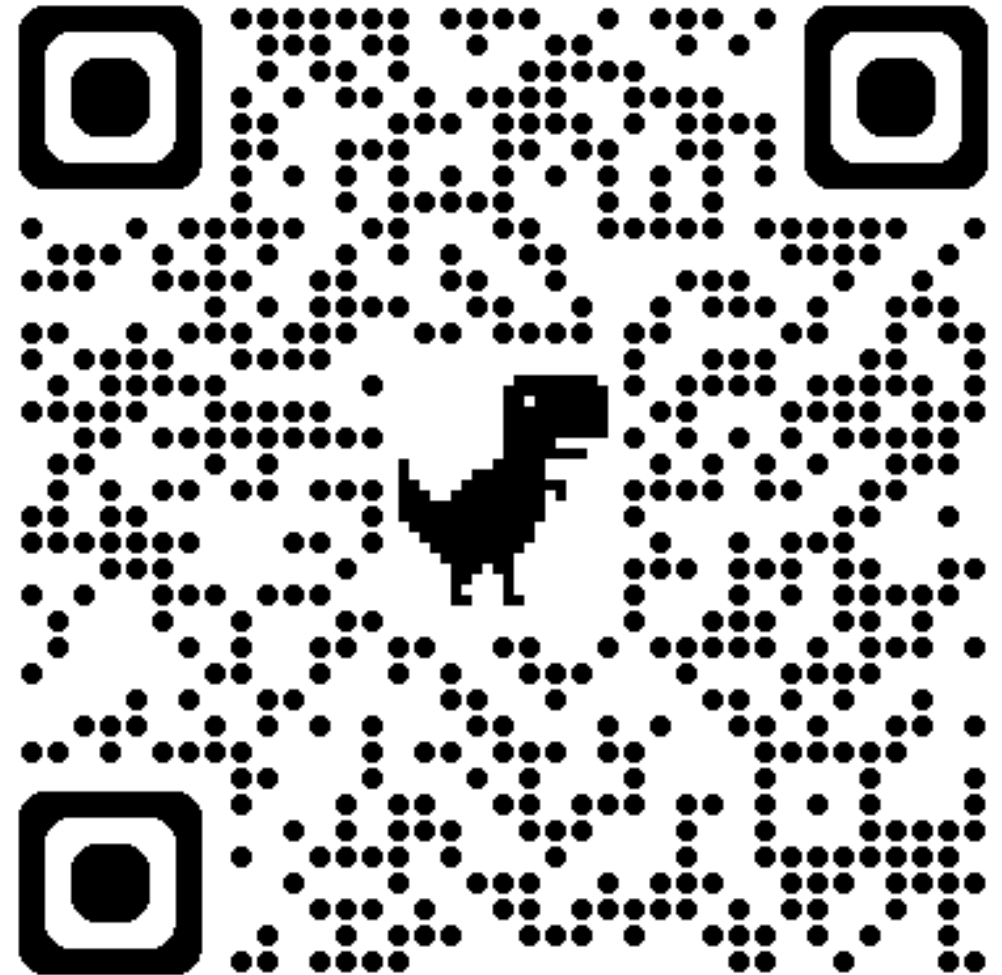


Video Evidence in Motions and Trial

Michelle Rutherford

Traffic Safety Resource Prosecutor

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AGENDA – Using Video Evidence in Motions and Trial



