



THE IMPACT OF 911

ANALYZING 911 CALLS AND
ASSESSING ADMISSIBILITY



THE OBJECTIVES

Collect & Review
Valuable
Evidence

Develop
& Exhaust
Investigative
Leads

Conduct
Evidence-Based
Investigations &
Make Informed
Arrest Decisions

THE OBJECTIVES

Guide
Prosecution
Intake & Case
Filings

Develop Pre-
Trial & Trial
Strategies &
Considerations

Support
Evidence-Based
Prosecution

PEOPLE CALL 911 WHEN...



The event has
escalated or is
escalating.

Their normal
ability to cope is
overwhelmed.

They are scared
for their own
safety or for the
safety of others.



911 OPERATORS

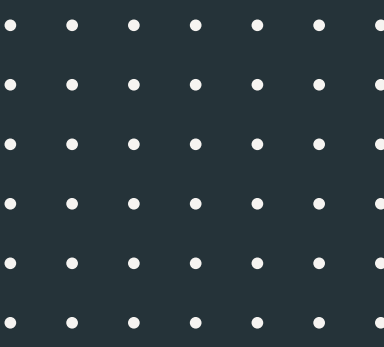
Triaging for a
safe response

NOT
investigators or
thinking in an
investigative
mindset

Detailed notes
can significantly
impact the
response &
investigation.



INVESTIGATIVE CONSIDERATIONS



OFFICERS

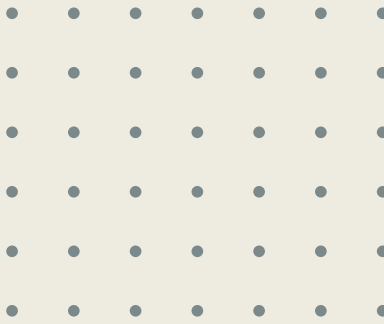
A safe response
& a safe scene is
vital.

You are not in an
investigative
mindset as you
respond.

Before
concluding an
investigation,
review the
dispatch notes.

Consider listening to the 911 call while on scene.

DETECTIVES



Prioritize listening
to the 911 call
PRIOR to arriving
at a scene
investigation or
conducting
interviews.

Calls should
ALWAYS be
collected ,
reviewed &
archived in every
investigation.

Document the
details of the
calls in your
offense report to
include sensory
details..

Do not solely rely on the Dispatch notes.
Information is often summarized or can be omitted.
Other information is sometimes added to supplement the call.

DISPATCH PROTOCOLS

Be aware of
retention
periods.

Consider
archiving
records for
Domestic
Disturbances /
Non-Criminal
events.

Be aware of
appended call
notations & how
to collect all
information.

Consider searching archives by location & phone number in addition to
known incident numbers.

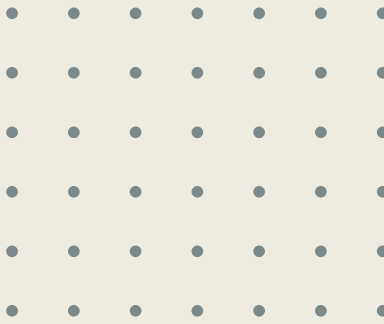
DISPATCH NOTES

Generated for
safety triage.
Information can
be incomplete.

Notes don't
always represent
emotionality,
urgency or fear.

May contain other
agency reference
numbers &/or are
a source to
request these.

CAUTION NOTES



Extract
TCIC/NCIC or
other noted
safety cautions.

Document in
report & PC
Affidavit.

Relay this
information in
BOLO's &
Requests to
Apprehend.

Consider adding caution notes to an address for high-risk indicators
and/or with other pertinent information

CALL RECORDINGS



Recreate the
experience.

Aid the
investigation.

Help
juries/judges
understand the
crimes.



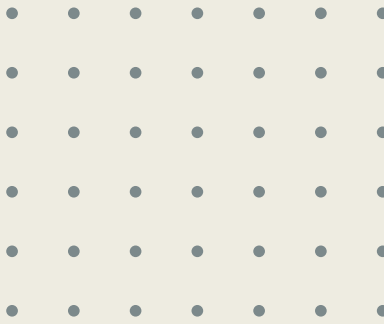
EMOTIONALITY

Include these
details in reports
and PC
Affidavits.

