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Prop 8:

Prop 8 applies to all criminal cases brought in a CA state court. Under Prop 8, all relevant evidence is admissible, unless it falls under an exception or an exemption. Prop 8 does not apply to hearsay, exclusionary rules under the CA constitution and the Federal Constitution, character evidence, or privileges and immunities. Furthermore, under CEC 352, a judge has the discretion to exclude relevant evidence if the probative value offered by the evidence is substantially outweighed the risk of unfair prejudice, delay, confusion of issues, or any other reasonable basis.

Here, Deb is being charged for battery in a CA state court. Battery is a criminal offense. Thus, Prop 8 applies.

1) 911 PHONE CALL

A) Relevance:

Under Prop 8, all relevant evidence is admissible. Evidence is relevant if it tends to prove or disprove a disputed issue.

Here, the 911 recording is offered to prove that Vic did, in fact, report to authorities that Deb had battered him. Whether Vic identified Deb as the perpetrator is the crux of the pending charges against Deb, since she cannot be guilty for a crime she did not do. Thus, the 911 call is relevant to the disputed fact of Deb's guilt. Additionally, because Vic is currently refusing to identify Deb, it is also relevant to prove the existence of the admission.

Thus, the phone call is relevant.

CEC 352:

Under CEC 352, a judge may exclude relevant evidence that would otherwise be admissible if the probative value offered by the evidence is substantially outweighed by the risk of unfair prejudice, delay, confusion of issues, etc.

Here, the 911 phone call is relevant to the action, since the statements contained within the phone call are the basis for the pending claims against Deb. However, the evidence may potentially be excluded if a judge finds the phone call to be prejudicial. Recordings of 911 phone calls by victims may prejudice the jury depending upon the statements made by the victim and the circumstances of the crime. For example, a victim that is murdered while on the phone with 911 would undoubtedly prejudice the jury. However, this is not the issue in the present case. Vic called 911 to report a battery on a domestic violence basis.

Thus, it is unlikely to be excluded by a judge.

Accordingly, the 911 phone call is relevant.

B) Secondary Evidence Rule:

The secondary evidence rule requires an original writing, recording, or other document type evidence to be produced in its original form when the contents of the writing are being proven. While the secondary evidence rule requires originals, duplicates that are made by reliable means, such as a photocopy, are acceptable as secondary evidence.

Here, the prosecution is attempting to prove Vic's statements in the phone call. Because the prosecution has introduced the recording itself, there would likely be no issues with the recording under secondary evidence.

C) Authentication

Evidence that is introduced must be authenticated to prove that is what the proponent purports it to be.

Here, the prosecution is claiming that Vic made the 911 phone call. Thus, to be admissible, the prosecution must authenticate the voice as belonging to Vic. This may be done by anyone who is familiar with or who has heard Vic's voice. While various individuals are present in court to authenticate Vic's voice, including Vic himself, the prosecution has not yet authenticated the phone call to determine the reliability of the statements as belonging to Vic. Because Vic is currently refusing to identify D in court, the statements contained in the 911 are important for

impeachment purposes. However, without first authenticating that the statements in the 911 call are in fact Vic's, the statements hold no merit.

Thus, Vic's voice was not properly authenticated.

D) Hearsay & Double Hearsay:

An out of court statement used to prove the truth of the matter asserted. When hearsay exists within hearsay, the statements cannot be admitted unless each of the hearsay statements must be admissible as non hearsay or as an exception to hearsay.

Here, the 911 phone call was made out of court, on Vic's driveway. The statements were further made by Vic, a declarant, while he was not on the stand in the current action. Furthermore, the statements are offered to prove that Deb battered Vic. Thus, they are hearsay. Furthermore, because the phone call itself is being offered, there is a double hearsay issue. Thus, the 911 recording must separately fall under a hearsay exception or exemption to be admissible.

Thus, there is a double hearsay issue presented by Vic's statements in the phone call and the phone call itself.

HEARSAY LEVEL 1 VIC'S STATEMENTS:

Admission by a party opponent:

Admissions or statements made by a party state currently in the action are admissible as non hearsay exemptions.

Here, the state is charging Deb for the alleged battery. As a result, it is questionable whether Vic's statements would be deemed a statement, since he is technically not a party. However, because he is the victim, and because the statements are the basis for the claims, they may be considered to be statements of the party.

Assuming Vic is considered a party or an agent of the state, the statements may be admissible as admissions of party opponent.

Circumstantial Evidence re: State of Mind:

Statements that evidence the declarant's state of mind may be introduced as nonhearsay evidence if they provide circumstantial evidence to support the alleged state of mind upon which a party seeks to assert. Here, the statements in the phone call may be used in conjunction with Vic's admission (that he called the 911).

Present Sense Impression/ Contemporaneous Statements

Statements made by declarant while perceiving or observing them. Here, the statements were made by Vic two minutes after he reported he had been beaten. The 2 minute lapse is a reasonable period of time for the delay, since it would be rather difficult to speak and be beaten at the same time. CA requires the statements to be made contemporaneously. Here, the 2minute lapse was likely contemporaneous, since he was likely still under the fear of being beaten again, and had no time to recover or feel otherwise.

