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1. Testimony of Wilma re: April 1 Phone Call**Relevance**

This information is relevant because it shows intent, motive, and state of mind of Vic. Relevance is defined in CEC 210 - the evidence must make an issue that is properly provable in the action more or less likely. Because this evidence shows that Vic and Dalbert had a contemptuous relationship, it makes the proposition that there was an altercation between them more likely, therefore it is relevant.

Hearsay

Hearsay is a statement made other than by a witness while testifying in the current trial offered to prove the matters stated in the statement. The proponent would want this evidence in, again, because it is relevant. The proponent would argue that it is hearsay, as it is a statement, made by Vic not during the current trial, offered to prove that Vic had the intention to get Dalbert, which is exactly what it asserts. In order to survive a hearsay objection the proponent would need to argue that this statement falls under an exception for state of mind. When a statement is offered to show the state of mind of the declarant, even if that state of mind is the truth of the matter stated, the hearsay is allowed. In this case, the statement makes clear the intent that Dalbert had, which was his state of mind. In addition, this could be considered an excited utterance. An excited utterance occurs when the declarant is responding to and emotionally stressful moment, and speaks while still laboring under said mental distress. In this case, because the facts suggest that Vic was emotional upset due to the phone call, this exception could apply. These statements are allowed because they have inherent guarantees of trustworthiness if sufficient evidence is shown to convince the judge that the statement was the result of a spontaneous reaction to emotional stress and not made with any ulterior motive to fabricate.

Prejudice

Because this statement is likely to make Vic look guilty in the eyes of the jury, it's possible that an objection on CEC 352 grounds would be appropriate here as well. If the opponent is able to convince a judge that the probative value of the statement is substantially outweighed by either a risk of confusing the jury or casting an undue level of prejudice, it will be kept out on those grounds. Because people get angry and make idle threats all the time, perhaps the probative value of this is not enough to outweigh its prejudice. Proposition 8, the truth in evidence amendment, gave the people a constitutional right to have relevant evidence included. However, the courts have well settled on the notion that not even the mandate of Prop 8 can prevent a judge from using a 352 analysis to exclude highly prejudicial evidence.

Confrontation

Because Vic is now dead, and is unavailable as a witness, it looks momentarily as though he accused's right of confrontation would be violated by using this testimony. However, because the court in *Crawford* ruled that confrontation rights are only violated when the hearsay is testimonial in nature, there does not appear to be a Crawford violation here. The Court in *Davis* ruled that in order for statements to be testimonial in nature, they must be made to law enforcement or other investigative personnel after an emergency is over, for the purpose of investigating past events, where the party making the statement and the officer or agent recording the statement are doing so in order to investigate what has already happened, not to alleviate or remedy an ongoing emergency. Because there is no testimonial statement here, there is no Crawford implication, and the statement does not violate the confrontation rights of the accused.

2. Cross exam of Wilma - Past Conviction Record

Relevance

This evidence is likely not relevant (supra). The crime involves moral turpitude, not physical violence, and is from eight years earlier. When evidence is not relevant, per CEC 350-351 and FRE 402, it is not admissible. It's possible an objection on relevance grounds would be sustained.

Hearsay

The document is also hearsay, defined supra, because it is a record of a "statement" that the court made at another time. However, it does not appear to be offered to prove the truth of the matter stated, so it is exempted from hearsay under both CA and Fed. rules. If it were offered to prove that Vic had been convicted for the earlier offence (if that were somehow relevant) it would survive a hearsay objection as an official record exception, under CEC 1280 and the federal rules. The document could be used to prove both the fact of conviction and the conduct leading to the conviction, and would self-authenticate as a certified copy of a court record. Indeed, the fact that he served only 30 days and 3 years probation is irrelevant, for although only felony convictions are allowed in official records, the determination is made based on the conviction, and not based on the length of time served.

Character

This document appears to be offered for a character purpose, which is to suggest somehow that Vic is a ~~dishonest man~~. Under CEC 1100 and FRE 404 evidence of one's character, in the form of personal opinions, community reputation, or specific instances of conduct is not allowed for the purpose of showing that conduct on a given occasion conformed to an underlying character trait. However, this is the character of the victim being brought into question, not the accused, so the victim's exception could be the only reason to use this. The victim's exception allows for the accused to use character evidence of the victim's reputation or opinion in order to show a propensity for violence, if the accused claims to have acted in self defense. However, that exception is limited to character traits for violence only, so this would not apply. Because the information is inadmissible character evidence, and is irrelevant, it's not likely to be admitted, and would not survive objection.