Helps to
understand the
significance of
an event for all
who read.

Helps
prosecutors
triage
admissibility.

STATEMENTS



Can be
admissible
evidence at trial.

Can help assess
fear & risk
factors.

Can give insight to
develop interview
and other
investigative
strategies.



STATEMENTS

Can help
develope
investigative
leads.

Can be used in
PC Affidavits.

May place a
subject on scene
and/or provide
evidence of
flight.

EXTRACT

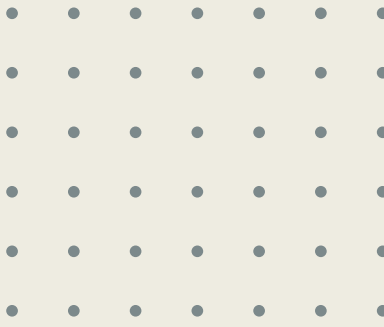
Suspect
descriptions.

Known
locations.

Known
vehicles.

Note these in your report.
They can later aid apprehension or future investigations.

EVIDENCE OF THE RELATIONSHIP



He's my husband
or (ex)boyfriend

He lives here /
used to live here.

He's my child's
father.



WITNESSES

ALWAYS
identify &
interview these
callers.

Explore the
relationship to
the parties.

What historical
knowledge do
they have?

WITNESSES

Capture what
they observed
and how they
felt about what
they saw.

May provide
insight to develop
interview and
other
investigative
strategies.

Can hold greater
weight when
they are an
uninvolved third
party.

DELAYED REPORTS



Don't be afraid
to investigate
them!

Often require
more efforts &
have a greater
chance to be
challenged.

Successful
prosecution
relies on the
corroborating
evidence.



ELECTRONIC DATA

Take photos of
call logs and text
messages.

Be sure to get
metadata with
citizen-provided
photos and
videos.

Assess for data
from other types
of electronics.

Consider Search Warrants.

MEDICAL RECORDS

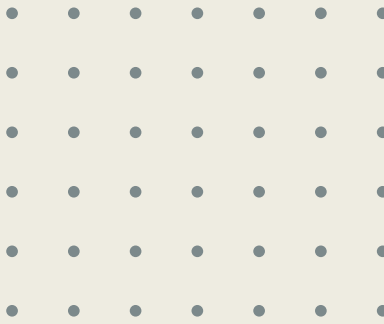
EMS Patient
Care Records

Hospital
Records

Ask about any
other medical
care during
during follow up
interviews.

Consider patient consent, subpoenas, and/or search warrants.

HISTORICALS



“This isn’t the
first time I’ve
had to call the
police.”

“He has an EPO
& a pending
court case.”

“He always hides
when I call the
police.”



HISTORICALS

Can establish
patterns of
domestic
violence.

Help assess risk
factors.

Be sure to notate
and archive with
new cases.

PROSECUTOR COLLABORATION



Probable
Cause and
Charging
Decisions

Relaying new
information
when cases are
pending.

Relaying High
Risk Factors

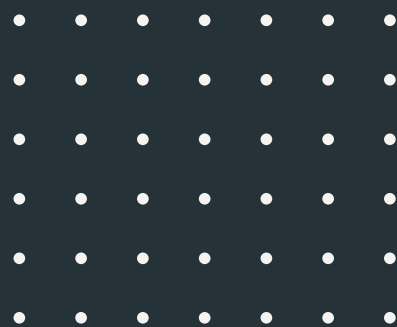
While Probable Cause is an officer's threshold, they should always investigate from a Beyond a Reasonable Doubt mindset.

When Probable Cause is met, SAFETY of the victim should be the priority!

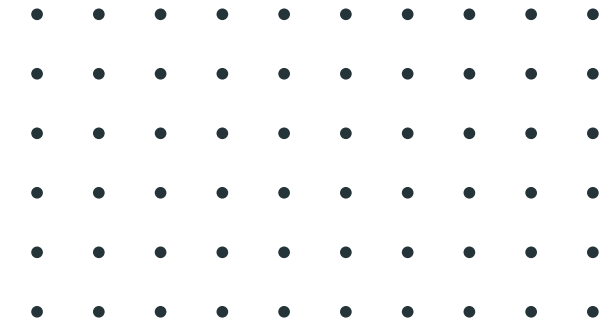




ADMISSIBILITY FACTORS



COMMON MISCONCEPTION



A 911 call is a **BUSINESS RECORD**.

