



**n Physical
Evidence**

What Is Physical Evidence?

- n In a criminal trial, **physical evidence** is material objects, such as a gun, a knife, bloodstained clothing, a latent fingerprint, or a photograph.



Two Forms of Physical Evidence

- n **Real evidence** is the actual object itself, or the real thing.
- n **Demonstrative evidence** is a representation of the object, either a copy, imitation, model, or reproduction.

Physical Evidence Speaks for Itself

- n Once physical evidence has been identified by a witness, authenticated, and introduced into evidence as an exhibit, the physical evidence speaks for itself.
- n The jury does not have to rely upon the testimony of a witness to explain what was found and describe it.
- n The jurors can hold, feel, inspect, and examine the object.

Physical Evidence Must Be Relevant

- n For physical evidence to be admissible, it must have some connection to the facts of the case.
- n It must be relevant to the issues of the trial, and it must assist in proving the facts in dispute.



Relevancy

n FRE 401 defines **relevant evidence** as evidence “having any tendency to make the existence of any fact that is of consequence to the outcome of the action more probable or less probable than it would be without the evidence.”

Laying the Foundation for Admissibility

- n Before any physical object may be admitted into evidence and shown to the jury, enough proof must be presented to satisfy FRE 901 requirements that the object is what its proponent claims it to be.



Laying the Foundation for Admissibility



n This **authentication** or presentation of proof to show that an object is what its proponent claims it to be is known as **laying the foundation**.

Methods for the Laying the Foundation for the Object

- n Testimony of a witness who has first hand-knowledge.

Methods for the Laying the Foundation for the Object

- n Allowing the jury or an expert to compare the objects and decide its authentication.
- n Distinctive characteristics and surrounding circumstances, such as sending a bill to an address and receiving payment from the bill.
- n Voice identification that can be learned first hand or through a mechanical or electronic transmission such as a television or answering machine.

Self-Authenticating Evidence

- n Some evidence is self-authenticating and does not require the any authentication to be admitted into court.



What is self-authenticating evidence?

- n certified copies of public records
- n domestic public documents under seal
- n foreign public documents
- n official publications such as books, pamphlets, newspapers, and periodicals

Burden of Authentication of Evidence

- n The burden of authentication of physical evidence in a criminal trial most often falls upon the police officer because an officer discovers the object while investigating the crime and knows how the object connects the crime with the accused.
- n The officer may be aware of the object's connection to the case because it was removed from the accused at the time of the arrest or from the crime scene.

Attacking Physical Evidence



- n Due to the great impact physical evidence has on a jury, a defense attorney will often do everything possible to prevent an object from being introduced as evidence.

Defense Strategies for Attacking the Evidence

- n Argue that the object is unduly prejudicial to the defendant.
- n Argue that the person collecting the object was prejudiced towards the defendant and had planted the evidence.
- n Try to show that the object is not relevant.
- n Show that it is not connected to the case.

Defense Strategies for Attacking the Evidence

- n Argue that the officer cannot positively identify the object as the same object that the officer had recovered at the crime scene.
- n Try to prove that the object was tampered with.
- n Argue that it is contaminated in such a way that the object no longer can prove the fact intended.

Defense Strategies for Attacking the Evidence

- n Argue that the evidence was collected by an incompetent investigator.



Defense Successful?

- n If the defense counsel's objections are successful, the success may be from improper handling of the investigation of the crime scene, which includes the collection, identification, and preservation of the evidence.

Sources of Physical Evidence

- n The law enforcement officer, or investigator, can find physical evidence in many places and can use it to determine what crime has been committed, to lead to other evidence, to enable the officer to reconstruct the crime, and to assist in convicting the perpetrator.

Where to Look?

- n The most logical and lucrative place to find physical evidence is at the crime scene. The perpetrator's person, vehicle, home, place of business, or base of operations, victim's person are prime sources of evidence.



Kinds of Physical Evidence

- n *Fruits of a crime*—the items obtained as a result of the crime.
- n *Instrumentalities* used in committing the crime—the objects that the perpetrator used to commit the crime.
- n Contraband—any item that is illegal for a person to possess.
- n Evidence of a crime—any object that shows that a crime has been committed.

