

Evidence in criminal trials

Judge Josh Herrera

El Paso County

Pct. 3

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Funded By A Grant From The Texas Court Of Criminal Appeals

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Resources:

Texas Rules of Evidence

www.tjctc.org

- Deskbooks, Forms, Charts, and Checklists
- Legal Question Board and Legal Calls
- Recordings and Self-Pace Modules

www.sll.texas.gov/legal-help

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- How many criminal jury trials have you presided over?
 - (A) 0-4;
 - (B) 5-9;
 - (C) 10+

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What is evidence?

Any testimony, documentation, or material object
presented to establish facts in court

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Types of evidence in criminal cases

Physical Evidence

Tangible Evidence

Documentary Evidence

Written or recorded items
(contracts/texts)

Testimonial Evidence

Oral statements made under oath by
witnesses or defendant

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Types of evidence in criminal cases

Digital Evidence

Phone records, surveillance, computer files

Exculpatory Evidence

Evidence that favors the defendant and can prove innocence or mitigate guilt

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Discovery, TRCP § 39.14

Texas Code of Criminal Procedure § 39.14, often referred to as the **Michael Morton Act**, governs the discovery process in criminal cases. The purpose of this article is to ensure **fair disclosure of evidence** between the prosecution and the defense, enhancing transparency in criminal trials.

This law was passed in 2013 as a response to wrongful convictions, including the high-profile case of **Michael Morton**, who was wrongfully convicted and exonerated after serving 25 years.

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Discovery, TRCP § 39.14

Obligation of the Prosecution to Disclose:

The prosecution ***must*** provide the defense with any **evidence that is material to the defense's preparation** (documents, witness statements, reports, photographs, and any other material that is relevant to the case).

Exculpatory Evidence

Article 39.14 mandates the disclosure of **exculpatory evidence**—any evidence that may be favorable to the defendant. This aligns with the **Brady Rule** (from *Brady v. Maryland*)

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Discovery, TRCP § 39.14

Timely and Ongoing Disclosure

The prosecution shall disclose evidence as early as possible, and the duty to disclose is **continuous**. If new evidence becomes available, it must be disclosed to the defense immediately.

Defense's Right to Inspect and Copy Evidence

allows the defense to inspect, copy, photograph, and reproduce materials in the possession of the prosecution.

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Discovery, TRCP § 39.14

- **Restrictions on Disclosures of Certain Sensitive Materials**

- There are some limitations, such as protecting personal identifying information of victims or witnesses. The court may also issue protective orders to restrict how certain sensitive materials are handled to prevent misuse.

- **Protection Against Undue Surprise**

- The discovery process under 39.14 ensures that there are **no surprises at trial**. Both the prosecution and defense have the opportunity to examine the evidence

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Discovery, TRCP § 39.14

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Defense's Right to Inspect & Copy Evidence

allows the defense to inspect, copy, photograph, and reproduce materials in the possession of the prosecution. This gives the defense the ability to properly prepare for trial.

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Discovery, TRCP § 39.14

- **Protection Against Undue Surprise**

- The discovery process under 39.14 ensures that there are **no surprises at trial**.

- **Restrictions on Disclosures of Certain Materials**

- There are some limitations, such as protecting personal identifying information of victims or witnesses. The court may also issue protective orders to restrict how certain sensitive materials are handled to prevent misuse.

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Evidence is relevant if:

- (a) Evidence is relevant if it has a tendency to make a fact more or less probable than it would without the evidence; and
- (b) The fact is of consequence in determining the action

It must help prove or disprove a key fact in the trial

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Excluding relevant evidence for prejudice, confusion or other reasons

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following:

Unfair prejudice

Confusion of the issues

Misleading the jury

Undue delay

Needlessly presenting cumulative evidence

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Example No. 1

Prosecutor Paydirt Pete learns that his complaining witness was arrested the day before trial for burglary of a vehicle and doesn't tell the Defense counsel.

At the trial, the arrest is not mentioned, and the jury begins to deliberate. As the jury deliberates, the witness asks the defense attorney for his card because of the arrest.

The defense attorney confronts the prosecutor about this issue and the prosecutor says, "Well you didn't bring it up, so why would I?"

What issues do you see? What do you do?

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Example No. 2

In a trial for a speeding ticket, ADA Chico Chihuahua calls Defendant Dante's ex-girlfriend to testify. She says she was in the car with him, but didn't know how fast he was going. She also says that he's a low-down dirty cheat and likes to drink until he's blue in the face.

Is this testimony admissible?

Why or why not?

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Personal knowledge,
TRCP 602

Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that a witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

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When one may not be required to testify:

- Attorney-Client Privilege
- Spousal Privilege
- Communications to Clergy Member
- Physician Patient Privilege

There are limitations in each privilege
(furtherance of a crime)

- **(a) Character Evidence.**
 - **(1) *Prohibited Uses.*** Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.
 - **(2) *Exceptions for an Accused.***
 - **(A)** In a criminal case, a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it.

- **(b) Crimes, Wrongs, or Other Acts.**

- **(1) *Prohibited Uses.*** Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

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Example No. 3

During a trial in which Norman is accused of theft, Prosecutor Perry calls Knowitall Nancy to testify as a witness. Nancy says, "I've known him in since middle school. We used to always call him sticky fingers because he would take stuff that wasn't his. I think he was actually convicted of burglary a couple of years ago."

Is Nancy's testimony permissible? Why or why not?

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Hearsay

Hearsay is a statement that

- The declarant does not make while testifying at the current trial or hearing; and
- A party offers in evidence to prove the truth of the matter asserted in the statement

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Hearsay

Statements that are not hearsay:

- A declarant witness' prior statement; and
- An opposing party's statement (or made by a person who the party authorized to make)

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Hearsay Exceptions TRE (24)

Excited Utterance

Statements by party opponent

Business records

Present Sense Impression

Recorded recollection

Public records

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Example No. 4

Speedy Gonzales is on trial for speeding.

Officer Busted Benny testified that when he pulled over Speedy Gonzales, Speedy's girlfriend said, "Officer, I told him not to speed but he doesn't listen to me."

Is this hearsay?

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Example No. 6