FUNDAMENTALS OF
TRIAL ADVOCACY COURSE

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ADMITTING EVIDENCE

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ELIZABETH ORTIZ
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Who is Responsible for Getting Evidence Admitted Properly??

You,
the Prosecutor

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I Have Evidence, Now What?

Admitting Evidence
S. René Schenks
Deputy County Attorney
Maricopa County Attorney's Office
SEF Pretrial

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Evidence… is it *really* necessary?

- Evidence is how we prove each element of our case.
- Potential to corroborate witness' testimony
- Paints a picture of what occurred

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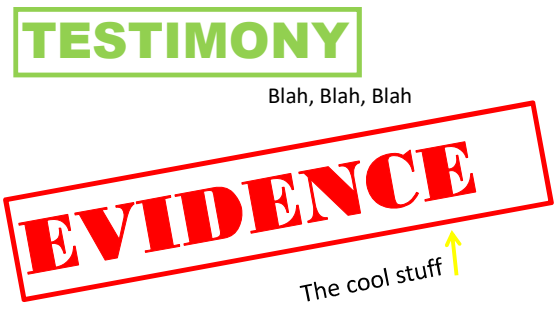

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Types of Evidence

- **Substantive Evidence:**
  - **jury gets in deliberations**
  - **IF PROPERLY ADMITTED**
- **All the OTHER Evidence**
  - **Utilized at Trial**
  - **Does not go back to deliberations**

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Types of Evidence

- **<u>Other Evidence</u> may be utilized at trial, and referred to in the record, but will *<u>not</u>* go back to the jury.**

i.e.

Demonstrative
Impeachment
Unredacted

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What is Evidence?

- Photographs
- Video
- 911 Calls
- Documents
- Lab Results
- Guns, knives, other weapons
- Bullets and Shell Casings
- Drugs
- Clothing
- Blood
- DNA
- Fingerprints
- Impressions (shoes, tires, etc.)
- Digital Evidence

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Trial Prep

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Step 1: Plan for Trial

- Elements—Jury Instructions
- What evidence do you NEED to get admitted?
- What demonstrative evidence maybe helpful or persuasive?
- Foundation—who will you need to establish your evidence is what you say it is?

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Step 1: Plan for Trial

- **Detail exactly what evidence you have to prove each element of your charges**
- **Who goes with which piece of evidence**
- **Meet with Case Agent <u>AND</u> view evidence in impound**
- **Create an Exhibit List**
- **Pare down photographs**
- **Make redactions**
- **Pre-trial discovery meeting with Defense Counsel**

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Trial Prep Form

<u>DUI OPENING FORM</u>

Defendant: _____ **Case Number:** TR _____
DOB: _____ **Priors:** _____
Defense Attorney: _____ **Email:** _____
Charge(s): _____
Arresting Agency: _____ **DR #:** _____
Date of Offense: _____ **Time:** _____
Location: _____ **Jurisdiction:** WEST MESA JUSTICE COURT _____
Collision: ☐Yes ☐No **Victim:** ☐Yes ☐No **Injuries:** ☐Yes ☐No (Describe: _____
Description of Driving/Actual Physical Control: _____

Witnesses: 1. **Officer:** _____ #_____
□Stop □Arrest □HGN □FSTs □DRE □Phlebotomist □Intox □QAS □Other: _____
2. **Officer:** _____ #_____
□Stop □Arrest □HGN □FSTs □DRE □Phlebotomist □Intox □QAS □Other: _____
3. **Officer:** _____ #_____
□Stop □Arrest □HGN □FSTs □DRE □Phlebotomist □Intox □QAS □Other: _____
4. _____ □Criminalist □Civilian
5. _____ □Criminalist □Civilian

Statements/Admissions: □ Yes □ Yes, then ***invoked*** □ No □ ***Invoked*** □ See below
□ Admitted drinking/using drugs: _____
□ Δ rated self on scale or described impairment: _____
□ Did Δ deny anything? □ No □ Yes (describe): _____
_____
□ Other (incl. DL status): _____
_____

Signs/symptoms of impairment:
□ watery eyes □ bloodshot eyes □ red eyes □ flushed face □ slurred speech
□ balance □ sway □stumble □ stagger □ disoriented
□ odor of intoxicating liquor: □ weak □ moderate □ strong □ chemical (drug) odor
□ Other: _____
□ FSTs performed □ FSTs refused □ agreed to perform, but unable to complete due to impairment.
□ HGN: _____/6 cues □ VGN: □ Walk/Turn: _____ cues □ 1 Leg Stand: _____ cues
□ Rhomb. Mod.: _____ cues □ Finger-to-Nose: _____ cues
□ PBT: time _____ reading _____%
□ DRE observations: _____
□ DRE conclusion: _____
Chemical Test(s): □ alcohol (retrograde? □ yes □ no) □ drugs
□ prescription □ vapor releasing substance
□ Breath: _____% at _____ hrs. / _____% at _____ hrs.
□ Blood: □ consent □ search warrant □ medical draw
result: _____% at _____ hrs.
drug: _____
□ Urine: result: _____

Offer:
_____

Dates: PTC 1: _____ PTC 2: _____ PTC 3: _____
SC: _____ Trial: _____

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Exhibit List & Witness List

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA, Plaintiff, vs. [redacted] Defendant.	))))))) NO. [redacted])) LIST OF STATE'S EXHIBITS AND LIST OF STATE'S WITNESS)) (Assigned to Roland Steinle))	

Deputy Maricopa County Attorney, S. René McGregor, submits the following exhibit list for trial.

