The Role of Evidence in Criminal Investigations
Objectives

After reading this chapter you will be able to

• Discuss the investigation of the death of Caylee Anthony. Identify the major evidence in the case and the probable reasons why Casey Anthony was found not guilty in the trial

• Differentiate between judicial evidence and extrajudicial evidence, as well as exculpatory evidence and inculpatory evidence

• Explain the various levels or standards of proof

• Compare direct evidence with indirect evidence and give an example of each

• Identify the various forms of circumstantial evidence

• Define testimonial evidence, real evidence, documentary evidence, and demonstrative evidence

• Discuss reasons for the hearsay rule and the exceptions to it

• Compare the role of lay witnesses with expert witnesses

• Provide examples of corpus delicti evidence, corroborative evidence, cumulative evidence, associative evidence, identification evidence, and behavioral evidence

From the CASE FILE

The Death of Caylee Anthony

On June 15, 2008, Casey Anthony, twenty-two, had a huge argument with her mother Cindy Anthony. Cindy discovered a photograph of Casey at a “no-clothes party” and was not happy about it. Cindy not only had concerns about the behavior of her daughter but also about the welfare of two-year-old Caylee, Casey’s daughter and Cindy’s granddaughter. Cindy told Casey she was unfit to be a parent and threatened to get custody of Caylee. Casey lived with her parents, Cindy and George, in Orlando, but for everyone involved, things were intolerable. The next day, June 16, Casey packed up and left the house with Caylee. She said they were going to Tampa and that she was going to get her old job back at Universal Studios. During the next thirty-one days, Cindy called Casey numerous times to see how Caylee was doing. Every time she called, Casey told her mother that Caylee was with the babysitter, Zenaida “Zanny” Fernandez-Gonzalez.

On July 13, 2008, Cindy and George received a letter in the mail informing them that Casey’s car had been towed and was available for pickup at a particular tow lot. George went to get the car. In the car he found Casey’s purse and Caylee’s car seat and toys. Reportedly, he also noticed a strong odor coming from the trunk. Now Cindy was even more concerned. She eventually found Casey at her boyfriend’s house and brought her home. Casey explained to her mother that she actually left Caylee with Fernandez-Gonzalez in Orlando on June 16 and that Gonzalez kidnapped Caylee. Casey told her mother that she had not seen Caylee since then.

On July 15, 2008, Cindy called the police to report Caylee was missing. Investigators questioned Casey. She told them a similar story to what she told her mother earlier: Caylee was kidnapped by her babysitter, Fernandez-Gonzalez. She told investigators that she left Caylee with the babysitter when she went to work at Universal Studios. She said that she did not tell the police about Caylee earlier because she was too afraid. Upon checking for a “Zenaida Fernandez-Gonzalez,” investigators discovered that there was no such person. Casey had lied. After Casey showed investigators around the Universal Studios theme park, they discovered that she did not actually work there. She had worked there two years ago, but not recently. Another lie. Casey was arrested on July 16, 2008, for the neglect of a child, providing false statements in a criminal investigation, and obstruction of a criminal investigation. Investigators wondered what else she was lying about. She was released from jail on August 21 but was arrested and returned to jail on August 29 for check and credit card fraud.

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Initially the investigation focused on trying to find Caylee, although investigators were not optimistic that they would find her alive. When Casey’s car was examined, a cadaver dog alerted to decomposition in the trunk of the vehicle. Insects and maggots commonly associated with dead bodies were also found in the trunk. The examination also revealed a trace of chloroform in the trunk, and investigators recovered a hair that was microscopically similar to Caylee’s hair (a sample of which was obtained from a hairbrush). Analyses revealed that the hair had certain characteristics that indicated that it came from a dead body. Computers in the Anthony house were seized and analyzed. On one of the computers the investigators found Google searches for the term chloroform made in March 2008. Upon checking the whereabouts and activities of Casey from June 16, 2008, to July 15, 2008, they did not find much except that on July 2, Casey got a tattoo that read “Bella Vita”—“beautiful life” in Italian.

On December 11, 2008, a meter reader found skeletonized human remains in a wooded area near the Anthony house; the remains were determined to be those of Caylee Anthony. Duct tape was found in the hair and around the skull. Investigators reasoned that Caylee died from suffocation as a result of the duct tape being placed over her nose and mouth. Duct tape that was the same as that found with Caylee was found in her grandparent’s garage. A laundry bag that was the same type and brand as one found with Caylee’s remains was found in the Anthony house. A blanket that was recovered with Caylee’s remains also matched Caylee’s bedding at her grandparent’s house.

In June 2011, three years after the disappearance of Caylee, the trial of Casey Anthony began. She was charged with first degree murder, aggravated child abuse, and aggravated manslaughter of a child. In a nutshell, the prosecution’s theory was that Casey was a party girl and no longer wanted the responsibilities of being a parent. She used chloroform to incapacitate Caylee and then used duct tape to suffocate her. Her body was kept in the trunk of her vehicle. The Internet search for chloroform showed premeditation.