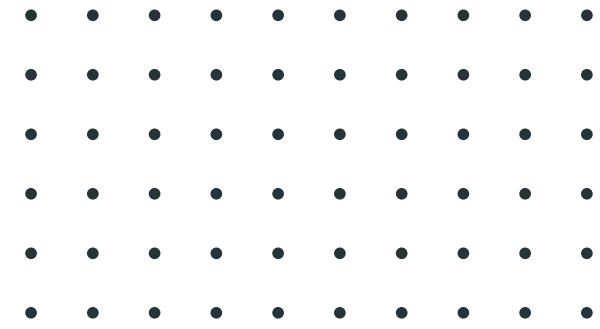
**Texas and Federal
Rules of Evidence
803(6)**

The State is NOT required to present the 911 caller or the 911 call taker (or both) as witnesses to admit the records...

911 callers and 911 call takers are impactful witnesses and should be called to testify if available to do so.



REQUIREMENTS



Two factors must exist to get the call admitted.

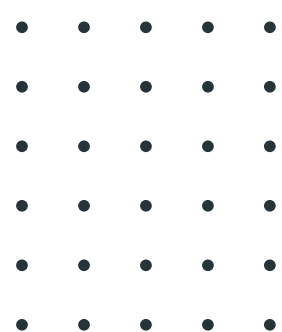
1. The call must be authenticated as a record kept in the ordinary course of business.

This can be done with:

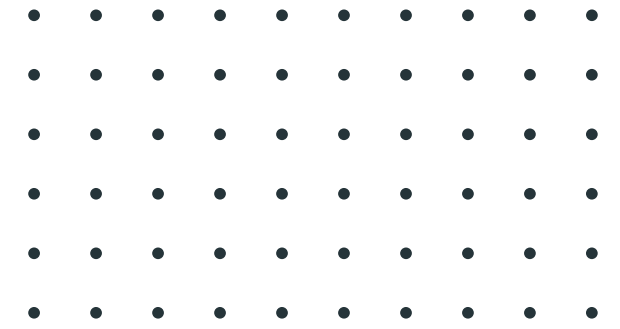
- a) A properly and timely served Record and Business Records Affidavit.
- b) The Custodian of Records can testify to the same information that would be provided in the Affidavit.

**Texas and Federal
Rules of Evidence
803(6)(B)**

**Texas Rules of
Evidence 902(10) and
Federal Rules of
Evidence 902(11)**



REQUIREMENTS

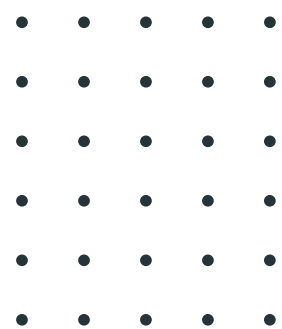


2. The contents of the call must also meet the applicable rules of evidence.

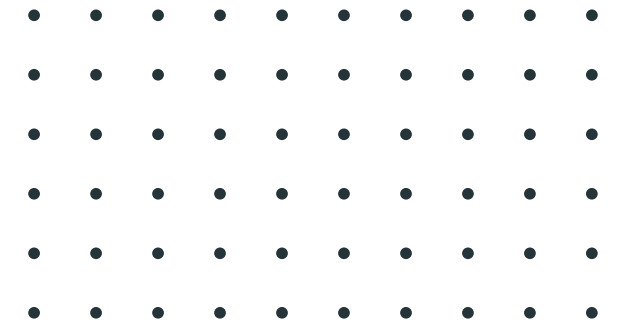
Typical objections are for

- Confrontation
- Hearsay
- Hearsay within hearsay

Most of the time, the majority of the content will be NON-TESTIMONIAL and will also have hearsay exceptions.



DEFENDANT'S RIGHTS

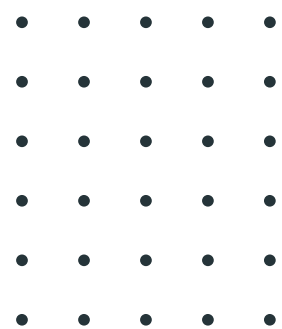


A defendant has a 6th Amendment right to confront the witnesses against him.

