

Slide 1

**CORROBORATING  
EVIDENCE:  
STRENGTHENING A CHILD'S  
CREDIBILITY**

Melissa Winger-Howard, JD

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Slide 2

**WHAT IS CORROBORATING  
EVIDENCE AND WHY IS IT  
IMPORTANT?**

- Any evidence or information that makes the child's allegation more likely or believable.

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Slide 3

**JURY INSTRUCTION: WITNESS  
CREDIBILITY**

- Every person who testifies under oath is a witness. You, as jurors, are the sole judges of the credibility of the witnesses.

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Slide 4

**JURY INSTRUCTION: WITNESS CREDIBILITY**

- the witness's attitude, behavior and appearance on the stand and the way the witness testifies;
- the witness's age, intelligence, and experience;
- the witness's opportunity and ability to see or hear the things the witness testifies about;
- the accuracy of the witness's memory;
- any motive of the witness not to tell the truth;
- any interest that the witness has in the outcome of the case;
- any bias of the witness;
- any opinion or reputation evidence about the witness's truthfulness;
- any prior criminal convictions of the witness relating to honesty;
- the consistency of the witness's testimony and whether it is supported or contradicted by other evidence.

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Slide 5

**WHERE TO GET CORROBORATING EVIDENCE**

- It begins with the victim's statement
- Work with your MDT
  - Law Enforcement
  - Medical
  - CCS
  - Advocates



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Slide 6

**"FIRST REPORT" DOCTRINE**

- Greening v. State*
  - such evidence tends obviously to indicate that truth of the charge and is corroborative thereof...
  - first report need not be made immediately after the assault if the period of delay is adequately explained

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Slide 7

**"FIRST REPORT" DOCTRINE  
CONT**

- Nolo pro Se
  - "In cases of sexual assault against children, there are  seldom any witnesses to the crime. Often, there is little or no evidence capable of lending support to the victim's story. The child is typically an unsophisticated child, inarticulate, and emotionally torn by the experience.
  - Juries are left with virtually no frame of reference for evaluating the credibility of the victim's story"

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Slide 8

**"FIRST REPORT" DOCTRINE  
CONT**

- First report testimony is admitted for the limited purpose of lending corroboration to the victim's in-court testimony

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Slide 9

**CRIME SCENE**

- There are always at least three scenes that need to be searched
  - Victim's body
  - Suspect's body
  - Place where abuse occurred.



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Slide 10

### GLASS WARRANTS

- ❑ *Groundsiff v. State*
  - The victim cooperated with police by having their conversation with defendant recorded did not render defendant's incriminating statements coerced nor otherwise involuntary, even if victim had been working as agent of police; although victim said to defendant, during the recorded conversation, that she wanted to drop the civil suit against him and that she was suicidal, she never offered to drop her civil suit in exchange for an admission by defendant, nor did she threaten to commit suicide if he did not make an admission.

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Slide 11

### SUSPECT INTERVIEW

- ❑ Identify ALL suspects and their relationship with the victim
- ❑ Attempt to interview the suspect(s)
- ❑ Miranda warning
  - *Meyer* - whether a reasonable person in the defendant's position would feel he was not free to leave and break off police questioning - groups of factors
- ❑ Test their understanding of the issue
- ❑ Cover the elements of the crime
- ❑ Eliminate any defense(s)
- ❑ What is the suspect saying? "Confession"?

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Slide 12

### CORROBORATING WITNESSES

- ❑ - Non-Offending caregiver
- ❑ - Potential eye-witnesses
- ❑ - Others?



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Slide 13

**PRIOR INCONSISTENT STATEMENTS**

- ER 801(d)(1)(A) a prior statement that is inconsistent with trial testimony is not hearsay and may be admitted as substantive evidence
  - Loss of memory genuine or feigned qualifies
- Witness must be confronted with the statement and be given the opportunity to explain or deny

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Slide 14

**PRIOR CONSISTENT STATEMENT**

- ER 801(d)(1)(B) prior consistent statements admissible once improper motive or influence alleged
- For use to aid the jury in assessing credibility of trial testimony and not as substantive evidence

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Slide 15

**PRACTICE EXERCISE #1**

- "We were picked up in a blue truck and taken to a campsite at Bear Creek. Joe put a fire together and we hung out. We went into the camper and hung out - drank vodka and smoked pot. My friend got sick outside the camper - throwing up. My friend passed out in the camper. I went into the tent (tent big enough to walk around in - mattress and toolbox inside) with Joe. He was touching me everywhere. I fought back. He forced his penis into my vagina and did not wear a condom. My earrings in my left ear were ripped out. He choked me on the mattress. I passed out. He got mad when I peed on his mattress."

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Slide 16

**PRACTICE EXERCISE #1 CONT**

- "After Joe was done he threw me on the mattress. Joe passed out. I ran out of the tent to a nearby RV. I banged on the door. No one opened the door. I walked in and started yelling. They called the cops."
- "My friend's backpack is in the camper with my purse and cell phone."

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Slide 17

**PRACTICE EXERCISE #2**

- "I am here today because my step-dad has been touching me. I don't know how old I was when it started but the last time it happened was in my room - my brother walked in the room and my step-dad stopped."

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Slide 18

**PRACTICE EXERCISE #3**

- "My step-dad began having sex with me when I was 12-13 years old. We lived in the house we are at now. He basically made me his wife and moved me into the bedroom. My mom slept on the couch. When I got a little older he made my 2 little brothers have sex with me. He would video tape and kept the camera in the closet."

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Slide 19

**PRESENTING CORROBORATING EVIDENCE TO A JURY**

- BEGIN IN JURY SELECTION
- PROBE FOR BIAS AND NEUTRALIZE "CSI"
- USE YOUR JURY INSTRUCTIONS




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Slide 20

**JURY INSTRUCTION RE: PROOF BEYOND A REASONABLE DOUBT**

*This requirement, that the prosecution must prove the defendant's guilt beyond a reasonable doubt, is what is called the burden of proof. It is not required that the prosecution prove guilt beyond all possible doubt, for it is rarely possible to prove anything to an absolute certainty. Rather, the test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense. Proof beyond a reasonable doubt must be proof of such a convincing character that, after consideration, you would be willing to rely upon it upon in your important affairs. A defendant may never be convicted on mere suspicion or speculation.*

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Slide 21

**JURY INSTRUCTION RE: PROOF BEYOND A REASONABLE DOUBT**

*This reasonable doubt can be based on the evidence at trial, or on a lack of evidence. Since the burden is upon the prosecution to prove every essential element of the crime charged beyond a reasonable doubt, a defendant has the right to rely upon a lack of evidence to establish a reasonable doubt.*

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Slide 22

**JURY INSTRUCTION RE:  
CIRCUMSTANTIAL EVIDENCE**

A fact may be proved by direct evidence, by circumstantial evidence, or by both.

Direct evidence is given when a witness testifies about an event which the witness personally saw or heard.

Circumstantial evidence is given when a witness did not personally see or hear an event but saw or heard something which, standing alone or taken together with other evidence, may lead a juror to conclude that the event occurred.

Both types of evidence are admissible and may be considered by you. **Neither is entitled to any greater weight than the other.**

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Slide 23

**QUESTIONS? COMMENTS?  
PRAISE?**



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