



Course Learning Outcomes for Unit VII

Upon completion of this unit, students should be able to:

2. Identify the four main types of criminal evidence used in trials.
 - 2.1 Identify physical evidence used in criminal trials.
 - 2.2 Identify demonstrative (audio/visual) evidence used in criminal trials.
5. Define secondary evidence, to include when and how it may be used in lieu of primary evidence.
 - 5.1 Identify the factors to address how photographic evidence or physical evidence can be admissible in criminal trials.
8. Describe evidence collection procedures and why well-written policies are important to this process.
 - 8.1 Recall evidence collection procedures for collecting and preparing physical or photographic evidence for admissibility in court.

Reading Assignment

Chapter 13:
Physical Evidence

Chapter 14:
Photographic, Recorded, and Computer-Generated Evidence

Unit Lesson

Physical evidence is one of the four major types of evidence. We can present physical evidence in two forms: real and demonstrative. Real evidence is the actual object, such as a knife, piece of clothing or appliance. Demonstrative evidence is a copy of the object, such as a replica of a crime scene or a weapon that is said to be similar to the weapon used in the commission of a crime. As with any evidence admitted to a trial, physical evidence must have some connection or relevance to the facts of the case. Physical evidence must also be authenticated through the laying the foundation process (Garland, 2015).

There are numerous sources and kinds of physical evidence. Thus, physical evidence is classified under four categories: fruit of a crime, instrumentality of a crime, contraband, and evidence of a crime (Garland, 2015). Although we don't use this terminology on a daily basis, we are most likely very familiar with the four categories of physical evidence. For example, we are aware of many cases in which law enforcement have come across a vehicle that contained stolen property, or they've gained access to a warehouse full of stolen items. This type of physical evidence is classified as fruit of the crime. We are also aware of cases in which police officers have reported obtaining a weapon used in a crime. This type of evidence is classified as an instrumentality of a crime. Then, there are cases where items are taken by law enforcement officers because it is not lawful for a person to possess a specific content, such as a shotgun with a barrel less than 16 inches or a cell phone as a prison inmate. These forms of physical evidence are classified as contraband. Also, we have heard of cases where evidence has been collected that demonstrates "foul play," such as finding blood-soaked clothing in an abandoned field or finding undergarments that appear to have bodily fluids on them that are stuffed in a trash can in a public park. These types of physical evidence are classified as evidence of a crime.

There are times when producing the real physical evidence is not feasible. For example, it is not feasible to bring the corpse of a homicide victim or a well-preserved crime scene into court. Therefore, photographs and recordings are often used. The visual aids used in criminal trials are not limited to photographs and recordings but can also include computer-generated output items. These visual aids can be used as substantive

evidence to assist in deciding facts about the case or as demonstrative evidence, in which the evidence is used to illustrate information given in the witness's testimony. Photographs and videos can be classified as pictorial testimony or entered under the silent witness theory. A pictorial testimony is similar to using visual aids as demonstrative evidence, as it is used to illustrate facts provided by the witness's testimony. However, there are also images that are taken without an operator present, such as video surveillance footage. If such images are used as a method of documenting the event, then they are admitted as evidence in court using the silent witness theory. Images can also be generated with devices other than cameras, such as photocopy machines, x-ray machines, and computers. It is now commonplace to not only find computers in courtrooms for accessing court documents, but they also provide an output for use as evidence in court, such as graphs, charts, and diagrams. The methods for presenting computer-generated output also vary (e.g., display boards, overhead projectors, and overhead transparencies).

Regardless of the demonstrative physical evidence type used in a criminal trial, the evidence must be found relevant and authentic. We must note that, especially in regards to photographs and videos that are gruesome or obscene in nature, they must pass the balancing test before they are admissible in court. That is to say that even if the demonstrative evidence is relevant to the case, it may not be admitted as evidence in the case if this "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or the chance of misleading the jury" (Garland, 2015, p. 438). Once the evidence is found to be relevant and balanced, the task of proving authenticity follows. The primary way to authenticate a photograph, recording, or computer-generated evidence is for the witness to testify that each one is a true and accurate reproduction of what the evidence is said to depict. A witness authenticates evidence. Also, an agent or agency that collected the evidence (e.g., law enforcement) can authenticate it by maintaining complete possession of the evidence until presented in court. Verifying the authenticity of demonstrative evidence can be accomplished by using an object that has a distinct characteristic (e.g., marker) at the crime scene. Objects used to provide distinct characteristics for authentication and identification purposes usually include a minimal amount of information necessary to ensure authentication. For example, an identification card would include the initials of the agent collecting the evidence, the date that the evidence was collected, and the time in which the evidence was collected.