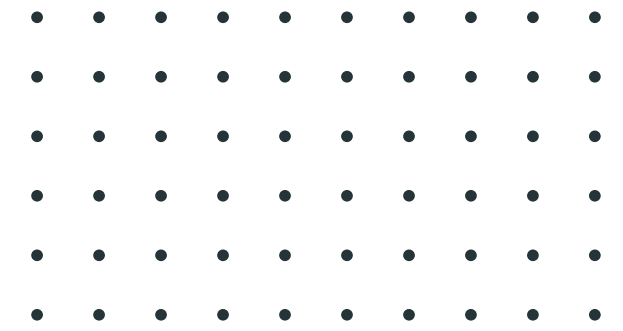
However, a Defendant does not have a right to confront his accuser if the statements made by the witness are considered **NON-TESTIMONIAL**.

Crawford v. Washington, 541 U.Ss 36, 124 S. Ct. 1354 (2004)

Davis v. Washington, 547 U.S. 813 (2006)



CASE LAW

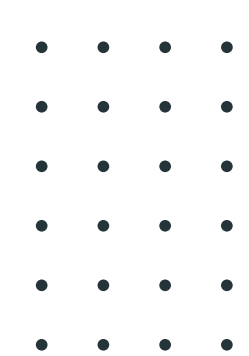


Crawford is the Supreme Court case that distinguishes out-of-court statements as either:

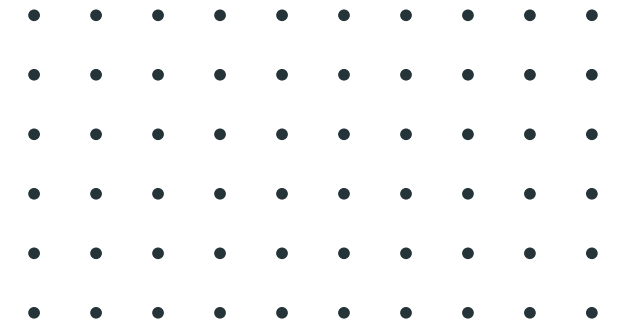
- Testimonial – subject to Confrontation
- Non-Testimonial – NOT subject to Confrontation

Davis came after *Crawford* to clarify the rules for non-testimonial statements.

Through *Crawford* and *Davis* (and lots of additional progeny) it is abundantly clear that any non-testimonial statements are completely outside the scope of the Confrontation Clause.



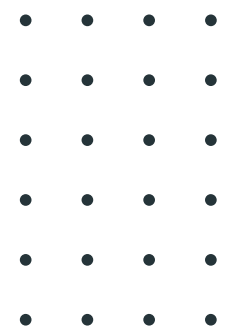
TESTIMONIAL



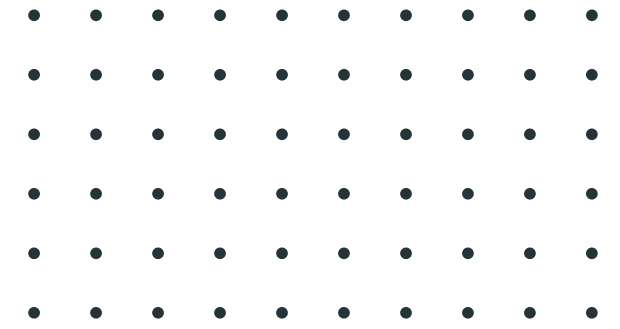
Testimonial statements include those in which **“State actors are involved in a formal, out-of-court interrogation of a witness to obtain evidence for trial”**.

The degree of “formality” of the statement is not controlling.

More important are the State actors (police, prosecutors, etc) **AND** an objective expectation on the part of the declarant the statements would be used in subsequent prosecution.