3. Dalbert's Testimony

Relevance

Because Dalbert is asserting that the victim was the aggressor, information regarding Vic's propensities for violence is relevant and should be admitted, subject to further objections.

Character Evidence

Defined supra, this is, on its face, inadmissible character evidence. However, again, defined supra, the victim's exception applies - and this time properly so - at least for Dalbert's first statement regarding vic's reputation in the community. Evidence of specific instances is not allowed as substantial evidence on direct examination, even for the victim's exception. Evidence of opinion and reputation only are permissible. The first statement would be allowed in under the victim's exception, and if the other two statements were made, the opponent would be entitled to have the judge instruct the jury to consider only the permissible portions of dalbert's statement.

4. Dalbert - Vic was a "known drunk," etc.

Relevance

This statement is relevant because it shows that the victim was intoxicated on the event in question, and it is common knowledge that drinking is commonly associated with violent

behavior. It is also probative of the possibility that Vic's heart attack was the result of an aggravated underlying condition, and not solely Dalbert and Vic's altercation.

Habit

The CEC s1105 defines habit evidence as evidence of a person's tendency to always respond to a certain situation or stimulus in exactly the same way. Habit is considered more reliable than character evidence, hence it is not banned by the same policy that excludes character evidence. It is permitted to show that on a given occasion a person acted in conformity with a habit. In this case, because Vic "always drank a case of beer every fourth of July" the statement made indicates the presence of and conformity with a habit and a character trait.

Character Evidence

The statement that Vic is a "~~known drunk~~ is inadmissible character evidence. It is a statement of opinion regarding the victim's reputation, but is not allowed under the victim's exception as it does not speak to a propensity for violence. The proponent could object on character grounds, which would be sustained for the first portion of the statement. The second half of the statement, mentioning habit, would be allowed subject to an instruction that the jury only consider the evidence for its habit purpose and not for a non-permissible character purpose.

5. Prosecution offer's dalbert's conviction

Relevance.

It is objectionable that this evidence is not relevant. It speaks to a 3-yr. old incident, is for a much less serious crime, and half of the information doesn't even speak to any violent propensities on the part of the accused. It is likely that a relevance objection, at least to the part regarding the marijuana possession, would be sustained. *BUT IS AN ASSAULT*

Impeachment

This document would constitute an out of court statement (a prior judgment), but is probably not offered for a hearsay purpose. Rather than being offered to prove the truth of the matters stated, it is probably being used to impeach the witness's credibility, which would require that it involve a crime of moral turpitude. Instead, it is merely a specific instance of past bad acts, which in this case would not be permitted under any character exception or non-character purpose. If the accused had made use of the mercy rule, which under the CEC allows the accused to offer evidence of character to show that *he is not* predisposed to the crime charged, he would have "opened the door" to this type of evidence, but he did not do that - nowhere did Dalbert offer favorable evidence of his character.

Prejudice

As mentioned supra, CEC 352 permits an objection where the evidence is simply more prejudicial, wasteful, or confusing than it is probative. Because this evidence is probative of very little, and highly prejudicial, it would likely be barred on those grounds and a 352 objection would be sustained.

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Officer Friendly's Testimony

Relevance

Relevance is defined in rule 401 of the FRE, as tending to make a proposition that is properly provable in the action more or less likely. The testimony is relevant because it sheds light on the the cause of the accident and who was at fault. Therefore, pursuant to FRE 402, it is inherently admissible, as long as it survives other objections.

Hearsay - Statement re: his boss

Hearsay is a statement made other than by a witness while testifying in the current trial offered to prove the truth of the matter stated. In this case, the statement would be admitted as an **opposing party admission**. Because the statement was made by a party to the case, the main concern of the hearsay rule, that the declarant will not be available to explain or defend their statement, is a moot point. An opposing party admission is any statement made by the opposing party, it need not technically be an admission per se. In cases of vicarious liability, when the declarant is in the scope of duty and employment, they represent their employer, and their admissions are automatically considered **authorized** admissions by the law.