In summation, the primary concern about the admissibility of physical evidence collected during an investigation that is found relevant to the case is the authentication of that object. That is why the way in which the evidence is collected, identified, and reserved for use in a criminal trial are extremely important. Often you hear of concerns about securing a crime scene and collecting the physical evidence as quickly and thoroughly as possible. The prosecution's task is to demonstrate that the physical evidence chain of custody was sufficient enough to ensure that the evidence collected at the crime scene is the same evidence being presented in court. We are probably aware of numerous cases where questions arise on how the evidence was collected, identified, and preserved for use in a criminal trial. This has led to the inadmissibility of evidence in a criminal trial or the dismissal of charges brought against the accused because of the inability to use the evidence collected at the crime scene.

Law enforcement plays a very integral role in ensuring that the physical evidence can not only be obtained from a crime scene, but it can also pass the authentication test so it is admissible in a criminal case. This role of law enforcement is often taken for granted until an officer is thrust into the media limelight because of how he or she handled the physical evidence, if deemed inappropriate or at least questionable by the court. It is imperative that all physical evidence collected for a criminal case is done in a secure manner, properly identified, transported using documented proper chain of custody procedures, properly stored and secured, delivered using approved protocols, and prepared for exhibit in court. This way these procedures will produce the appropriate impact associated with the physical evidence.

Reference

Garland, N. M. (2015). *Criminal evidence* (7th ed.). New York, NY: McGraw-Hill Education.

Suggested Reading

The following article discusses physical evidence as mentioned in the lesson lecture. You are highly encouraged to review this information.

In order to access the resource below, you must first log into the myCSU Student Portal and access the Criminal Justice database within the CSU Online Library.

Uphoff, R. J. (2011). Handling physical evidence: Guidance found in ABA standard 4-4.6. *Criminal Justice*, 26(2), 4-18.

The following article discusses photographic and recorded evidence as mentioned in the lesson lecture. You are highly encouraged to review this information.

In order to access the resource below, you must first log into the myCSU Student Portal and access the Academic Search Complete database within the CSU Online Library.

Edmond, G., & San Roque, M. (2013). Justicia's gaze: Surveillance, evidence and the criminal trial. *Surveillance & Society*, 11(3), 252-271.

Learning Activities (Non-Graded)

This non-graded learning activity will require you to either physically go to a place or be able to visualize the place in your mind.

Choose a place that you are familiar with, such as a neighborhood park, grocery store, place of residence, place of worship, community center, place of education, etc.

- Identify the major type of crime that could occur at this place.
- Imagine yourself as a crime scene technician that has been sent to document the crime, so the evidence collected can be used in the forthcoming criminal trial.
- Make note of the type of evidence you would need to collect. Consider the following questions:
 - Is it real or demonstrative physical evidence?
 - If it is real evidence, what specific items will be collected?
 - If it's demonstrative evidence, is it photographic, recorded, or computer-generated and what specific items be collected?
- Make note of how that evidence would need to be collected.
- Also, make note of the difficulties that would arise in trying to collect the evidence in a way that would allow the evidence to be admissible in court.
 - Such notations could include difficulties associated with geography, climate, use of the space, parties occupy, the nature of the crime, etc.
- Consider the concepts that were presented in textbook and make note of whether or not those concepts properly prepared you to complete this learning activity.
- Also, consider whether or not there is any information that should have been included in the textbook that was not.

Non-graded Learning Activities are provided to aid students in their course of study. You do not have to submit them. If you have questions, contact your instructor for further guidance and information.