Casey’s lawyers had a different explanation for the disappearance and death of Caylee, and they had alternative explanations for the prosecution’s evidence. According to the defense, Caylee actually drowned in the family pool on June 16, 2008, and Casey’s dad helped cover up the death so that Casey would not be charged with child neglect. Caylee’s death was not the result of a murder; it was a tragic accident and then, unwisely, covered up to avoid police scrutiny. The attorneys further explained that Casey had an abusive childhood and was sexually abused by her father and her brother, so she got used to disguising and hiding her emotional pain. As for the evidence, through expert testimony the defense argued that odor analysis of the trunk was not scientific and was not accepted by the scientific community. A primary compound found in human decomposition was not present in the trunk. The guts of the maggots found in the trunk were not analyzed.
for DNA; therefore, it was not possible to determine what they had consumed, if human remains or other organic material, such as food or excrement. According to the defense, the source and reason for the presence of chloroform in the trunk was not adequately specified and did not prove anything. The hair in the trunk was presumed to be Caylee’s, but this was not proven with certainty. Caylee’s body was never in the trunk, it had nothing to do with her accidental death. The duct tape found on Caylee’s skull was simply trash recovered with the body; it had no connection to or role in her death. The Google searches for chloroform were not conducted by Casey but by her mother who was actually searching for chlorophyll and then got sidetracked and searched for chloroform as well.

After thirty-three days of testimony, on July 5, 2011, the jury found Casey not guilty of first degree murder, child abuse, and aggravated manslaughter of a child. She was only found guilty of four counts of providing false information in a criminal investigation and check forgery. Casey did not testify at the trial.

Case Considerations and Points for Discussion

- Two fundamental questions are present in homicide investigations and trials: (1) Did a homicide occur? and (2) if a homicide occurred, did the suspect/defendant commit the homicide? What evidence in the Caylee Anthony investigation suggested that a homicide actually occurred? What evidence suggested that Casey Anthony committed the homicide?

- Since Casey Anthony was found not guilty of murder at trial, apparently the evidence in the case was unconvincing to the jury. Why? What other evidence may have helped to establish that Caylee was murdered and that Casey committed the murder?

- Many people think that Casey actually killed Caylee. What do you think? Was Casey found not guilty because she did not do it, or was she found not guilty for some other reason? Explain.

Also:

- See “Casey Anthony Trial: Police Tapes” on YouTube for additional details regarding the investigation and prosecution of Casey Anthony.

The Basics of Criminal Evidence

Broadly defined, criminal evidence is any crime-related information on which an investigator can base a decision or make a determination. It consists of supposed facts and knowledge that relate to a particular crime or perpetrator. Evidence is the product of investigative activities; investigative activities are performed to discover and collect evidence. In turn, evidence is used to establish proof that (1) a crime was committed and (2) that a particular person committed that crime.

A basic and fundamental distinction can be made between judicial evidence and extrajudicial evidence. Judicial evidence is evidence that is admissible in court and meets the rules of evidence. As such, it is often referred to as admissible evidence. In the Anthony case, the remains of Caylee, the hair recovered from the trunk of Casey’s car, and the testimony of the computer forensic expert were all examples of judicial evidence.

Extrajudicial evidence is any information on which an investigative decision can be based but which is not allowed in court proceedings. It is often referred to as inadmissible evidence. An example of extrajudicial evidence may be the results of a polygraph examination taken by a suspect. It is certainly not unreasonable that investigators would consider the results of a polygraph examination when judging whether a particular person committed the crime in question. At the same time, however, this “evidence” would not be allowed by a judge to be introduced into court proceedings; it would not meet the rules of evidence. In this sense, such evidence can be quite useful, even though it may not be admissible in court.
Another basic but important distinction can be made between *exculpatory evidence* and *inculpatory evidence*. Exculpatory evidence is evidence that tends to exclude or eliminate someone from consideration as a suspect. If a witness described the perpetrator as being six feet tall and having black hair, that would tend to exclude a suspect who was five feet tall with blond hair. Inculpatory evidence is evidence that tends to include or incriminate a person as the perpetrator. For example, a lack of an alibi for a suspect may be inculpatory, as would a suspect’s characteristics that matched the perpetrator’s description. Through the course of an investigation, investigators will likely uncover both inculpatory and exculpatory evidence in relation to a particular suspect. It is a legal requirement that the police and prosecutor share not only the inculpatory evidence but also the exculpatory evidence with the defendant’s attorney through the discovery process.

**STANDARDS OF PROOF**

Evidence is used to establish proof that a crime was committed or that a particular person committed that crime. To prove something (e.g., that Casey Anthony killed Caylee) is to eliminate uncertainty, or to eliminate some degree of uncertainty, regarding the truthfulness of the conclusion. Proof is not a one-dimensional phenomenon; there are various levels, or standards, of proof. For example, as discussed in more detail later, the police often need enough evidence to establish *probable cause* to justify a search or an arrest. Probable cause, then, is a standard of proof. Probable cause exists when it is more likely than not that a particular circumstance exists; generally speaking, the degree of certainty is greater than 50 percent. Probable cause is the standard of proof of most direct concern and relevance to investigators in solving crimes.