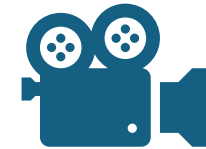
Preparation of Exhibits



Laying Foundation



Dealing with
Common Objections



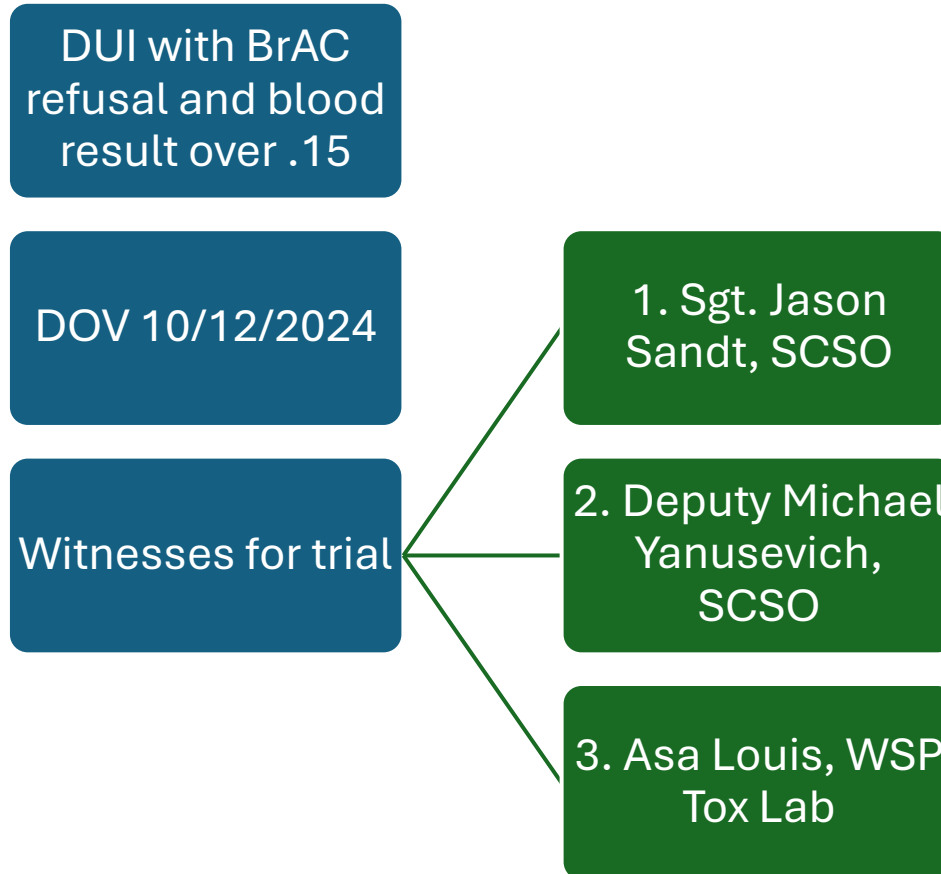
Presenting Video
Evidence in Court

Pretrial Media – ER 1101

(c) When Rules Need Not Be Applied. The rules (other than with respect to privileges, the rape shield statute and ER 412) need not be applied in the following situations:

(3) Miscellaneous Proceedings. Proceedings for extradition or rendition; detainer proceedings under RCW 9.100; **preliminary determinations in criminal cases; sentencing, or granting or revoking probation**; issuance of warrants for arrest, criminal summonses, and search warrants; **proceedings with respect to release on bail or otherwise**; contempt proceedings in which the court may act summarily; habeas corpus proceedings; small claims court; supplemental proceedings under RCW 6.32; coroners' inquests; preliminary determinations in juvenile court; juvenile court hearings on declining jurisdiction; disposition, review, and permanency planning hearings in juvenile court; dispositional determinations related to treatment for alcoholism, intoxication, or drug addiction under RCW 70.96A; and dispositional determinations under RCW 71.05 and 71.34.