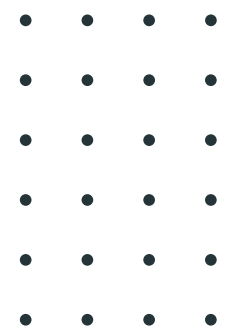


TESTIMONIAL

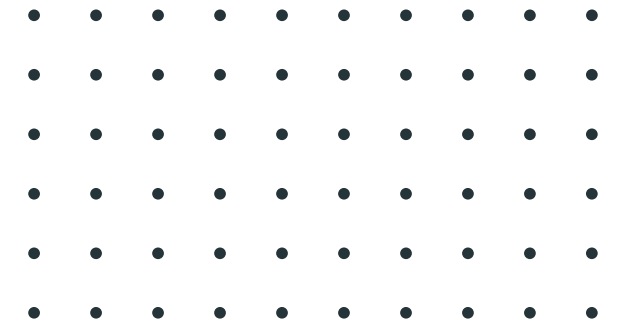


Additional types of statements considered testimonial are:

- Affidavits
- Certifications
- Lab reports prepared for evidentiary purposes
- Testimony at court proceedings
- Plea allocutions

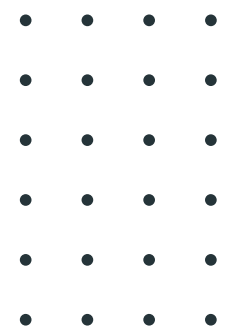


NON-TESTIMONIAL

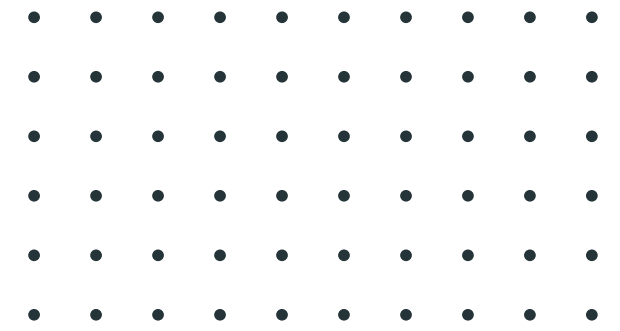


NON-testimonial statements are out-of-court statements that are generally less formal and are not intended to establish past events for a future prosecution.

A statement made to a police officer is non-testimonial where the primary purpose of the statement is to aid police to meet an **ongoing emergency** rather than to establish past events.



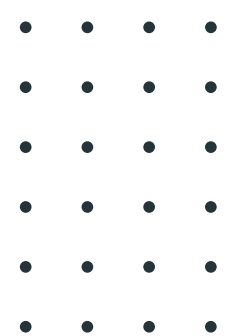
NON-TESTIMONIAL



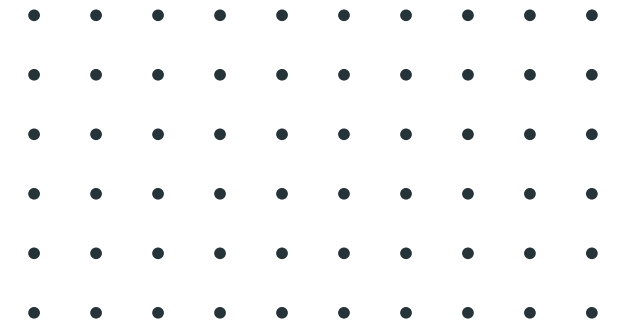
Statements made to a 911 dispatcher or police officer at the scene of a crime in progress are NON-testimonial because the primary purpose is to address the **ongoing emergency** and are seen as a “cry for help”.

Davis held a victim’s statement to a 911 operator were “speaking about events as they were actually happening rather than describing past events”.

Sometimes, non-testimonial statements can evolve into testimonial so you may have to redact out the portion that became testimonial.



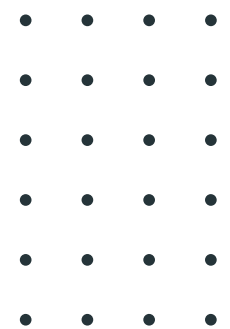
NON-TESTIMONIAL



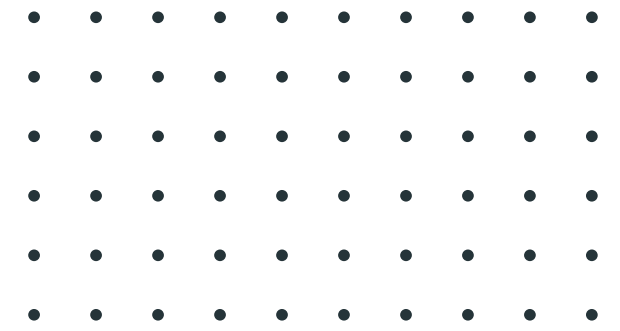
The key factor is determining there was an **ongoing emergency**.