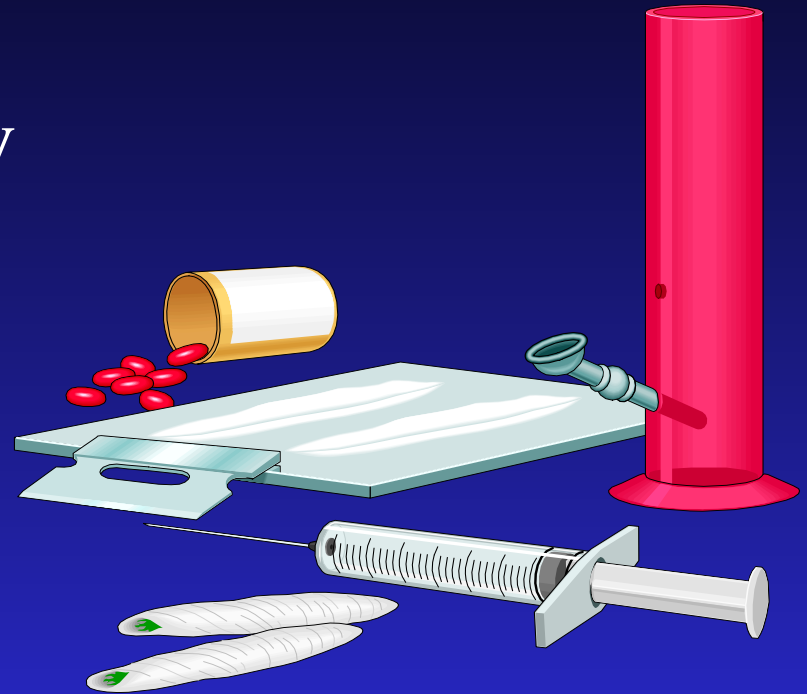


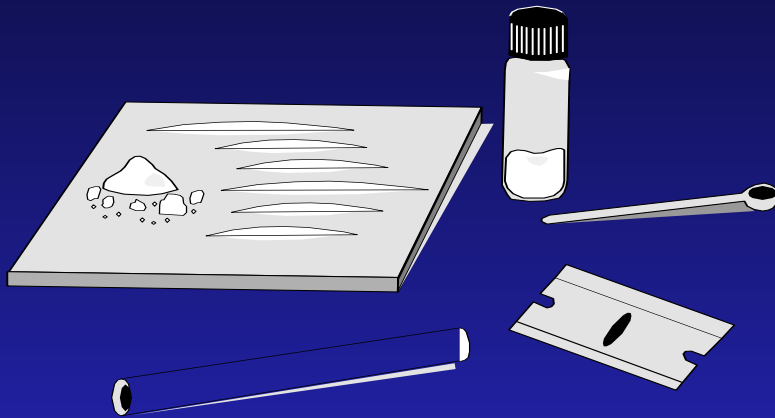
n Fruits of a crime are the items obtained as a result of the crime, such as a television taken in a burglary, or money or jewelry taken in a robbery.



n **Instrumentalities of a crime** are objects that the perpetrator used to commit the crime, such as a gun used in a car jacking or drive-by shooting, a crowbar used to open the front door of a house to commit a burglary, or the automobile used by bank robbers to get to and from the crime scene.

n **Contraband** is any item that is illegal for a person to possess, such as an illegally sawed-off shot gun or illegal drugs (crack cocaine).





n **Evidence of a crime** is any object that demonstrates that a crime has been committed.

Chain of Custody

- n When the prosecutor seeks to introduce an object into evidence, the burden is on the government to prove that the object in court is the same item that was collected by the officer out on the street and that it is in the same condition, or substantially the same condition, as it was when it was collected.



Prosecutor's Proof of Chain of Custody

- n The prosecutor needs to obtain testimony that traces who had control of the object and where the object has been.



Who Are the “Links” in the Chain?