Another standard of proof is *beyond a reasonable doubt*. Proof beyond a reasonable doubt is needed in a trial to conclude that a defendant is guilty of the crime. With this level of proof, a jury (or a judge in a bench trial) may have a doubt about the defendant’s guilt, but this doubt cannot be meaningful or significant. Beyond a reasonable doubt is the level of proof of most direct consequence to prosecutors, who have as their responsibility presenting evidence in court to obtain a conviction.

A third level of proof is *reasonable suspicion*. In order for police to legally stop and frisk a person, the police have to have a reasonable suspicion about that person’s involvement in, or association with, a criminal act.

A fourth major level of proof is *preponderance of the evidence*. Preponderance of the evidence is the degree of certainty needed to prove and win a civil case. It is essentially the functional equivalent of probable cause but applies only to civil matters.

It is important to understand that all levels of proof are subjective in nature. The determination of what constitutes proof depends on the judgments of people. As a result, what constitutes probable cause for one judge may not constitute probable cause for another judge. One

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jury may find proof beyond a reasonable doubt, and another may find reasonable doubt. The weight and value of evidence in establishing proof is an individual determination.

**The Meaning and Nature of Probable Cause**

Probable cause stems directly from the Fourth Amendment to the U.S. Constitution and constitutes a critical ingredient needed to justify a legal search, seizure, or arrest. In general, if probable cause does not exist to conduct a search or to make an arrest, any evidence collected as a result of that search is not admissible in court, nor is that arrest considered valid. Probable cause is critical indeed and, as such, is discussed in more detail here.

Probable cause exists when “the facts and circumstances within the officers’ knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed” (Brinegar v. United States [1949]). This is known as the “man of reasonable caution” or the “reasonable person” standard. In United States v. Ortiz (1975) the court ruled that police officers could legitimately draw on their experience and training in determining whether probable cause existed in a particular situation. As a result, what may look like innocent activity to the “reasonable person” may indeed be sufficient to establish probable cause for a police officer.

In Aguilar v. Texas (1964), the court established a two-pronged test to determine probable cause when information is given to the police by an informant. The two prongs were (1) the reliability of the informant and (2) the reliability of the informant’s information. This is particularly relevant when the police obtain information from a person who has been engaged in criminal activity and has low credibility. The Aguilar two-pronged test was abandoned with Illinois v. Gates (1983) when the court ruled that the “totality of the circumstances” must be considered in establishing probable cause. So, with specific reference to this case, not only should the informant’s tip be considered in determining probable cause, so too should the corroborating information from other independent police sources.

As a practical matter, establishing probable cause can be viewed as a process by which some evidence can lead to other evidence, which can lead to still more evidence. The accumulation of this evidence may eventually provide a basis on which probable cause can be established. Consider the case of the kidnapping and murder of seven-year-old Danielle van Dam in San Diego (see Case in Point 3.1).

**Types of Evidence**

Various types of evidence can be used to establish proof. All evidence can be classified as being either direct or indirect, and all evidence can be classified as either testimonial, real, demonstrative, or documentary. Each type of evidence is discussed next.

**DIRECT VERSUS INDIRECT EVIDENCE**

Direct evidence refers to crime-related information that immediately demonstrates the existence of a fact in question. As such, no inferences or presumptions are needed to draw the associated conclusion. On the other hand, indirect evidence, which is also known as circumstantial evidence, consists of crime-related information in which inferences and
probabilities are needed to draw an associated conclusion. Of course, from an investigator’s perspective, the ultimate conclusions that need to be drawn are that a crime occurred and that the suspect committed the crime; however, there may be other conclusions that would be useful to establish as well. In determining whether evidence is direct or circumstantial in nature, one needs to consider the conclusion that is trying to be established. For example, in the Caylee Anthony case, a hair that was microscopically similar to Caylee’s hair was recovered from the trunk of Casey’s car, and the trunk had an odor of human decomposition. These two pieces of evidence are best considered circumstantial evidence that Caylee’s dead body was in the trunk of that car (because her hair was in the trunk does not necessarily mean that her dead body was in the trunk) and, further, that Casey killed Caylee (because the trunk smelled of decomposition does not necessarily mean that it was Caylee’s dead body that produced that smell, nor does it mean that Casey killed Caylee). If a witness saw Casey kill Caylee, that information would be direct evidence that Casey killed the victim because no inferences would be needed to draw the conclusion.

Consider a case in which a knife, identified as the likely murder weapon, has the suspect’s fingerprints on it. Are the fingerprints direct evidence or circumstantial evidence? Again, it depends on the conclusion trying to be established. The fingerprints on the knife would be best considered direct evidence that the suspect touched or held the knife but circumstantial evidence that the suspect murdered the victim with the knife.

During the early morning hours of February 2, 2002, a sleeping Danielle van Dam was taken from her home by David Westerfield, fifty, a neighbor of the van Dams. Upon being notified of the missing girl, the police, using police dogs, launched a massive door-to-door search of more than 200 homes in the neighborhood and interviewed all the residents. Reportedly, Westerfield was the only neighbor the police were unable to contact because he was not at home.