CASE EXAMPLE - State v. Alexander 24-17718



CASE EXAMPLE - State v. Alexander 24-17718

BASIC FACTS - BAD DRIVING

- Nearly striking marked patrol veh when making wide right turn
- Weaving within lane
- Driving without headlights (halo lights on)
- Said he thought veh had automatic lights - did not deny driving without lights

CASE EXAMPLE - State v. Alexander 24-17718

BASIC FACTS – EVASIVE BEHAVIOR

- Slows down to 30 on HWY 99 to refuse to pass Sgt. Sandt
- Slow to pull over, passing multiple parking lots (siren used)
- Swerving within lane while Sgt behind
- Only cracking window on initial contact
- Has to be ordered to get out of the car

CASE EXAMPLE - State v. Alexander 24-17718

BASIC FACTS – Observation of HBD

- Fumbled for license (on BWC)
- Lethargic movement (registration/ins) and cannot grasp it
- Slurred speech

- Odor of intoxicants
- Droopy half-closed eyes, watery/bloodshot
- Using car for balance when exiting

CASE EXAMPLE - State v. Alexander 24-17718

BASIC FACTS – BAC

- Denied drinking at all - ethanol on breath and in blood
- Refused to speak with Deputy once outside the car
- Refused Breath Test after ICW
- .22 BAC 2.5 hours after traffic stop

CASE EXAMPLE - State v. Alexander 24-17718

TIMELINE

- DOV 10/12/2024 - 23:50 – Sgt. Sandt observation of driving
- 23:53 - traffic stop in Bud Hut parking lot
- 10/13/24 - 0001 hours - Deputy Yanusevich arrives on scene
- 0005 hours - Arrest
- 0007 hours - MIR warnings in field
- 0051/0052 hours - MIR warnings at station
- 0053 hours - attorney contacted at jail
- 0111 hours - ICW at jail
- 0212 hours - SW granted
 - —D Spontaneously offers that he is not consenting to a blood draw
- 0228 blood draw at Snohomish County Jail - 2.5 hours after ceased driving

CASE EXAMPLE - State v. Alexander 24-17718

BASIC FACTS – Inadmissible

- D on bail/conditions for pending Murder 2
- Made statements to SCSO that his lawyer told him not to talk to police
- Spontaneously stated he is not consenting to blood draw
- On EHM and living at a sober house on DOV
- Later stated to sober house counselors that he wasn't driving, was just sitting in parking lot when racist police racially profiled him

CASE EXAMPLE - State v. Alexander 24-17718

ISSUES

Super short investigative timeline / Limited “affected by”

SFST refusal - Deputy didn't ask D about fields, narrative is misleading

BAC refusal - D refused to respond verbally

Agency case number correction on tox report / foundation

Defense notes intent to use NTSHA manual and ARIDE guide

CASE EXAMPLE -
State v. Alexander
24-17718

DEFENSE THEORY OF CASE



Deputy Sandt is lying about D driving w/o headlights and using only "Halo" lights

Bud Hut Video used by defense at
3.6 motion

BUD HUT Surveillance Video

- Obtained by defense investigator pretrial
- No authentication statement provided
- Offered by defense at CrRLJ 3.6 motion to challenge traffic stop

On October 12, 2024, at approximately 2350 hours, I was traveling northbound on HWY 99 near Gibson Rd. As I was in the left lane approaching the intersection, I observed a black Dodge Charger bearing CA/9FRT691, make a right turn from Gibson Rd onto northbound HWY 99. As it did so, the front of the vehicle came into my lane of travel causing me to slightly swerve to the left to keep from hitting the vehicle. I also noticed the vehicle did not have its taillights or headlights on. The only light emitting from the vehicle were the halo lights (in the headlights).

10-12-2024 Sat 11:53:35 PM

Parking Sout

Pretrial Preparation

Media Notes

Digital Exhibits List

Redactions

Witness Prep

Making & Using Media Notes

Formatting

Uniform formatting

Note

Note important details

- File names,
- Date & time stamps,
- Total video length

Flag

Flag Important content

- Incriminating statements, bad driving, poor coordination
- Constitutionally significant events: traffic stop, formal arrest, Miranda
- ER 404b or ER 403 content