ADMISSION
NOT HEARSAY
UNDER
FRE

Charlie's statement, also ends up being a **prior inconsistent statement**. Because he testifies that he was on his way to donate blood, if this statement by the officer is offered to impeach Charlie's statement, it would come in under that exception as well, which provides for inconsistent statements by the witness to be used to impeach the witnesses testimony if he offers a conflicting statement to the court.

Hearsay - Paul's Statement

Defined supra, Paul's statement is also potentially hearsay, however the proponent could argue that it is not offered for the truth of the matter asserted, but is offered instead to show Paul's **state of mind**, which is that he was obviously shaken up, and perhaps very injured.

Statements of the declarant's state of mind are considered non-hearsay when offered not for the truth of the matter stated. In addition, if Paul's statement of having no memory of the accident was to be objected to on hearsay grounds, the proponent could argue that it was a **spontaneous utterance, or excited utterance**. This type of declaration is made when the declarant is either laboring under the emotional distress of an immediately preceding dramatic event, or while the witness is currently perceiving or participating in an event or occurrence. The statement is deemed more reliable because in the circumstances show that the declarant could not have fabricated or pre-planned the words in the statement, due to its spontaneous nature.

Character Evidence/Habit

Because Charles' statement includes a reference to his Boss' drinking habits, this would be considered evidence of character, in the form of Charles' opinion about his boss's character traits. Generally, character evidence, per FRE 404(a), is not allowed to show conformity of conduct with a given character trait on a given occasion. Because this evidence is appeared merely to explain Charles' actions, and not to show conformity with character on the part of his boss, it would probably be considered being used for a **non-character** reason under FRE 404 (b).

Paul's Testimony

Relevance

The information is relevant because it sheds light on who was at fault.

Multiple Hearsay

Paul's statement contains multiple hearsay. He first mentions a police report, which would be one level of hearsay, but then mentions what a witness said to the police, which is a second level of hearsay. Bea Bystander's statement does not fall under an exception to the hearsay rule. It is not an excited utterance, present sense impression, or contemporaneous statement, as all of those require that the statement be made either during or immediately following the event that inspired the statement. It is also not a statement of identification as it does not identify a person, only a truck which could've been driven by anybody. Hence, a hearsay objection to

Paul's statement regarding the police report would be sustained, because multiple hearsay requires an exception for each level of hearsay in the statement. Even though the **business records** exception would likely provide for Paul to read relevant sections of the report into evidence, it does not allow for hearsay within the report unless that hearsay is itself subject to its own exception. Because there is no exception for Bea's statement, the entire statement is barred.

Settlement Offers

Because public policy encourages the offer of settlements in order to increase the efficiency of our legal system, evidence of **settlement offers** when used to prove liability is banned. Notice that Windows did not apologize or admit fault, he only offered to pay Paul's bills. Even though the offer was not necessarily made during a bona-fide settlement negotiation, such unsolicited humanitarian offers to pay damages are also protected under this policy. Therefore this evidence would be barred and an objection sustained.

BILLS
ACROSS
PMO

Windows and Charles' Testimony

Relevance

It could be argued that this information is not relevant per FRE 401, and therefore inadmissible per FRE 402. Both statements are probative in the sense that they are inconsistent with previous testimony. Windows' statement regarding refraining from alcohol is relevant only to impeach the credibility of the testimony offered by Charles. Charles' statement is relevant in the sense that it is not consistent with the testimony offered by Friendly, so it may setup the use of the Friendly testimony as a prior inconsistent statement. As well, Charles' statement is probative of whether he was operating vicariously or on a frolic and detour. Neither statement would be allowed substantively as favorable character evidence, as there is no mercy rule for civil cases. However, the accused is allowed to use favorable evidence of his character if the opponent "opens the door" by impugning the witness's character. Depending on what order this evidence is entered, that could've been the case here, the evidence could be allowed as character evidence to defend their character.

Prejudice

This is a good example of prejudice going "the other way" - here, the two attempting to offer evidence that paints them as 'saints' of the community in good moral standing is an attempt to appeal to the emotional weaknesses of the jury. An objection under FRE 403 - that this evidence is attempting to unfairly prejudice the defendants in a favorable weight, thereby prejudicing the plaintiff negatively - could be sustained as the probative value of these statements is very low. They could simply be lying.

END OF EXAM