Westerfield returned home on February 4 and was then questioned by the police. He told the police that at about 3:30 a.m. on February 2 he began a 550-mile motor home trip to various places in and around San Diego and Imperial counties. The nature and timing of this trip was suspicious to the police. Police also found it unusual that a garden hose used to equip his motor home with water that was in front of his house appeared hastily placed there, as though he had been in a hurry before he left, but everything else appeared to be in perfect order. When checking his story about this trip, the police discovered that Westerfield got stuck in the sand in the desert and had to call a tow truck to get him out. According to the tow truck driver, Westerfield was in such a hurry to leave after getting pulled out of the sand that he left some of his equipment behind. The more investigators heard, the more suspicious they became. The police asked Westerfield to take a polygraph examination. He agreed but reportedly failed it, raising additional suspicions about his involvement in the disappearance of the little girl. All this information was used by the police to establish probable cause to justify a search warrant for Westerfield’s property. In conducting the search, the police seized his sport utility vehicle, boxes of personal property, several computers (some of which contained images of child pornography), and his motor home. When investigators examined Westerfield’s motor home, they found blood that matched Danielle’s, along with her fingerprints and hair. Blood on Westerfield’s jacket recovered from a dry cleaner also matched Danielle’s (Dillon and Perez 2002; Roth 2002a; Roth 2002b). Based on all this evidence, probable cause was established to justify an arrest warrant for kidnapping and possession of child pornography. While in custody, Westerfield was charged with homicide after the decomposed body of the missing girl was found along a roadside west of San Diego. In August 2002, David Westerfield was found guilty of kidnapping, murder, and possession of child pornography and was sentenced to death. He is now on death row at San Quentin State Prison.

The Murder of Danielle van Dam and the Arrest of David Westerfield
Chapter 3 • The Role of Evidence in Criminal Investigations

MYTHS & MISCONCEPTIONS 3.1

Circumstantial Evidence Is Not Very Useful

Circumstantial evidence is often viewed as less valuable than direct evidence in establishing proof. It has been said that one cannot be convicted of a crime based on circumstantial evidence alone. This is just not true. Sometimes reference is made to a case that is "just" circumstantial. In fact, circumstantial evidence can be quite powerful in establishing proof—perhaps even more influential than direct evidence, especially if there is much circumstantial evidence that can be presented. No question, a person can be convicted of a crime based only on circumstantial evidence. See Case in Point 3.2 for an example of a case where circumstantial evidence played a critical role in an investigation.

It is important to understand that the distinction between direct and indirect evidence depends entirely on the need for inferences to draw the associated conclusion; it does not depend on the likelihood that the evidence is valid. For example, a statement from an eyewitness that she saw the suspect shoot the victim is best considered direct evidence that the suspect shot the victim, regardless of the possibility that the eyewitness is mistaken. The possibility that the eyewitness identification is wrong does not make the eyewitness identification circumstantial evidence.

There are many different types of circumstantial evidence. First, one's physical ability to commit the crime can be introduced as circumstantial evidence of guilt or innocence. For example, consider the trial of O. J. Simpson for the murder of his ex-wife, Nicole Brown Simpson, and her friend Ron Goldman. On June 12, 1994, at approximately 11:00 p.m., the two victims were found slashed and stabbed to death on the front walkway of Nicole’s home in Brentwood, a wealthy section of Los Angeles. As there was substantial physical evidence associating Simpson with the homicides (see the introduction to Chapter 5 for a detailed discussion of the investigation), he was arrested and charged with the crimes. During the trial, the prosecution provided evidence to the jury about the nature of the crime and the nature of the wounds inflicted on the victims. In turn, the defense provided testimony about the poor physical condition of Simpson, which had resulted from the effects of arthritis caused by a career of playing professional football. The defense argued that whoever committed these homicides had to be of superior physical strength and abilities, and, as a result, it could not have been Simpson. The prosecution countered this testimony by introducing a recently produced commercial exercise video showing a physically capable Simpson engaged in an aerobic exercise routine. With this evidence, the prosecution argued that Simpson was capable of committing the crime, thereby allowing one to infer that he committed the crime.

Second, an alibi, or the lack of an alibi, may be best considered circumstantial evidence. An alibi is a claim on the part of a suspect that he or she was somewhere other than at the crime scene at the time of the crime. The primary issue associated with an alibi as evidence is its believability. Because alibis are often established by friends of the suspect or by the suspect’s own account (e.g., “I was home in bed by myself”), they are often not believed by investigators or jurors. The lack of an alibi or an alibi that is not believable may be used to infer that the suspect committed the crime. From the suspect’s perspective, one of the problems with alibis is that they are often inherently difficult to convincingly prove (Olson and Wells 2004). Consider the case of Steven Avery, who was wrongfully convicted of sexual assault in 1986 and spent eighteen years in prison before he was cleared of the crime through DNA analysis. Avery had sixteen witnesses (including friends, family, and clerks at a store) that corroborated his alibi, but the jurors did not believe them. They believed the
On December 24, 2002, a pregnant Laci Peterson was reported missing by her husband, Scott. Four months later, Scott was arrested and charged with the murder of his wife and their unborn baby. He was convicted and sentenced to death. The prosecution of Scott Peterson rested entirely on circumstantial evidence—a lot of it. Specifically:

- Approximately one month after Laci was reported missing, a woman came forward and reported to the police that she and Scott Peterson were dating. She did not realize while they were dating that Scott was married. She told the police that two weeks prior to Laci’s disappearance, Scott told her that he had “lost” his wife and that he would be spending Christmas without her.

