“I KNOW WHO THE MURDERER WAS!” AND OTHER STATEMENTS THAT A COURT WILL IGNORE

El Derecho Del Pueblo

Columna de comentario social y asesoría legal por el abogado y maestro Matthew “Mateo” Katz.

The People’s Right

A column of social commentary and legal advice by attorney and teacher Matthew “Mateo” Katz.

Imagine that somebody said to you “I know the murderer was John!” Maybe this is the key piece of evidence that will free somebody who is wrongfully charged with murder. Maybe, through, only maybe, will the statement be considered by the court in its decision making process. If you read last week’s column, you know that **HEARSAY** involves a statement made by someone who is not in court to undergo cross-examination, and thus, this statement might not be considered.

We began a discussion in last week’s column of an explanation of the various rules of evidence that apply to a case at trial or in a hearing before a judge. Remember that these rules can make or break your case, because if you have a key piece of evidence that you think proves your case but is not “admitted into evidence” meaning it won’t be looked at by the judge or jury, you might kiss that big win goodbye!

FOUNDATION is perhaps the most important rule of evidence, because guaranteed your evidence will not be considered by the court if it does not have a “proper foundation.” This generally means that the person who prepared a document, some other material evidence like a bullet or weapon, or otherwise has knowledge that the evidence is authentic, must come to court to explain how it is that they know the evidence is true and accurate.

In a sense, this rule relates to the hearsay rule because the central point of hearsay is to make sure that no evidence is considered by a court without giving the party who would be harmed by the evidence an opportunity to challenge its validity. Take, for instance, a picture drawn by a child of one stick figure stabbing another with a knife, say as s/he watched a bloody movie and drew what s/he saw. If you were being accused of a knifing murder would you want that

picture to be admitted into evidence without the child being asked in court what the picture depicted?! NO! That's why this rule exists.

ARGUMENTATIVE is the rule that prohibits talkative lawyers from arguing their case at the wrong time. When someone is on the witness stand, the lawyer should be asking questions, not arguing the case to the judge or jury.

CUMULATIVE means repetitive, redundant, asked and answered. Yes, we all see on television those persistent government lawyers on cross-examination asking the defendant, "you did it, didn't you!?" again and again. In the real world, this would prompt an objection from the defense attorney: "Your honor! The witness has answered this question already!" This objection should be sustained.

CHARACTER TESTIMONY is perhaps the most complicated area of evidence law. The basic rule is that a criminal defendant's past behaviors can not be used to prove conformity therewith, meaning simply that if you hit someone a year ago, that doesn't mean you are guilty of battery for an act that occurred a month ago. But, if you bring your own character into play at trial, say, by having all of your friends and family testify about how great of a person you are, you open up the door to all sorts of attacks against your character that otherwise would not be allowed into evidence.

VOLUNTEERED/NARATIVE involves a witness who can't just answer the questions – this witness keeps talking and talking, offering up thoughts and ideas, answers to questions never asked, and spewing verbage over and over again, telling a story that never seems to end. I think you get the point, and are probably now objecting to this paragraph rambling on any more!

With that, you have most of the main rules of evidence!