character evidence (same as the FRE), and several other exceptions.

Here, Des is on trial in CA's Superior Court for possession with intent to distribute hundreds of pounds of cocaine from January through October in 2019. This is a criminal case, therefore, any material fact in dispute related to the this criminal crime will be admissible under CA Proposition 8 and the CEC.

Therefore, CA proposition 8 applies and the CEC applies because the case is in CA's superior court.

Hearsay

Hearsay is an out of court statement offered for the truth of the matter asserted. A hearsay statement is not admissible under CA rules, unless a hearsay exception or exemption applies.

1a) Page 1-4 of the notes

Relevance

Here, pages 1-4 of the notes are relevant because it tends to make the material fact of Carol having the intent to distribute cocaine more likely than not. The notes allegedly describe Carol keeping track of income and expenses related to the cocaine notations and sale of cocaine. Pages 1-2 are sales from January through April of 2019, not including Des and pages 3-4 are notations of sales from May through October in 2019 to various people, including Des. Des would argue that if any of the note were to be admissible, it would only be pages 3-4 because those are ones that include her, and pages 1-2 cannot be admitted because it is not a material fact that is in dispute against her.

Therefore, the evidence is relevant and the court likely erred in admitted pages 1-2 against Des under the CEC.

Personal Knowledge

Carol has personal knowledge of what is included in the notebook because Carol testified that the notebook belonged to her and that she used it to keep track of income and expenses related to cocaine.

Therefore, Carol had personal knowledge of the contents of the notebook and may testify to it.

Past Recorded Recollection

A past recorded recollection is a document/notebook/recording device that the witness used to record (written or oral) immediately or while the event was fresh in the witness's mind, an event the witness perceived. However, the Witness's memory must have been refreshed, and after refreshing, the witness still does not remember what he/she wrote. If this occurs, the witness may read the document into evidence, and only the opposing party may admit the evidence.

Here, Pete could argue that the notes are a past recorded recollection and should be admitted. However, there are no facts to show that Carol forgot what the contents of the notebook included and that Carol's mind was refreshed, therefore exception does not apply.

Therefore, the court likely erred in admitted page 1-4 of the notes.

Hearsay

Des would argue that Carol's notes are hearsay and inadmissible evidence and none of the

hearsay exemptions or exceptions apply to allow the notes to come in.

The prosecutor, Pete, would argue that the evidence is admissible as a business record, present sense impression, dying declaration, then-existing statement of mind, and others.

a) Business Records

A business record is a hearsay exception that allows for documents created within the regular course and scope of business to be admissible.

Here, Pete would argue that the transactions of income and expenses were made during the course of her business of selling cocaine and thus should be admissible. If the court finds that Carol was making these statements during the scope of her business, then the court would allow it.

b) Present Sense Impression (PSI)

Present Sense Impression is another hearsay exception that the notes could be admitted. A PSI is an event that the witness perceived as it was occurring and the statements were made concurrently as perceiving the event.

Here, Pete would argue that the notebook contains information that Carol perceived and immediately recorded and thus should be admissible. However, this argument is weak because the facts do not state how soon after Carol records the transactions into the notebook. She could write all her transactions down at the end of the week or even month, and therefore is not strong enough to show it was a present sense impression.

The court will likely err in admitting the notes under the PSI exception.

In conclusion, the court likely erred in admitting pages 1-4 of the notes under the CEC. If anything would be admitted, only pages 3-4 should be because those are relevant to the material issue of the case and in dispute (whether Des had the intent to distribute hundreds of pounds of cocaine from January through October 2019) as required under the CEC.

1b) Evidence of Des's conviction for Forgery

Relevance

Here, evidence of Des's conviction for Forgery is relevant because she took the stand and the conviction may be used to impeach her statements and credibility. However, Des would argue

that her Forgery conviction is not a material fact in dispute and should not be admissible. The court will likely find that the evidence is not relevant to her charges of intent to distribute. However, the evidence could come in solely for impeachment purposes.

Personal Knowledge

Here, Des would have personal knowledge of her forgery conviction because it was charges against her. Therefore, she may testify to the conviction, and the court may admit it if allowed under the rules.

Character Evidence

Character Evidence is usually inadmissible unless it falls within an exception. For criminal cases, if the Defendant takes the stands and presents evidence of his/her own good character, then the prosecution may rebut with evidence of the Defendant's bad character on cross. On direct, only reputation and opinion evidence may be admissible, and on cross, reputation, opinion, and specific acts/conduct may be admissible.

Here, the Des's forgery conviction could be admissible as a specific act. It was asked on cross, and if used solely for the purposes to impeach Des, who took the stand and denied the charge, it can be admissible.

Prior Convictions

Prior convictions are only admissible if they are felonies that occurred within the past ten years, and/or misdemeanors that occurred within the past ten years, and related to the witness's truthfulness. Forgery is a crime of truthfulness and requires the defendant to have acted intentionally to alter a legal document. Therefore, if a witness has a conviction within the past ten years related to truthfulness, then it would be admissible. If a conviction is more than ten years old, then the court would balance the unfair prejudice against the probative value to determine whether the conviction could be admitted.

Here, the court admitted Des's conviction of forgery, a felony, that occurred 11 years ago. If the court finds that the probative value of the evidence outweighs the unfair prejudice, then the court may admit this evidence. Because forgery is related to truthfulness, the court will likely find that it is more probative than unfairly prejudicial. Des would argue that the court failed to properly admit Des's conviction of forgery because it occurred more than ten years ago because it is prejudicial against her.

Therefore, the court properly admitted Des's conviction, if it was sued for impeachment purposes.

2) Attorney Client (A/CL) Privilege

The A/CL privilege is a privilege that belongs to the client (CL). Any communication between the Attorney and CL are inadmissible. Under the CA rules, the A/CL privilege lasts until the client's estate is distributed. The client may raise the A/CL privilege at any point in time.

Here, Des's attorney called Carol's attorney, Abe, to the stand and asked him whether Pete, the prosecutor, had offered Carol a reduced sentence in exchange for Carol's testimony. Pete then asserted attorney-client privilege. Pete does not have the authority to raise the A/CL privilege because the privilege belongs to Carol and only Carol may assert the privilege. Additionally, Pete is not Carol's attorney; Carol is merely one of Pete's witnesses, and therefore Pete cannot raise the privilege.

The court properly denied Pete's assertion of A/CL privilege.

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