Davis established a “primary purpose test” an objective standard where the court evaluates:

The purpose that reasonable participants would have had, as ascertained from the parties’ own statements and actions, and the circumstances in which the encounter occurred.



NON-TESTIMONIAL



Factors the Court should consider are:

Location – Crime scene vs. police station

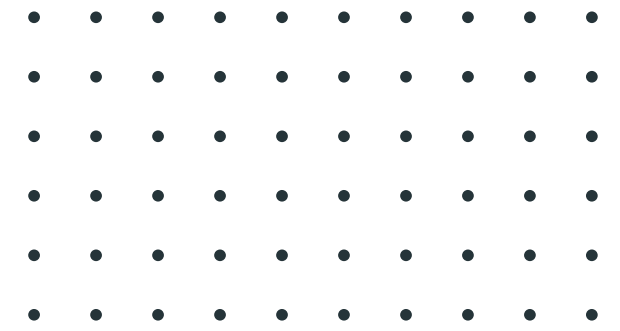
Time – During/immediately after the emergency vs. delayed report.
Has there been time for reflection on the events?

Existence of a necessity to “end a threatening situation”

- A threat to the public
- Involvement of a weapon
- A victim’s medical condition
- The need for first responders to judge the existence and magnitude of a continuing threat to the victim/witness and the public, by questioning the victim/witness
- Informality of the encounter



NON-TESTIMONIAL

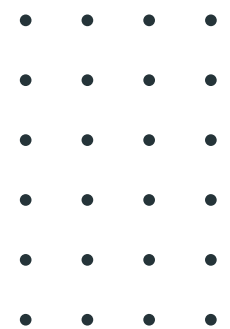


Helpful cases for 911 calls:

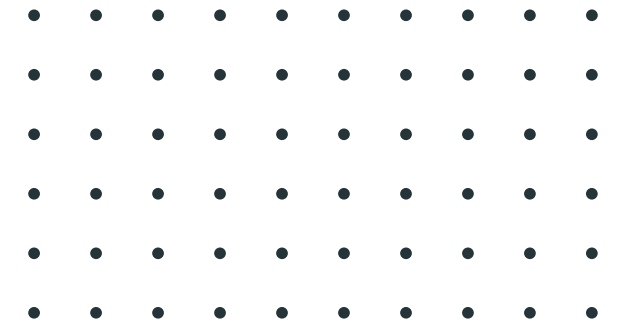
Kinnett v. State, 623 S.W.3d 876 (Tex. App.—Houston [1st Dist.] 2020, pet. ref'd)

Santacruz v. State, 237 S.W.3d 822 (Tex. App.—Houston [14th Dist.] 2007, pet. ref'd)

Ruth v. State, 167 S.W.3d 560 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd)



CONSIDERATIONS

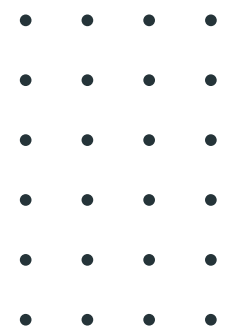


If the emergency event has stopped, it **COULD** affect whether the statement is non-testimonial.

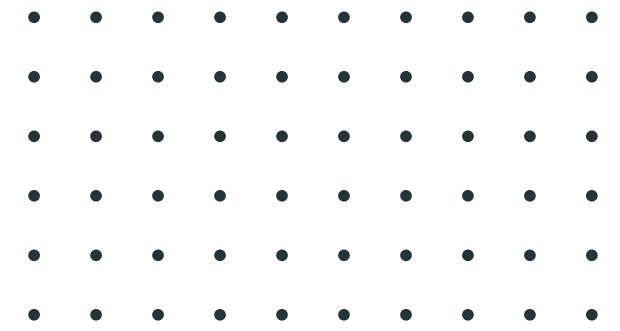
If the emergency event could continue or start again, the statement should still be considered non-testimonial.