TIME	SPEAKER	DESCRIPTION	NOTES
Axon_Body_3_Video_2024-10-12_2353_X60A9872Q.mp4		DEPUTY SANDT BWC	
00:00 on video		BWC starts with Deputy in car	START 10/12/2024 - 23:53 hours No audio Appears light bar already on
00:21		Traffic stop, deputy puts veh in park	
00:24		Deputy exits patrol car	
00:29		Audio on First view of D's car	SNAPSHOT 23:53:47 hours
00:39		At window	D FUMBLED FOR LICENSE

00:39		At window	D FUMBLED FOR LICENSE
01:00		Dash lights go off and light back up about a second later	D turns car off? 23:54:16 on Sandt BWC (1:00 min into video) Dash lights flash and come back on briefly. Go back off at 1:45 or so without D touching it. D TURNS LIGHTS OFF (Visible on Bud Hut Video at 11:54:16). They stay off after that.
01:10	Sandt.	Hello, Sgt Sandt with the Sheriff's Office Can you roll that window down a little more so I can talk to you unproperly? I appreciate it man Jamel? Hi, uh, being audio and video recorded... the reason I stopped ya ... you have no lights on	
01:30	Jamel	D saying the car has automatic lights	D gestures toward switch but doesn't touch it at all
	Sandt	Is this your car	
	Jamel	Yes it is	
	Sandt	Do you got the registration and insurance on ya	D looks toward glove box in a rental. Doesn't find docs.

		D asks for permission to reach for glove box	
	Sandt	Go ahead, sorry, thanks for asking	
		unintelligible	
	Sandt	Say again	
	Sandt	Mmm kay... Is this a rental or is it registered to you	
	Sandt	Okay, it's a rental. That makes sense then b/c of the California plates	
02:25	Sandt	You lives on Oakes? Okay Have you had anything to drink tonight	D DENIES DRINKING
	Sandt	Nothing whatsoever?	
	Sandt	Confirms address confirms denial of drinking? Any reason why I can smell something coming out of the car?	
02:55		Deputy goes back to patrol car	STOP

BWC – SGT SANDT



02:55		Deputy goes back to patrol car	STOP
03:16	Sandt	On radio - "I need another, possible DUI"	
04:16		Another Dep on scene, talks to scene at Sandt's car •There's 2 in there. It's a rental	
	Deputy	Are they drunk	
		Sant describes slow roll. Initially stopped him for no lights. Kinda weaved. When I saw him I slow down, when I slow down, he would slow down. Had to get into turn lane just to let him pass.	NOTHING ABOUT D ALMOST HITTING HIM LOCATION WRONG

10:12		Yanusevich walks up to D's car	START
10:40	Yusenevich	Go ahead and step out for me	<i>D leans and car and not very steady</i>
11:18		D Standing at back of the car	STOP
11:34	D	Saying he was told not to speak to any law enforcement at all	
11:40		ARREST	

BWC – SGT SANDT



11:18		D Standing at back of the car	STOP
11:34	D	Saying he was told not to speak to any law enforcement at all	
11:40		ARREST	
12:22		Yanu - Trying to get information about passenger to avoid tow. D stays silent	
12:52		Sandt contact with passenger They tell passenger that Jamel won't give talk to them to see if passenger can take the car. They kick passenger out. Sant engages with passenger about D's belongings. Passenger tries to talk to D. Passenger has keys D won't tell Sandt if he even wants wallet or phone.	
18:25		Passenger asks LE to ask D again about the car	
		Sandt and Deputy chat.	