Thus, likely admissible as contemporaneous statement.

Statement of then existing physical condition:

CA requires statement to be made for purposes of medical treatment. Further requires that the declarant be a child under 12. Here, Vic is not a child and the statements were not made to get medical treatment.

Thus, inadmissible.

Excited Utterance

Statement made under stressful conditions while declarant under the stress of the condition. Here, Vic claimed to have been beaten, and 2 minutes is sufficient time to be under the stress.

HEARSAY LEVEL 2: 911 CALL

Business Records:

Business records prepared in the regular course of business, regularly created by the business in the scope of employment, made by someone with a duty to prepare

such records, and made while the information was fresh in their minds.

Here, the phone call was not a record, but rather a recording. Furthermore, the statements contained in the records were made by Vic. Vic owes no duty to tell the truth. This makes the statements questionable. Furthermore, Vic while 911 recordings are regularly conducted activities of 911, they are not prepared by a specified individual. Instead, they are simply retained records.

Thus, inadmissible hearsay.

IMPEACHMENT:

Prior inconsistent statements made by a currently testifying witness may be used to impeach the witness. Furthermore, statements that are consistent with the testimony, as well as statements of former identification may also be used, provided the witness is testifying.

Here, Vic is testifying. He is refusing to identify Deb. Because the statements made in the phone call exist, and they contradict the current statements he is making, the phone call may be used as impeachment evidence as prior inconsistent statements. Furthermore, they identify Deb and are thus relevant.

THE 911 TAPE WAS INADMISSIBLE HEARSAY, BUT MAY BE ADMISSIBLE TO IMPEACH VIC'S CREDIBILITY.

2. SAM'S TESTIMONY

Relevance: (see rule statement above).

Sam is Deb's ex-boyfriend. His testimony is offered to prove that Deb is a violent person, which is a trait that is currently disputed.

Therefore, likely relevant.

CEC 352:

Unlikely any risk of prejudice, although a judge may consider Sam's 8 year gap of relations with Deb to be prejudicial on Deb's character.

Personal Knowledge:

To testify, sam must have personal knowledge and must be testifying upon what he personally knows, observed or previously perceived. Furthermore, he must testify to tell the truth.

Here, Sam's testimony is based upon his own beleif and experiences with Deb, while he was in a relationship with her. Thus, he has personal knowedlfge.

CHARACTER EVIDENCE:

Defendant must open the door to character. Character evidence is evidence that conveys a morajl judgement of the defendant's character.

Here, prosecution is offering sam's testimony to prove that Deb is a violent person. This is currently at issue, since the action is for battery. Furthermore, the testimony is offered to prove that Deb acted in conformity with her violent traits when battering Vic. Because these traits have not yet been introduced by the defense, the "door" was not open. The prosecution therefore improperly introcued Sam's testimony.

CONCLUSION: IMPROPER CHARACTER EVIDENCE.

Specific Instances of Conduct:

Once door is opened, character must be asserted by reputation or opinion testimony. On cross, specific instances of conduct may be introduced.

Here, Sam is not on cross. Furthermore, his testimony is referring to a specific instance with Deb upon which Deb threatened to choke him to death if he left her. This is imrpopper.

HEARSAY:

Sam's testimony is referring to a previous conversation with Deb. As such, the statmeents in Sam's testimony made by Deb are hearsay. Thus, they must be admissible to be included.

Statement by Party Opponent:

Here, the statements are Debs. She is the defendant in the action. Thus, admissible as a statement by party-opponent.

CONCLUSION Sam's testimony is improper character evidence.

3. COMPUTER PRINT OUT

Relevance:

Computer print out is offered by Deb to dispute Vic's statements, as well as dispute the charges brought against her.

Therefore, they are relevant.

CEC 352:

Unlikely prejudicial since they have little effect.

SECONDARY EVIDENCE:

Contents of the document are offered by Deb to prove that she was at work, rather tahn on the drive way battering Vic. The print outs are secondary copies, since they are print outs that have been mechanically created. Thus, they are admissible as secondary evdence.

AUTHENTICATION:

Doucments must be authetnicated to prove that they are what they purport to be. Here teh documents must be authenticated to show that they are Deb's work documnets and were created. Since Deb has not yet done so, the documents are not reliable at this time. This is highly necessary, since Deb very well could have accessed the computer from home. Teh records therefore do not show that she was in fact working on a computer from her work 20 miles away, as Deb has stated.

IMPROPERLY AUTHETNICATED.

COLLATERAL ISSUES:

Here, the print out is offered to prove that Deb was not at the scene of the accident.

However, the date and time is collateral to the entire claim. Only material representations are required to be produced. Here, the documents would not be required simply to show the date and time. Furthermore, they can be altered and therefore, Deb would be required to show a more credible basis to show that she was not at the scene of the incident.

DOCUMENTS SHOULD NOT HAVE BEEN ADMITTED WITHOUT AUTHENTICATION.

Question #2 Final Word Count = 1927

END OF EXAM