1-79 Photographs

80 Aerial Photograph

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Step 2: Prepare for Trial

- Prepare to properly admit evidence
- Prepare ALL witnesses and victims
- Prepare exhibits

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Prepare to Properly Admit the Evidence

How Does One do *THAT*?

1. Establish Relevance
2. Lay the Proper Foundation
3. Overcome Objection

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Step 2: Prepare for Trial

<u>Relevance</u>

If the piece of evidence does nothing for you (hurt or help); do you really need it or want it?

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Step 2: Prepare for Trial

Foundation

- **Who do you need to identify the evidence?**
- **Who needs to authenticate it?**
- **Do you need to add additional witnesses to get evidence in?**

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Step 2: Prepare for Trial

Foundation

- **What type of evidence do you have?**
- **Which Arizona Rules of Evidence and/or statutory rules apply to your evidence?**
- **Are there multiple layers of hearsay?**
- **Do you have documents which are self-authenticating? Or, do you they require additional foundation for authentication?**

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Step 2: Prepare for Trial

Overcoming Objections:

Rules of Evidence

Article 8: Hearsay
Article 9: Authentication and Identification
Article 10: Contents of Writings, Recordings, and Photographs

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Step 2: Prepare for Trial

Prepare ALL your Witnesses

AVOID SURPRISES

- Let them know what you intend to admit in their testimony.
- May need to authenticate exhibits. Have them review prior to court outside the presence of the jury.

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Step 2: Prepare for Trial

Prepare the Exhibits

- Make any redactions
  - Both redacted and unredacted are admitted only the redacted go to the jury. Preserve your record.
- Exhibit List
- Get exhibits to clerk to mark

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Step 2: Prepare for Trial

Prepare the Exhibits

- Get YOURSELF organized
  - Make a list for each witness as to which exhibits you are going to use with them.
  - Get them exhibits ready prior to calling the witness if possible-don't make jury wait.
  - Group photos to quicker admission
  - Case Agent unseal evidence with defense to avoid any chain of custody issues.

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Step 3: Perform

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Step 3: Perform

The Dance:

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Step 3: Perform

The Dance:

1. **May I approach the exhibits**
2. **Showing Defense Counsel exhibit #__**
3. **May I approach the witness**
4. **I am handing you exhibit # __**
5. **Lay Proper foundation***
6. **State moves to admit exhibit # into evidence**
7. **Your Honor, State requests to publish exhibit #__ to the jury****
8. **Return exhibit to clerk**

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Step 3: Perform

Lay Proper Foundation:

To admit evidence we only need to establish that the evidence is what we purport it to be.

To accomplish this, we need to show 3 things:

1. **Recognition**
2. **Identification**
3. **Authentication**

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Step 3: Perform

Lay Proper Foundation:

1. **Do you know what this is? (recognition)**
2. **What is it? (identification)**
3. **How do you know what this is? (authentication)**

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Step 3: Perform

Lay Proper Foundation:

Exhibit is a representation of something else, or has been altered in any way since it was collected, a 4th clarifying question is needed:

Photo, Video, Diagram, or other representation:

4. Is this a fair and accurate depiction of _____?

For an altered exhibit:

4. Is this in the same or substantially the same condition as when you found it?

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Step 3: Perform

Moving to Admit the Evidence:

- **Be Powerful, not weak in your request.**
- **Keep your cool, this is when you will get your objections**
- Respond with confidence. You got this, because you already anticipated the objection and have your response ready.
- If asked for additional foundation. No biggie ask some more questions. Judge usually admits when satisfied. Defense still objects after judge being satisfied, because they still want more, ask what is missing.

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Step 3: Perform

Moving to Admit the Evidence:

- Keep record of what you have and have not admitted.
- Do not pass over a witness until all the evidence they are listed to get admitted has been admitted.
- Enlist a friend—case agent can keep track
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Step 3: Perform

Publish to the Jury

- Exhibits are useless if admitted, but jury doesn't see them.
- Put the exhibits in front of them and ask witness to explain it to the jury
  - Does this ring a bell??? 2nd and 3rd Pass
- When you prepared your exhibits you made a decision how to show this cool stuff to the jury

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Step 3: Perform

Publish to the Jury

- This is when you get to show them the cool stuff
- Let them look at it
- If you let them touch it—
  - shut it so they all can see it. They will not be listening to you while it is being passed around. With that they wont be listening to defense either.

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Step 3: Perform

Handling Evidence

- always wear gloves and have witness wear gloves dealing with physical evidence
- Have witness demonstrate weapon is in safe before giving to the jury.
- Don't point weapons at anyone, even if made safe.
- Weapons and ammunition separate, don't go back to jury at same time.
- Maintain chain of custody and evidence security during the trial and after

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Step 3: Perform

Give Exhibit Back to the Clerk:

- Don't keep the exhibits.
- They have to mark what is and is not admitted
- Collect them at end of day and make sure you don't have any
- Keep your clerk happy

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EXAMPLES:

- Group Photos
- Document
- 911 Call

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Common Objections

- Lack of Foundation
- Chain of Custody
- Prejudicial, Rule 403

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Practical Tips

- Stipulations
- Don’t need person that took photo
- Don’t need everyone in chain of custody link
- Pretrial rulings help with smooth admissions
- Witness view/hear prior to court

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QUESTIONS??

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Your Turn

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Thanks!

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