- n The Discovering officer
- n The collecting officer
- n The transport officer (who takes it to the crime laboratory for analysis or directly to the police evidence locker for booking)
- n The crime lab personnel
- n The custodian of the records of the evidence locker
- n The officer who brings the object to court

More Links and Issues of Policy

- n Many departments simplify their chain of custody by requiring that the collecting officer transport the object to the crime laboratory or book it into evidence.
- n The same officer then retrieves the object and brings it to court.
- n The object will usually have a chronological log attached to it that must be filled out by everyone who handles the object, including laboratory technicians, booking officers, investigators, and prosecutors.

Securing the Crime Scene and Collecting Physical Evidence

- n The fact-finding activities that take place at the scene of a crime immediately after a crime has been reported or discovered by police officers are all part of what is called the preliminary investigation.



Law Enforcement Officer's Duty at the Crime Scene

- n Determine if anyone is injured or needs medical treatment and summon the necessary health professionals.
- n Protect the integrity of a crime scene.
- n Determine who to interview.
- n Move non-essential individuals out of the area.
- n Cordon off or otherwise close the area to non-essential individuals.
- n Keep contamination of the scene to a minimum.

Law Enforcement Officer's Considerations

- n The officer must exercise good judgment to protect as much of the crime scene as possible.
- n Improper protection of a crime scene may result in evidence becoming contaminated or even destroyed and may lead to the exclusion of key objects in a trial or affect the worth of the evidence in the eyes of the jury.

Collecting Physical Evidence

- n Each type of physical evidence, whether an intact object, pieces of an object, blood, glass, liquids, or gasses, must be collected, marked or tagged, packaged, transported, and stored properly to be later admitted into evidence in court.



Connecting Objects With Issues of a Trial: Chain of Custody or Possession

- n Objects that constitute the fruits, the instrumentalities, the evidence of the crime, or are contraband may be introduced in evidence and exhibited to the jury if it is proven that such objects offered as evidence relate to the crime charged.
- n To do this, someone must be in a position to testify that the object was connected with the crime or found at the scene.

Record of Custody or Possession

- n The typical record of custody or possession includes:
 - u the person who initially observed the object;
 - u the possession of the object by the officer;
 - u transportation to the laboratory;
 - u possession by laboratory technicians;
 - u retrieval by another officer and transportation to police storage facilities;
 - u the final transport to court.

Three Procedures May Be Used to Positively Identify an Object

- n The officer may keep the object in his or her complete and exclusive custody and control from the time it was found until it is presented in court.
- n The officer may maintain a complete and accurate record of the chain of custody.
- n The officer may tag or mark the object in some distinctive manner.

Identification by Proof of Chain of Custody

- n The officer must know to whom the object was released, and the purpose for which it was released.
- n In other words, maintain a record of the chain of custody.



The Importance of Maintaining the Chain of Custody

- n First, to establish that the object presented in court is the one that was found at the scene, and is, thus, a part of the transaction;
- n Second, to establish that the object examined and analyzed by the expert was the one found in connection with the crime and that it was not altered or tampered with between being found and being analyzed.

Marking Objects for Identification



- n The prosecution can only introduce relevant objects into evidence against a defendant. Thus the identification of an object of evidence in court is extremely important.

Marking the Object

- n The most efficient and desirable method for marking an object is for the officer who discovered it to mark the object in such a manner that the officer will recognize it later.

Marking Evidence for Identification

- n The mark should be made at the time the object is removed from its original position.
- n The mark should be a distinctive one the officer will recognize as the one the officer placed on the object.
- n The officer's initials and the date of the marking will usually be sufficient to enable the officer to identify the object at a later time.

Method of Recording the Information on the Tag

- n There is no set format for the method of recording the information on the evidence tag.