- Scott’s alibi for the time that Laci went missing (Christmas Eve) was that he was fishing on his boat in San Francisco Bay. On April 14, 2003, a fetus was found on the shoreline of San Francisco Bay. The next day a partial female torso washed ashore in the same area. These were the bodies of Laci and her unborn child.

- Investigators discovered a hair of Laci’s in a pair of pliers that belonged to Scott. The pliers were kept on his boat.

- Two days after Laci’s disappearance, Scott had installed two pornographic television stations on his television.

- Shortly after Laci’s disappearance, Scott sold her vehicle, and he wanted to sell the house they lived in.

- Just prior to his arrest, Scott drastically changed his appearance by bleaching his hair and growing a goatee. When he was arrested, he was in possession of numerous items, including $15,000 in cash, several cell phones, multiple credit cards belonging to family members, his brother’s driver’s license, and camping gear.

While any one of these “circumstances” could possibly have been explained, all of them together represented powerful evidence of his guilt. Scott Peterson remains on death row in the San Quentin prison. If you were Scott Peterson’s defense attorney, how would you explain the existence of this circumstantial (and inculpatory) evidence?
victim who (incorrectly) identified Avery as the attacker. The Avery case is not unique. In many wrongful conviction cases, alibis are presented but not believed.

Third, MO, or the method in which the crime was committed, may be introduced as circumstantial evidence. In particular, if a series of crimes are committed in a particular manner, and a defendant has been linked to one of these crimes through other evidence, one could infer that the defendant committed the other, similar crimes as well. The reasonableness of the inference may depend strongly on the uniqueness of the MO. For example, if a series of burglaries took place in early afternoons in which entry was gained into the houses by breaking a window and only jewelry was taken, this might allow investigators to infer that whoever committed one of the crimes also committed the others.

Fourth, the existence of an identifiable motive (or lack thereof) may represent circumstantial evidence of guilt or innocence. Motive—a reason why the crime was committed—is an important dimension of identifying a perpetrator. If a motive such as anger, revenge, greed, or jealousy on the part of the perpetrator can be established, one may infer that the defendant committed the crime. It was suggested by the prosecutors in the Casey Anthony trial that Casey killed her daughter because she was not interested in having the responsibilities of being a mom. During the trial of Scott Peterson, his affair, his increasing debt, and Laci’s life insurance policy were presented by prosecutors as evidence of motive for the murder of his wife.

Fifth, evidence concerning an individual’s attempts to avoid apprehension after the crime occurred can be used to infer guilt. For example, that Scott Peterson changed his appearance and had items with him that suggested he was about to flee was presented as circumstantial evidence of his guilt. Similarly, there was a belief that Casey Anthony also attempted to elude the police prior to her arrest, although she claimed she was simply trying to flee from the media, not the police.

Sixth, if an individual is found to be in possession of the fruits of the crime, this evidence could be used to infer that that person is guilty of the crime. For example, if a person is found in possession of a cell phone that was taken in a robbery, it might (but does not necessarily) indicate that person committed the robbery. Of course, that person could have come into possession of the cell phone in some other way other than being the one who actually took it. If chloroform had been found in the possession of Casey Anthony, it would have been powerful circumstantial evidence that she killed her daughter.

Seventh, the existence of prior threats made by the suspect or similar prior behaviors of the suspect may be introduced as circumstantial evidence of that suspect’s guilt in the crime. If Casey Anthony had previously done harm to her daughter, it would have been powerful circumstantial evidence that she killed her daughter.

Finally, character witnesses can be introduced to help establish the innocence of the defendant. Character witnesses are used by the defense to bring evidence to court that the defendant is incapable of committing a crime like the one in question.

Testimonial evidence is evidence that is presented in court through witnesses speaking under oath when those witnesses would be committing perjury if they did not state what they believed to be the truth. Testimonial evidence often begins as statements made to the
police. Witnesses can be considered either lay witnesses or expert witnesses. Lay witnesses are individuals whose testimony is limited to the facts as personally observed. In some situations, lay witnesses may also offer judgments as they relate to the particular case at hand (e.g., “In my best judgment, the person I saw running through my backyard was about six feet tall”).

Expert witnesses are persons who possess special knowledge about a particular issue or phenomenon under examination (e.g., post-traumatic stress disorder, DNA analysis, the characteristics of the odor of decomposition). Expert witnesses often hold academic or scientific positions and conduct research on the issue at hand. They are able to express their opinions about the issue in court and speak about hypothetical cases. Ideally, the function of expert witnesses is to help the jury or judge understand the complex issue under consideration—to basically educate the jury.

Associated with the admissibility of expert testimony are the Frye and Daubert standards. Briefly, the Frye standard holds that in order for the results of a scientific technique (and corresponding testimony) to be admissible, it must have gained general acceptance in its particular field. With the Daubert standard, the trial judge must screen the scientific evidence and testimony to ensure that it is relevant and reliable. In the Caylee Anthony investigation, the odor analysis presented by the prosecution was questioned on this basis. The meaning and implications of the Frye and Daubert standards are discussed in more detail in Chapter 4.