BWC – DEPUTY YANUSEVICH

Media Notes

Axon_Body_3_Video_2024-10-13_0003_X60A9860S.mp4		DEPUTY YANUSEVICH BWC	
00:00		Deputy getting filled in by Sandt.	[Sandt has audio.
00:30		Deputy begins approach to D	Audio on
00:48		Is there any reason your lights are not on? no	[car already off, not running anymore or lights went off already on bud hut video]
		When is the last time you had alcohol to drink?	
		Getting D out of car	BWC doesn't catch stumbling. Sandt video is better.
02:05		I was told by my attorney not to speak to any law enforcement at all	No request for FSTs - arrested

BWC – DEPUTY YANUSEVICH



Making & Using Media Notes

- Understand what is important in each clip (Plaintiff/Defense)
 - Corroborate testimony
 - Show thorough investigation
 - Set up future impeachment
 - Provide context for alleged crimes
 - Personalize witnesses
 - Show plaintiff is not hiding “bad facts” – embrace the “warts”

Making & Using Media Notes

Compare vantage points and audio quality from multiple clips

- Axon sync feature
- Axon transcript feature

Resolve factual disputes, if possible

- * **Did BWC resolve “bud hut” video issue?***

10-12-2024 Sat 11:53:35 PM

Parking Sout

2024-10-12 23:53:47 -0700
AXON BODY 3 X60A9872Q



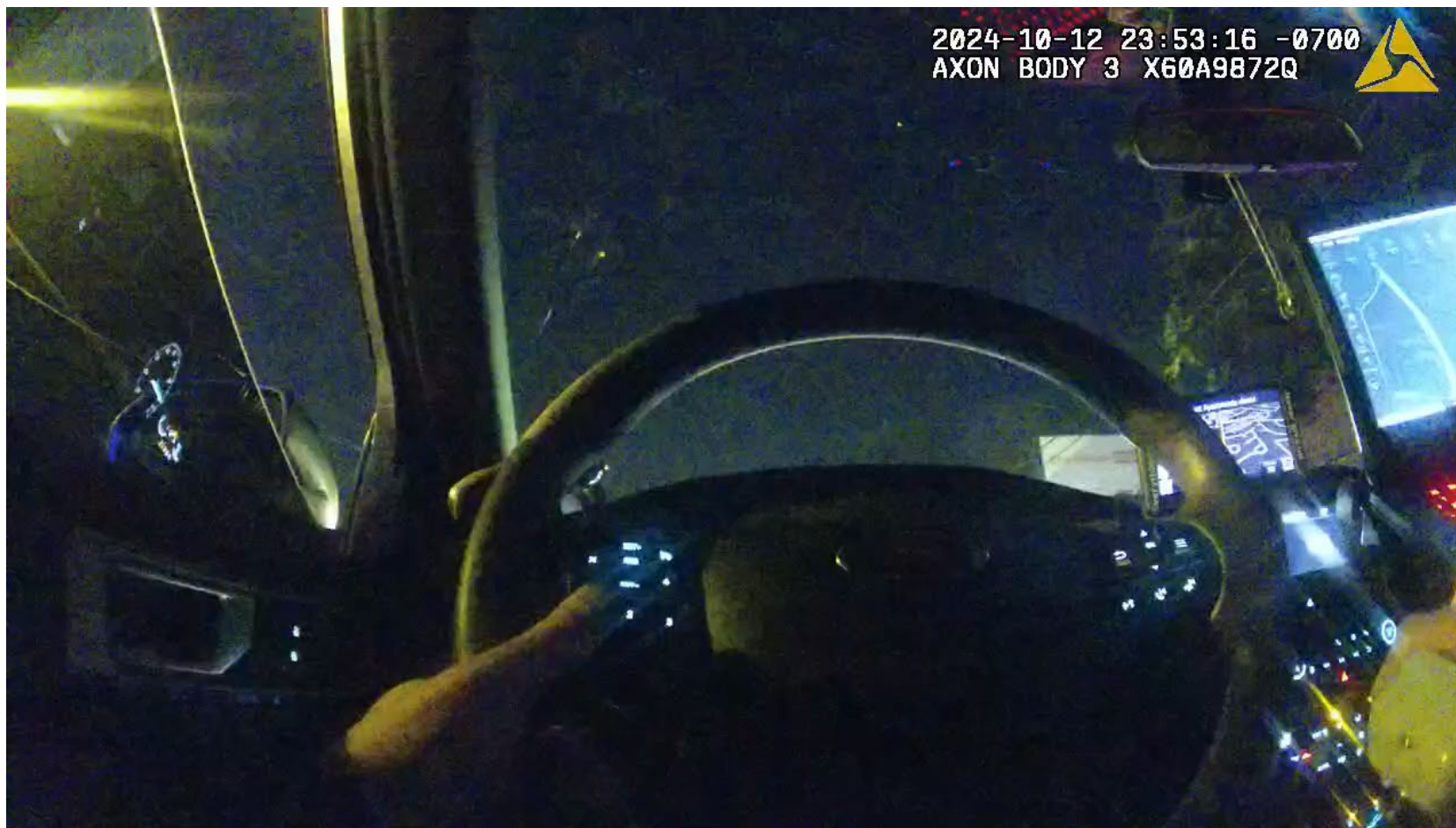
10-12-2024 Sat 11:54:17 PM

Parking Sout

2024-10-13 00:03:26 -0700
AXON BODY 3 X60A9872Q



BWC – SGT SANDT



Digital Exhibits List

Uniform formatting

Bold items to offer into evidence

EXHIBIT #	DESCRIPTION	WITNESS	OFFERED	ADMITTED
	Sgt Sandt BWC			
	Bud Hut Still 10/12/24 11:53:35 (traffic stop, lights on)			
	Still Sandt BWC Still 10/12/24 23:56:47 (back of car lights)			
	Bud Hut Still 10/12/24 11:54:17 (lights off)			
	Still Sandt BWC Still 10/13/24 00:03:26 (Y walking up, back of car lights)			

EXHIBIT #	DESCRIPTION	WITNESS	OFFERED	ADMITTED
	Sgt Sandt BWC			
	Bud Hut Still 10/12/24 11:53:35 (traffic stop, lights on)			
