

Evidence In Animal Cruelty Cases

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Preface

A vital question for law enforcement and others charged with the task of enforcing animal cruelty laws or addressing issues of animal cruelty is: "What is meant by *evidence*?"

To answer that question, one must consider:

1. The types of things we ordinarily view as *evidence*
2. Relevancy
3. Direct evidence
4. Circumstantial evidence
5. The preference of the law
6. Rule of proof
7. Standards of proof
8. The investigators' role

Broad View of *Evidence*

Broadly, *evidence* includes tangible objects, documents, photographs, processes (such as DNA analysis), substances (such as blood or other bodily fluids, or various types of liquid), conditions of climate outside and inside structures, acts, omissions, statements—oral, written and non-verbal—by people, and conditions and behavior of animals. In other words, the concept of *evidence* is very broad and nearly anything in the ordinary world can fit into it.

We can exclude anything that is merely a product of fantasy or the imagination.

Relevancy

Both the Minnesota and Federal evidence codes* indicate that evidence is relevant, that is, pertinent to a case, if it has any tendency to make a fact of

consequence to the case either more likely or less likely to exist than it would be if we did not have that evidence.

We need to look carefully at the elements of this definition:

- **Fact of consequence.** A “fact of consequence” is *any* fact that makes *some* difference to the outcome of the case. It does not have to be the ultimate fact (although it can be); and it does not have to be the fact that proves the entire case. It might be, and often is, a fact that is part of a chain of several facts that lead to the ultimate conclusion to be reached in the case.

Example: An ultimate fact might be that a horse died from poisoning. But other facts, such as the supine position of the horse’s body, fluids leaking from the nose and ears, the unusual odor coming from the mouth, and the like, that are part of a chain of several leading to the ultimate fact will be facts of consequence; they, and each of them, in combination with other facts, will make a difference to the outcome of the case.

- **Any tendency.** To be relevant, the item needs to have *some* tendency to make the existence of a consequential fact more likely, or even less likely. The tendency can even be slight; it does not have to rise to the level of actually proving or disproving an issue in the case. If it *tends in the direction of proof*, it is relevant.

Example: The fact that a dog cowers and whimpers in the presence of his or her owner can mean various things, and standing alone does not prove animal cruelty. But the fact has at least some tendency to make the possibility of abuse more likely than it would be if there were no such fact.

There are 2 other important points to remember about relevancy.

- First, the definition of relevancy is very broad and is intended to be interpreted broadly.

- Second, in evidence law, there are no degrees of relevancy, such as “highly relevant” or “slightly relevant.” An item is either relevant or not, depending on whether it fits the definition.

For purposes of applying the definition of relevancy, one needs to be able to explain how an item fits to some fact in the case. This becomes quite obvious with some items. For example, the crushed skull of a dead dog fits as to the fact of how the dog died. But the fact that the dog's owner has been divorced 3 times

would have no relevance in the case because we could not explain how that pertains to anything in the case.

More practically, we can use a "So what?" approach as to any item of evidence, asking "So, what does this [photo, feces smear, temperature of 95-degrees, etc.] have to do with something important to the case?" One needs to be able to answer that question during an investigation, keeping in mind that any particular item should be viewed as part of a constellation of items that can ultimately lead to proof of animal cruelty.

Direct Evidence

"Direct evidence" is: (1) something that is perceived directly through the exercise of one or more of the 5 senses (saw, heard, smelled, tasted, felt) and (2) that in itself demonstrates a relevant fact in the case.

A cat lying motionless and without a heartbeat (see and feel) is direct evidence that the cat is dead. But whether the cat died as a result of an act or omission of cruelty, will depend on the next category of evidence.

Observing a researcher drown a pigeon in a tub of water in a laboratory is direct evidence (saw the pigeon, the water, the act by the researcher) that the pigeon died from drowning caused by the conduct of a person.

Smelling, inside a garage, strong odors of urine and feces is direct evidence of the presence of those substances. Whether the garage has been allowed to become an unsanitary, and unhealthful, condition for animals, will depend on other facts that likely will fall into the next category of evidence.

So, the key to understand is that "direct evidence" *directly* proves a fact pertinent to the case without having to draw any intermediate conclusions to reach that proof.

