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PROP 8

In California criminal cases, all evidence is allowed in as long as it proves a fact is more likely than not. The evidence probative value has to outweigh its prejudicial value.

1. Did the court properly deny Dan's motion to suppress the photograph?

Line Up and Identification of Defendants

In CA normally line ups are not really allowed anymore given, the police sometimes can influence the witness of the crime scene. However when there are line ups or pictures are shown to witnesses, the defense attorney normally always has to be present to make sure there is proper police conduct and to make sure there is no bias. When pictures are shown the suspects shown all have to be different but have to have similar features.

In this case, Tessa was shown the photographs of the six men, with similar hair color, and mustaches. However, the men all appeared to be the same race, and age, normally the pictures have to at least have some diversity or some difference to them. Recall, Tessa said to the defense attorney that she saw men with black hair and no mustache rob the bank in February.

This is a huge issue because on cross examination Tessa admitted in court that she made a statement that the robber had black hair and no mustache. Tessa should have been shown men with black hair and not blonde hair given her original statement. The fact Officer Pat showed her only men with blonde hair and mustaches makes the photograph used against Dan here is fruit of the poisonous tree.

Fruit of the poisonous tree doctrine states that any tainted evidence can no longer come in and should be excluded.

When the court allowed in the photograph over the motion by defense counsel the court believed that the photograph was an accurate identification. However upon learning that the photograph came in tainted because originally Tessa had said something else to the detective the court should have completely excluded the photograph. The photograph can no longer be used against Dan. The photograph should have never been admitted into evidence when it was tainted since Tessa gave one statement to the investigator of defense in February 2023, and another to Officer Pat on April 2023.

Conclusion

As such the court erred in denying Dan's motion to suppress the photograph.

2. Assuming all objections were made timely did the court properly admit it under CA evidence code?

A. TESSA'S TESTIMONY ABOUT HER STATEMENT TO THE DEFENSE INVESTIGATOR

Hearsay

This testimony would be considered hearsay since it is an out of court statement made for the truth of the matter asserted.

When there is hearsay normally, the statements do not come in unless you have exceptions some common exceptions to hearsay are evidence coming in for motive, identification, Absence of mistake, excited utterance or statement against interest.

Identification Purposes (Exception to Hearsay)

In this case the court properly allowed the statement made by Tessa to the defense investigator because defense brought it in for identification purposes. Originally Tessa had identified that the robber had black hair with no mustache and then 2 months later she switched her story with Officer Pat.

Impeachment Purposes

Tessa's statement to the defense investigator can also come in to impeach her and question her credibility. As previously stated she originally stated she saw black hair on the robber and no mustache right after the incident in December and in April 4 months later, she was given photographs of men who had blonde hair and mustaches like Dan. Defense counsel can use her statement to impeach her credibility.

Conclusion.

The court properly admitted the evidence where Tessa spoke to the defense investigator because it should have been used for impeachment purposes.

B. THE PHOTOGRAPH WITH TESSA'S SIGNATURE

Best Evidence Rule

Normally the best evidence rule states that the original picture is the best evidence available.

Fruit of poisonous Doctrine (supra)

However as previously discussed the photograph is considered fruit of the poisonous tree since there is an issue to the validity of Tessa's identification since she identified one person to defense counsel investigator and gave another description to Officer Pat.

The photograph with her signature should not have been admitted given it was tainted and her credibility is at issue in this case. with her conflicting statements.

In CA law Prosecutors cannot use evidence they know is tainted its considered misconduct.

When the prosecutor used the photograph knowing there was an issue to the validity of it, it consisted of prosecutorial misconduct. A prosecutor cannot introduce any evidence to the court that it knows is tainted or fruit of the poisonous tree.

Conclusion

The court should not have admitted the photograph with Tessa's signature since it was tainted evidence given her conflicting statement.

C. THE ATM RECORDS

Prosecution brought in Credco which identified that there was a record that indicated a withdrawal was made from Dan's account the day before the robbery using a personal ID number.

Hearsay

Hearsay is an out of court statement brought in for the truth of the matter asserted.

Dan would argue that this is hearsay and it should not come in because there is nothing to identify that Dan was the one who actually made the transaction, the bank is just assuming Dan made the transaction without actual physical evidence he was there.

Prosecution would argue that this comes in under the business records

Business Records Exception to hearsay

Business records made during the regular course of dealing of a business are allowed in as an exception to hearsay.

The records would be considered business records since they were identified by Chet as being made during its regular course of business.

Probative v. Prejudicial value

When evidence is more probative than prejudicial it comes in but if it can confuse the jury or mislead them, it should not come in.

In this case, the evidence is prejudicial towards Dan, a business record does not identify more than that someone used his pin the day prior, there is no video evidence that it was actually Dan.

Conclusion

The court should not have admitted the evidence because its probative value here outweighs its prejudicial value.

Question #1 Final Word Count = 1033

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