	Still Sandt BWC Still 10/12/24 23:56:47 (back of car lights)			
	Bud Hut Still 10/12/24 11:54:17 (lights off)			
	Still Sandt BWC Still 10/13/24 00:03:26 (Y walking up, back of car lights)			
	Still Sandt BWC 10/13/24 00:13:08 (Passenger hands over keys)			
	Deputy Yanusevich BWC			
	Still Yan BWC 10/13/24 01:12:38 - ICW			
	Still Yan BWC 10/13/24 02:20:47 - blood vial unfilled			
	Still Yan BWC 10/13/24 02:28:48 - blood draw			
	Still Yan BWC 10/13/24 02:20:57 - box for vials with lot #			
	Narrative Sandt			
	Narrative Yanusevich w/ packet			
	Supplement Yanusevich			
	MIRANDA FORM			
	REDACTED MIRANDA FORM			
	ICW			
	REDACTED ICW			
	RN Credentials Cecilia Onuegbu			
	Photo of blood vials			
	Amended Tox Report 12/17/24 (case #)			
	Request for Analysis			
	Certificate of Compliance			
	Chromatograms			
	Tox Lab chain of custody			
	Tox Lab Amended Test Report Nonconformance Review Record			
	CAD log			
	Warrant Package			
	Prior DUI conviction Record			
	NHTSA Manual			



Washington State
OUR ARREST REPORT

IMPLICIT CONSENT WARNING FOR BREATH

I understand that I am being arrested and that I am being asked to provide a breath sample for alcohol testing. I understand that I have the right to refuse to provide a breath sample and that my refusal will result in my arrest and the filing of a criminal charge against me. I understand that I have the right to stop at any time. I understand that I am being asked to provide a breath sample as a condition of my release from custody. I understand that I am being asked to provide a breath sample as a condition of my release from custody.

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PROSECUTOR'S OFFICE
FELONY RECORDS FAX
(425) 388-3883
(All Adult Felony -
Deadlines)

ATTENTION

ALL LAW ENFORCEMENT OFFICERS
USE OF DRUG RECOGNITION
EXPERTS (DRE'S)

INS



ALL IN THE LINE
... ..
... ..
... ..