One form of testimonial evidence is hearsay. Hearsay is “an oral or written assertion . . . made or carried on by someone other than a witness who is testifying at a trial or hearing, which is offered in evidence to establish the truth of the matter asserted” (Waltz 1997,
In other words, when someone repeats information that someone else said, it is hearsay. Hearsay is most often excluded from consideration in court proceedings because it is considered unreliable. The serious concerns about the reliability of hearsay are that (1) the person who made the original statement was not under oath and therefore was not obligated to tell the truth and (2) the person who originally made the statement cannot be cross-examined to test his or her perception, memory, veracity, and ability to be articulate (Waltz 1997). Simply stated, “Criminal cases cannot be made on gossip and secondhand accounts of what happened” (Waltz 1997, p. 82). To avoid the complications of hearsay, investigators need to get information “from the horse’s mouth.” For example, suppose a lawyer has a witness who has critical information about the crime, but this witness would not likely leave a favorable impression on the jury and probably would not be believed by the jury. The witness is sloppy, not very articulate, and is of questionable mental competence. Without the hearsay rule that excludes most hearsay evidence, the lawyer could have this witness meet with another individual who would have a much more favorable impression on a jury. This witness is bright, articulate, and attractive. The sloppy witness could tell the articulate witness the relevant points of the testimony and then the lawyer could call the articulate witness to testify. Obviously, this hearsay testimony could raise all sorts of questions about fairness and the discovery of the “truth” (Waltz 1997).

As with just about every legal rule, there are exceptions to the hearsay rule. There are instances when hearsay is admissible as testimony in court. For example, previously recorded testimony that was provided under oath and was subject to cross-examination is admissible as hearsay as long as the witness is no longer available. Under certain conditions, dying declarations of a victim may be admissible in court through hearsay. A defendant’s previous admission and confession can be admitted into court as hearsay. An admission involves acknowledging some aspect of involvement in the crime (e.g., “I was at the gas station at about midnight”), whereas a confession involves acknowledging the actual involvement in the crime (e.g., “I robbed the gas station at about midnight”). Given a defendant’s right to remain silent, the only way a defendant’s statements may be presented in court is through hearsay, unless the defendant chooses to testify. Further, a claim on the part of a defendant that the statements were not subject to cross-examination would be strange.

Statements that relate to a witness’s state of mind may be admissible as hearsay evidence as long as there is a question at hand about the person’s state of mind at a particular time and the statements made were made in an apparently sincere manner. Excited utterances or spontaneous exclamations may be admissible as hearsay. Finally, statements regarding one’s physical condition are often admitted as hearsay evidence. For example, a defendant’s statement “I am so drunk” could be admitted through hearsay to refute a defendant’s current claim that he or she was totally sober at the time of the crime and had a crystal-clear memory of the incident. There are several other, rarely encountered exceptions to the hearsay rule that are not discussed here. For an additional discussion of this issue, see Waltz (1997). See Case in Point 3.3 for an example of unusual hearsay evidence that played a critical role at trial.

**REAL EVIDENCE**

Real evidence is also known as physical evidence, scientific evidence, or forensic evidence. Real evidence refers to tangible objects that can be held or seen and that are produced as a direct result of the commission of a crime. Examples of real evidence would include blood splatters on a wall, semen recovered from a victim, and the knife used to kill a victim. In the Caylee Anthony case, the duct tape recovered from Caylee’s remains was real evidence. In the Peterson trial, the hair found in the pliers was real evidence. All real evidence that is introduced in court must be accompanied by testimony that demonstrates that the evidence complies with the rules of evidence.
A husband was accused of killing his wife by poisoning her. She had suspected that he was going to kill her, and, as a result, she wrote a letter to a detective at the local police department. She then gave the letter to her neighbor with instructions to give it to the detective if she were to die. She wrote the letter on November 21; she was found dead in her home on December 3. The letter was admitted at trial as evidence as an exception to the hearsay rule. The letter read as follows:

Pleasant Prairie Police Department, Ron Kosman or Detective Ratzenburg—

I took this picture + am writing this on Saturday 11–21–98 at 7am. This “list” was in my husband’s business daily planner—not meant for me to see. I don’t know what it means, but if anything happens to me, he would be my first suspect. Our relationship has deteriorated to the polite superficial. I know he’s never forgiven me for the brief affair I had with that creep seven years ago. Mark lives for work + the kids; he’s an avid surfer of the Internet.

Anyway—I do not smoke or drink. My mother was an alcoholic, so I limit my drinking to one or two a week. Mark wants me to drink more with him in the evenings. I don’t. I would never take my life because of my kids—they are everything to me! I regularly take Tylenol + multi-vitamins; occasionally [sic] take OTC stuff for colds; Zantac, or Imodium; have one prescription for migraine tablets, which more use more than I.

I pray I’m wrong + nothing happens . . . but I am suspicious of Mark’s suspicious behaviors + fear for my early demise. However I will not leave [my two sons]. My life’s greatest love, accomplishment and wish: My 3 D’s—Daddy (Mark), [deleted] + [deleted].