What the Evidence Tag Generally Contains

- n case number
- n name of the defendant
- n name of the victim
- n name of the officer who found the object
- n date, time, and place where the object was found

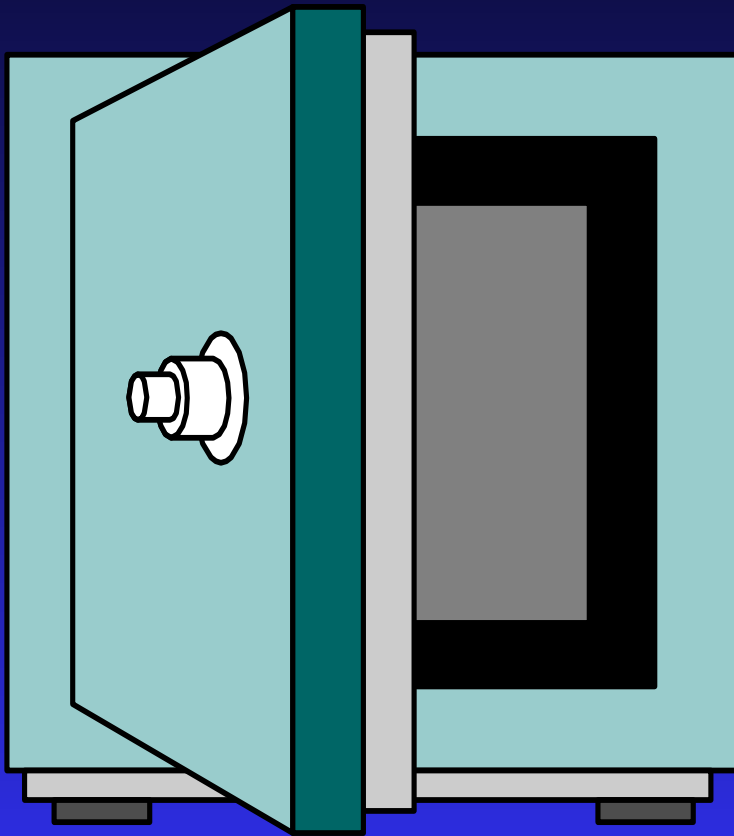
What the Evidence Tag Generally Contains

- n brief description of the article (This is important in event the tag should become detached from the object and also because there are some objects that cannot be recognized from appearance alone.)
- n signature of the officer finding the object

What the Evidence Tag Generally Contains

- n person to whom the object was released and reason for the release
- n date and time of release
- n ultimate disposition of the object: what will be done with the object if it is not used as evidence

Storage of Physical Evidence



- n Frequently much of the value that could be derived from the evidence is lost because of deficient storage procedures.
- n Objects should be stored in a manner where they can retain their original shape and appearance as much as possible.

Storage of Physical Evidence: Practical Considerations

- n Each department should have a separate room or rooms set aside for the storage of physical evidence.
- n The evidence storage room door should have a combination lock or special key that only the property control officer and his or her supervisor has possession of.
- n Additionally, the evidence locker should be organized by item type.

Preparation of Physical Evidence for Use in Court

- n With the use of a little ingenuity and planning, physical evidence can be most effectively displayed to the jury, and its use as evidence greatly enhanced.
- n The physical evidence emphasizes and substantiates the officer's testimony.
- n In most jurisdictions, jurors may take the physical evidence with them while deliberating to enable them to better recall the testimony of the officer.

Gruesome Objects

- n The court weighs the importance of the gory object to the prosecution against the effect the evidence will have on the jury.



Gruesome Evidence and the FRE

- n FRE 403 states, “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

Gruesome Objects: The Balancing Test



- n The evidence will be admitted unless the prejudice against the defendant is substantially greater than the value of the evidence to the jury in determining the outcome of the case.

State v. Thompson

- n Photographs of homicide victims are admissible at trial even if they are “gory, gruesome, horrible or revolting so long as they are used by a witness to illustrate his testimony and so long as an excessive number of photographs are not used solely to arouse the passions of the jury.”

Physical Objects Not Produced in Court

- n There is no requirement that all physical evidence in a case must be produced or introduced into evidence.
- n There is only the requirement that the defendant be afforded a fair trial.
- n The prosecuting attorney has the final decision in determining which evidence will be presented, if at all, and how it will be presented.

Viewing of the Crime Scene by the Jury

- n The trial judge has the discretion of allowing the jury to view the crime scene, taking into consideration the time the viewing will take and the value of the viewing.