2024-10-13 02:28:48 -0700
AXON BODY 3 X60A9860S



Redactions & Witness Prep

Know

Know whether jury will have ability to play in jury room

- May need to create redacted video
- Save on separate CDs or Thumb Drives by Exhibit #

Mark

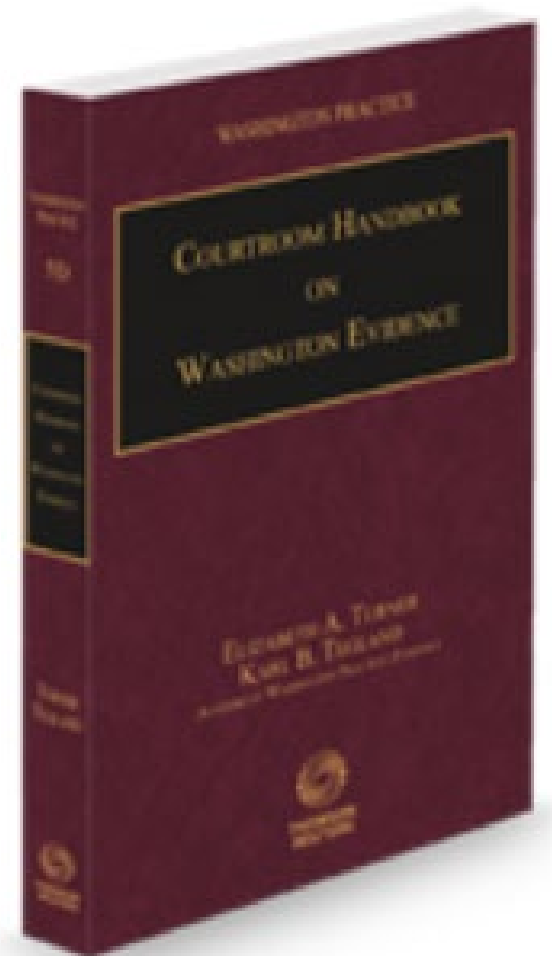
Always mark an unredacted version as well

Go through

Go through exhibits and redactions with witnesses in advance

Useful Resources

- Tegland's Courtroom Handbook on WA Evidence
 - Master Checklists on Foundation
 - List of Evidence Rules
 - List of Objections



Laying Foundation

Did you
previously view
Exhibit #1

Fair and
Accurate copy
of _____

Dealing with Common Objections

Privacy Act: RCW 9.73.090 (ICV) & RCW 9.73.070 (911 audio)

ER 801-804: Hearsay

ER 901: Authentication

ER 401-403: Prejudice, Confusion, Waste of Time

ER 106: Rule of Completeness

Confrontation

ER 404: Prior Bad Acts

Select the Best Response



Reject the premise – erroneous factual assertion by defense



Point of lack of legal authority – erroneous legal assertion by defense



Indicate you do not need to be heard – obvious nonsense



Offer to ask additional questions – fix actual issue



Make and offer of proof – educate court

Evidence Rule 104 – Preliminary Questions

(a) Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of section (b). In making its determination it is not bound by the Rules of Evidence except those with respect to privileges.

(b) Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

Presentation in Court – The Basics

Making the
Record
Complete

Digital vs.
Hard Copy

Hard Drive
vs. Marked
Exhibit

Presentation in Court – The Content

Knowing when during testimony to play video and how to break up long video

- Media notes can determine natural breaks / sections
- Separate video files should be individual exhibits
- Advance narrative chronologically if possible
- Alternating about every ~ 8 minutes