Julie C. Jensen

DEMONSTRATIVE EVIDENCE

Demonstrative evidence refers to tangible objects produced indirectly from the crime that relate to the crime or the perpetrator. For example, diagrams or videos of the crime scene may be produced by investigators for evidentiary reasons and may be used in court, photographs of the victims (or victims’ injuries) may be produced as a result of the crime and used in court, and radiographs showing injuries to the victim may be produced for medical reasons and introduced in court. Photographs, videos, diagrams, and medical records are all common forms of demonstrative evidence.

DOCUMENTARY EVIDENCE

As the name suggests, documentary evidence refers to any evidence that is in the form of a document or to evidence that documents some issue related to the crime. Included would be printed e-mails relating to the crime (e.g., in a conspiracy investigation), bank statements (e.g., in an embezzlement investigation), surveillance video relating to the crime (e.g., in a bank robbery investigation), or any other documents relating to the crime. The evidentiary value of documentary evidence is limited to the content of the document. For example, if a book is introduced as evidence because of the fingerprints on that book, the book (and fingerprints) would be best considered real, not documentary, evidence. However, if the book is introduced because of what the suspect wrote in the book, the book would best be considered documentary evidence.

Sometimes the lines are blurred between testimonial evidence, documentary evidence, real evidence, and demonstrative evidence. For instance, in Case in Point 3.3, the actual letter written by the decedent would be best considered documentary evidence, but what was said
PHOTO 3.5: Crime scene photos are best considered demonstrative evidence. The photograph here shows the inside of the garage shed at the home of Casey Anthony’s parents. Duct tape that was found with Caylee’s body was the same brand as the duct tape found on the gas can in the shed.

in the letter would best be considered testimonial evidence (hearsay). If there was a question about whether the victim actually wrote the letter, the handwriting would best be considered forensic (real) evidence. A video that captured a crime as it occurred would best be considered documentary evidence because the video was produced as a direct result of the crime. A crime scene sketch would be demonstrative evidence, not documentary evidence, because that evidence was produced only indirectly as a result of the crime, and only after the crime occurred.

The Functions of Evidence

Evidence, be it testimonial, real, demonstrative, documentary, circumstantial, or direct, may serve various purposes or functions in establishing proof. In this sense, evidence can be classified as corpus delicti evidence, corroborative evidence, cumulative evidence, associative evidence, identification evidence, or behavioral evidence.
CORPUS DELICTI EVIDENCE

Corpus delicti evidence refers to evidence that establishes that a crime actually occurred. For example, a dead body with a knife in its back is best considered corpus delicti evidence that a homicide occurred. The presence of semen recovered from a victim may help establish that a rape occurred (of course, the presence of semen does not always prove that a rape occurred, just as the absence of semen does not prove that a rape did not occur). A victim’s statement that property is missing from his or her house and that no one had permission to take it establishes that a burglary occurred. In such cases, the dead body, the semen, and the victim’s statement constitute corpus delicti evidence.

CORROBORATIVE EVIDENCE

Corroborative evidence is evidence that is supplementary to the evidence already available and which strengthens or confirms that available evidence. For example, a male suspect is apprehended near a burglary scene and his fingerprints are collected from the scene. The fingerprints would corroborate the statements of a witness who saw the suspect running from the house with a television.

CUMULATIVE EVIDENCE

Cumulative evidence is evidence that duplicates but does not necessarily strengthen already existing evidence. For example, cumulative evidence would be when investigators find five witnesses (as opposed to just one) who can provide the same details about the same incident.

ASSOCIATIVE EVIDENCE

Associative evidence is evidence that can be used to make links between crimes, crime scenes, victims, suspects, and tools or instruments. Evidence may also prove to be dissociative, showing a lack of association between crime scenes, victims, and so forth. Most evidence in criminal investigations is used to establish associations. For example, in the Anthony case, Caylee’s dead body was associated with Casey via the odor of the trunk of her car and the hair found in the trunk of the car. Caylee’s remains were associated with the grandparents’ house (and by implication Casey) as a result of the duct tape found with the remains and the duct tape found in the garage.

IDENTIFICATION EVIDENCE

Evidence that leads to the identification of the perpetrator is considered identification evidence. Fingerprints most commonly serve this purpose. Fingerprints may be recovered from a crime scene and, through the use of an automated computerized search, the perpetrator may be identified. Dental evidence and DNA can also be used to make identifications, usually of dead bodies. The skeletonized remains of Caylee Anthony were identified through DNA analysis, as were the remains of Laci Peterson and her unborn baby.

BEHAVIORAL EVIDENCE

Behavioral evidence provides a basis on which to identify the type of person who may be responsible for a particular crime and considers directly the nature of the crime and how it was committed. Behavioral evidence constitutes the building blocks on which a psychological or geographical profile may be built or on which linguistic analysis may be conducted. Behavioral evidence and psychological profiles are discussed most often in relation to serial crimes—particularly homicides, rapes, and, to a lesser extent, arson. However, such evidence may be available in other crimes as well. For example, in a burglary, what could be inferred from the fact that the only property missing from a residence was an Xbox? This
evidence might suggest that whoever broke into the house knew that the game was there (perhaps a neighbor or a friend). It might also suggest that the culprit was a teenager or young adult and that he was probably male.