Circumstantial Evidence

"Circumstantial evidence" refers to an inference, that is a conclusion, that is drawn from various circumstances. In other words, nothing perceived *directly* demonstrates a particular conclusion, but rather, when all the circumstances are considered, it is reasonable to conclude that a fact exists.

Suppose you empty the mailbox in front of your house on Tuesday afternoon. You check that box on Wednesday afternoon and find in it several

pieces of mail, some bills, a couple of personal letters, and a large envelope from the American Cancer Society. All of the items have one thing in common; they all have cancelled stamps or postmarks.

You did not see a postal worker put those items into your mailbox. Had you done so, that would have been direct evidence of the fact that a postal worker deposited the mail. But you draw that same conclusion from considering the circumstances: the box is designated for use as a mail depository; a postal worker typically puts mail in there every day; the mail you found all had cancellation marks that are routinely applied at a post office before mail can be delivered; and the time of day you found the mail was a time after which the daily mail is ordinarily delivered. A reasonable conclusion from all these circumstances is that a postal worker put the mail in the box. Is that absolutely certain? No. It is possible that all your mail was misdelivered to your neighbor, who then put it in your box. But the fact that the circumstances can support more than one conclusion does not invalidate the evidence or the original conclusion.

This latter point is critical. Circumstantial evidence often supports more than one conclusion, perhaps even an innocent one. But the question is whether the evidence can reasonably support a guilty conclusion. If it can, it will be competent evidence in the case.

Preference of the Law

To be admissible in court, evidence must be relevant. If it is not relevant, it cannot be used in court.

The law does not prefer direct evidence over circumstantial evidence (despite what we sometimes hear on TV shows). Either type may be used as proof of a fact. Typically, there will be both types of evidence in a case.

Rule of Proof

"Proof" refers to the ultimate conclusion to be drawn by a judge or jury. "Evidence" is what supports or negates a conclusion.

In an animal cruelty case, the final question is whether it has been proved that cruelty has occurred. The evidence gathered and offered at a trial leads to either a yes or a no.

Standards of Proof

Although animal cruelty investigators need not, and should not, apply ultimate standards of proof as they investigate and collect evidence, it can be helpful for investigators to know what the standards are. The term 'standard of proof' refers to the degree to which the evidence at trial, when taken altogether, persuades a judge or jury of the truth of an ultimate fact.

The standard of proof in a criminal case requires that there be no reasonable doubt about the truth of a fact. But it should be noted that this standard does not require proof to an absolute or mathematical certainty.

The standard of proof in a civil case is far lower. It requires that the evidence, taken altogether, leads to the conclusion that a fact is more likely true than not true. This standard is also called proof "by the greater weight of the evidence" or "by the fair preponderance of the evidence."

The Investigators' Role

Although investigators in an animal cruelty case should have in mind these concepts of evidence and proof, it is important for them to understand that *they* do not have to prove anything. This is a matter for determination by a judge or jury at a trial. So, it would be an error for an investigator who finds a dead dog with a choke collar tightened around its neck to simply say, "Well, that does not prove animal cruelty." Although that might be true, that circumstance is a piece of evidence that can (not necessarily will) support a conclusion of animal cruelty.

Investigators are gatherers of evidence, as it is broadly defined. And although they likely will make some judgments as to what is or is not pertinent to a case, they should be guided by both the very broad notion of relevancy and the value and critical importance of circumstantial evidence.

Above all, the law relieves investigators of having to make final judgments as to whether a case can be proved; this is a matter left for prosecutors to decide.

***FOOTNOTES**

- *Minnesota Rules of Evidence*: https://www.revisor.mn.gov/court_rules/rule/ev-toh/
- *Federal Rules of Evidence*: *Federal Rules of Evidence*, 28 U.S.C. sec. 2072.

Judge Gordon Shumaker is a former judge of the Minnesota Court of Appeals. He was appointed to this position in 1998 and was subsequently elected in 2000 and 2006. He retired in October 2011. Judge Shumaker also served on the Minnesota Second Judicial District Court from 1982 until 1997, where he was the Chief Judge of this court from July 1, 1996 to December 31, 1997. A supporter of animal protection issues and the law, Judge Shumaker is working collaboratively with Animal Folks to create training materials for the improved understanding and enforcement of animal law.

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