

§ 7.2

Introduction to Evidence

The Facts

Evidence is that which tends to prove or disprove a fact in issue. Not all evidence is admissible. As an investigator, however, do not concern yourself with admissibility. Your job is to find evidence. Let the lawyer worry about admissibility.

For almost every piece of evidence the following question will be asked: Is the evidence *direct* or *circumstantial*? Think of these two types of evidence together. Both are valid types of evidence and, assuming the evidence is admissible, may be presented to, and considered by, a jury or judge.

direct evidence

evidence (generally from personal observation) that tends to establish a fact without the need of an inference

circumstantial evidence

evidence of one fact requiring an inference to establish another fact

Evidence is also either *oral* or *physical*. Typically, if the evidence can be touched, it is physical. If the evidence involves testimony under oath, it is oral.

physical evidence

evidence that can be touched; also called *tangible* or *demonstrative* evidence

oral evidence

evidence given verbally; also called *testimonial* evidence

A single piece of evidence can be both *direct* and *circumstantial*. This may sound confusing at first, but it is really quite simple. It depends on the perspective of the question being asked. In other words, a single piece of evidence can be *direct* as to one question, and *circumstantial* as to another.

Example

Your client, Randy, has been charged with robbing a bank. There is a photograph taken by a surveillance camera that shows him entering the bank, walking toward a teller named Melissa. He displayed no gun or note.

As to the question, "Was Randy at the bank on the day of the robbery?"

The picture would be direct evidence that Randy was at the bank.

As to the question, "Did Randy rob the bank?"

The picture would be circumstantial evidence that he robbed the bank.

The picture itself would also be considered *physical evidence*, and the testimony of the teller, Melissa, identifying the man in the picture as Randy, would be considered *oral evidence*.

Thus, as mentioned above, a single item can be multiple kinds of evidence, depending on the perspective of the question being asked.

EXERCISE | DIRECT OR CIRUMSTANTIAL?

1. Phil is charged with robbery. A witness at the scene wants to testify that Phil was in the store on the day in question. As it relates to the robbery, what kind of evidence would the witness' testimony be?

- direct circumstantial

2. Carol witnessed a car accident. She was stopped at a red light when a blue car ran the same light and collided with a bus. What kind of evidence about the accident would Carol's testimony be?

- direct circumstantial

3. Ella is in trouble. Her fingerprints were discovered on the handle of a kitchen knife found in the back of her boyfriend. She claims innocence. What kind of evidence are the fingerprints as to the murder?

- direct circumstantial

4. Steve is a bricklayer who is being sued for using substandard materials in his work. Last week, a house on which he was working collapsed. A subsequent investigation determined that the mortar used in the house was of sub-standard quality. What kind of evidence would the mortar report be in terms of the question of sub-standard materials?

- direct circumstantial

5. In a rape case, semen from your client, David, was found inside the vagina of the alleged victim. As to the rape, what kind of evidence would the semen be?

- direct circumstantial