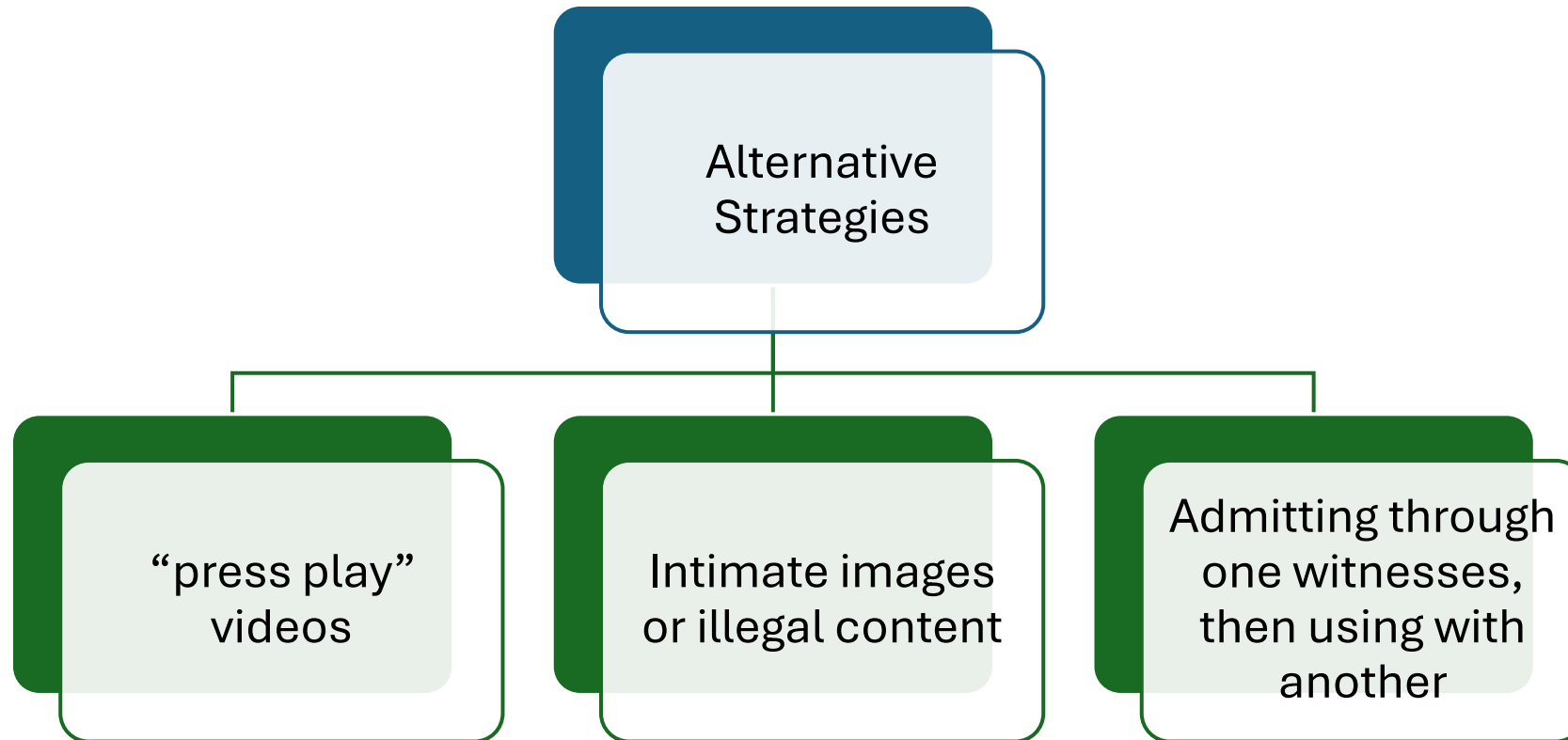
Presentation in Court – The Content

Effectively Using Video Evidence

1. Set up what we expect to see through testimony
2. Corroborate testimony with video
3. Explain significance of the evidence

4. Alternate between exhibits to show relevant context

Presentation in Court – The Content



Pro Tips

Pre-Marking

Pre-Admitting

On Retrial

Utilizing Low Resistance