In an apparent sexually motivated serial homicide (most serial homicides are sexually motivated to some identifiable degree), the behavioral evidence may be more elaborate. Experts sometimes differentiate between MO (modus operandi) and the signature of the criminal (Douglas 2000); both represent behavioral evidence. The MO refers to the mechanics of the crime—the circumstances of the crime and manner in which it was committed. Signature refers to that part of the crime that provides emotional satisfaction to the perpetrator. This and other types of behavioral evidence are discussed in more detail in Chapter 8.

**MAIN POINTS**

1. Criminal evidence is any crime-related information on which an investigator can base a decision or make a determination. Evidence is used to establish proof that (1) a crime was committed and (2) that a particular person committed that crime.

2. Judicial evidence is evidence that is admissible in court and meets the rules of evidence; it is often referred to as admissible evidence. Extrajudicial evidence is any information on which an investigative decision can be based but is not allowed in court proceedings; it is often referred to as inadmissible evidence.

3. Exculpatory evidence is evidence that tends to exclude or eliminate someone from consideration as a suspect. Inculpatory evidence is evidence that tends to include or incriminate a person as the perpetrator.

4. Probable cause exists when it is more likely than not that a particular circumstance exists. Probable cause is the standard of proof of most direct relevance to investigators in solving crimes, especially when conducting searches and making arrests. Beyond a reasonable doubt is the standard of proof needed in a trial to conclude that a defendant is guilty of the crime. In order for police to legally stop and frisk an individual, the police have to have a reasonable suspicion about that person’s involvement in, or association with, a criminal act.

5. Direct evidence refers to crime-related information that immediately demonstrates the existence of a fact in question. As such, no inferences or presumptions are needed to draw the associated conclusion. On the other hand, indirect evidence, which is also known as circumstantial evidence, consists of crime-related information in which inferences and probabilities are needed to draw an associated conclusion.

6. Testimonial evidence is evidence that is presented in court through witnesses speaking under oath. Testimonial evidence often begins as statements made to the police.

7. Lay witnesses are individuals whose testimony is limited to the facts as personally observed. Expert witnesses are persons who possess special knowledge about a particular issue or phenomenon under examination. Expert witnesses are able to express their opinions about the issue in court and speak about hypothetical cases.

8. When someone repeats information that someone else said, it is hearsay. Hearsay is most often excluded from consideration in court proceedings because it is considered unreliable, although there are several exceptions to the hearsay rule.

9. Real evidence is also known as physical evidence, scientific evidence, or forensic evidence. Real evidence refers to tangible objects that can be held or seen and that are produced as a direct result of the commission of the crime. Demonstrative evidence refers to tangible objects that relate to the crime or the perpetrator and that are produced indirectly from the crime. Documentary evidence refers to any evidence that is in the form of a
10. Corpus delicti evidence refers to evidence that establishes that a crime actually occurred. Corroborative evidence is evidence that is supplementary to the evidence already available and that strengthens or confirms it. Cumulative evidence is evidence that duplicates but does not necessarily strengthen already existing evidence. Associative evidence is evidence that can be used to make links between crimes, crime scenes, victims, suspects, and tools or instruments. Evidence may also prove to be dissociative, showing a lack of association between crime scenes, victims, and so forth. Evidence that can be used to identify a perpetrator is considered identification evidence. Behavioral evidence provides a basis on which to identify the type of person who may be responsible for a particular crime and considers directly the nature of the crime and how it was committed.

**IMPORTANT TERMS**

- Admissible evidence
- Associative evidence
- Behavioral evidence
- Beyond a reasonable doubt
- Corpus delicti evidence
- Corroborative evidence
- Criminal evidence
- Cumulative evidence
- Demonstrative evidence
- Direct evidence
- Documentary evidence
- Indirect/circumstantial evidence
- Lay witness
- Judicial evidence
- Preponderance of the evidence
- Expert witness
- Probable cause
- Exculpatory evidence
- Proof
- Extrajudicial evidence
- Reasonable suspicion
- Hearsay evidence
- Real evidence
- Identification evidence
- Standards of proof
- Inculpatory evidence
- Testimonial evidence

**QUESTIONS FOR DISCUSSION AND REVIEW**

1. What is the difference between judicial evidence and extrajudicial evidence?

2. What is the difference between exculpatory evidence and inculpatory evidence?

3. What is proof? What are the various levels or standards of proof?

4. What is the difference between direct evidence and indirect evidence? Is one type of evidence more useful than the other? What are various types of circumstantial evidence?

5. What are the differences between testimonial evidence, real evidence, documentary evidence, and demonstrative evidence?

6. What is hearsay? What is the hearsay rule? What are the major exceptions to the hearsay rule?

7. What are lay witnesses and expert witnesses? What is the role of each in court?

8. What are corpus delicti evidence, corroborative evidence, cumulative evidence, associative evidence, identification evidence, and behavioral evidence?

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