



# MANAGING A JURY TRIAL IN THE JUSTICE/MUNICIPAL COURT

A PRACTICAL GUIDE

CONDUCTING THE TRIAL

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AND SPECIAL EVIDENTIARY ISSUES

# Special Evidentiary Issues

- Prior Bad Acts / Collateral Evidence NRS 48.045 (2)
- Res Gestae NRS 48.035(3)
- Self-Defense and Character Evidence NRS 48.045(1) & 50.085
- Hearsay NRS Chapter 51
- Photographs & Videos NRS 48.035(1) & (2)
- Documentary Evidence
- Sheriff/Police Reports - Not Admissible ... Why?
- Prior Convictions
  - Felonies Only!
  - 10 Year Rule – Release from Confinement or P&P
- Effects of Domestic Violence
  - NRS 48.061 – Limiting Instruction
- Confessions and Statements of the Defendant
  - Miranda or Non-Miranda

# DEALING WITH EVIDENTIARY ISSUES

- 99% of issues dealing with admissibility of evidence should be determined pre-trial.
- **NRS 47.080 Determinations of admissibility: Hearing of jury.** In jury cases, hearings on preliminary questions of admissibility, offers of proof in narrative or question and answer form, and statements of the judge showing the character of the evidence shall to the extent practicable, unless further restricted by NRS 47.090, be conducted out of the hearing of the jury, to prevent the suggestion of inadmissible evidence.
- Require Counsel to present know evidentiary issues pre-trial
- Know the standards of admission prior to the evidentiary hearing
- All relevant evidence is still subject to weighing its probative value v. its prejudicial effect pursuant to NRS 48.035
- Limiting Instructions may be necessary depending on the evidence to be presented
- **ALWAYS, ALWAYS, ALWAYS – MAKE A RECORD ON ALL EVIDENTIARY RULINGS** (with some exceptions)

# The Trial Process

- **Opening Statements:**

- NRS 175.141(2): The district attorney, or other counsel for the State, must open the cause. The defendant or the defendant's counsel may then either make the defendant's opening statement or reserve it to be made immediately prior to the presentation of evidence in the defendant's behalf.

- **Purpose:**

- to inform the court and the jury in a general way of the nature of the case, the outline of the anticipated proof, and the significance of the evidence as it is presented. **It is not an opportunity to argue the case**

- **What to be prepared for:**

- **Objection, your Honor ....**
- Statements ultimately unsupported with evidence & demonstrative evidence
- Statements that are argumentative
- Improper personal beliefs
- Misstatements of law
- Improper anticipating of objections
- Statements referring to inadmissible evidence

# The Trial Process

## Presentation of Evidence

- Witnesses
  - Victim
  - Officer
  - Defendant
    - Admonishment Necessary!! Outside the Presence of the Jury.
  - Experts – Nevada’s Unique Rule
    - *Hallmark v. Eldridge*, 124 Nev. 492 (2008)
    - Can never testify to veracity/truthfulness
- Documentary Evidence
  - Police Reports
  - Pictures
  - Diagrams

## • Handling Physical Evidence

- Weapons
- Blood Evidence

## • Trial/Talking Objections

- Prohibit argument on objections in front of the jury
- Objection – Grounds – Ruling
- Limiting Instruction, if necessary

## • Side Bars

- Make a Record outside the Presence of the Jury.

# The Trial Process

- **Closing Arguments:**
  - **NRS 175.141(5):** When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the district attorney, or other counsel for the State, must open and must conclude the argument.
- **Purpose:**
  - allow counsel to offer ways of viewing the significance of the evidence in relation to the law. Because closing arguments are not evidence, juries are instructed to that effect.
- **What to be prepared for:**
  - **Objection, your Honor ....**
  - Golden rule arguments
  - Attacks on opposing counsel
  - Personal opinions and beliefs
  - Misstatements on law
  - Credibility of witnesses
  - Burden shifting/comments on right to remain silent

# PRACTICAL APPLICATION EXERCISE





# QUESTIONS?