Example – For an assault:

- Could the assailant start hitting the victim again?
- Could the assailant return and start hitting the victim again?
- Are there ongoing medical concerns?



CONSIDERATIONS

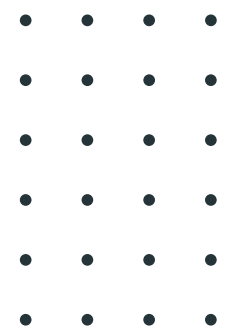


Even preliminary statements to police on scene are generally considered non-testimonial because they are necessary for responders to assess the situation and determine if an emergency situation was ongoing.

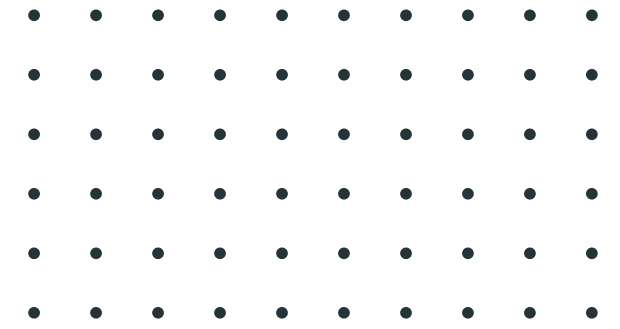
Wilson v. State, 296 S.W.3d 140 (Tex. App.—Houston [14th Dist.] 2009, pet. ref'd)

Clark v. State, 282 S.W.3d 924 (Tex. App.—Beaumont 2009, pet. ref'd)

Avant v. State, 499 S.W.3d 123 (Tex. App.—San Antonio 2016, no pet.)



CONSIDERATIONS



Once you've overcome the Confrontation Objection you **STILL** need to prepare to overcome Hearsay exceptions.

Most often you are seeking to introduce a 911 call that is non-testimonial because of an **ongoing emergency** so you should have:

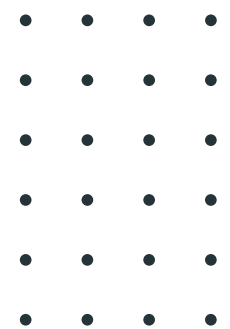
Present sense impressions

Excited utterances

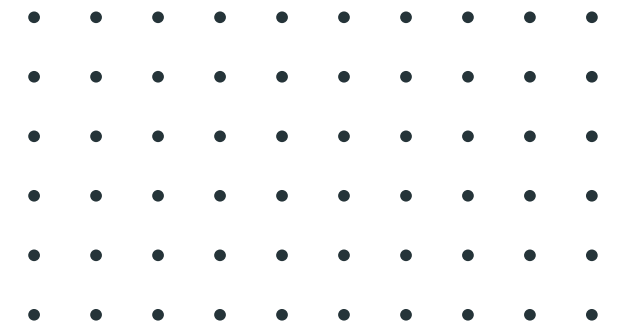
The-existing mental, emotional, or physical condition

And more...

**Texas and Federal
Rules of Evidence
803**



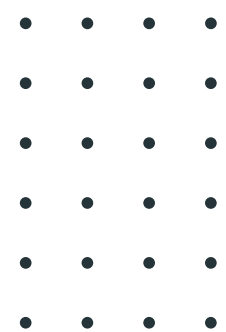
CONSIDERATIONS



Any other objection a defense attorney may raise should **go to the weight of the evidence, not the admissibility.**

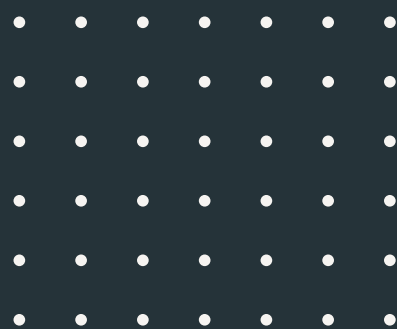
The court must decide any preliminary question about whether evidence is admissible. This is a threshold question, and the court should merely decide whether the proponent of the evidence has supplied facts that are sufficient to support a reasonable jury determination that the evidence proffered is authentic.

“The ultimate question whether an item of evidence is what its proponent claims then becomes a question for the fact-finder[.]”
Tienda v. State, 358 S.W.3d 633, 638–39 (Tex. Crim. App. 2012).



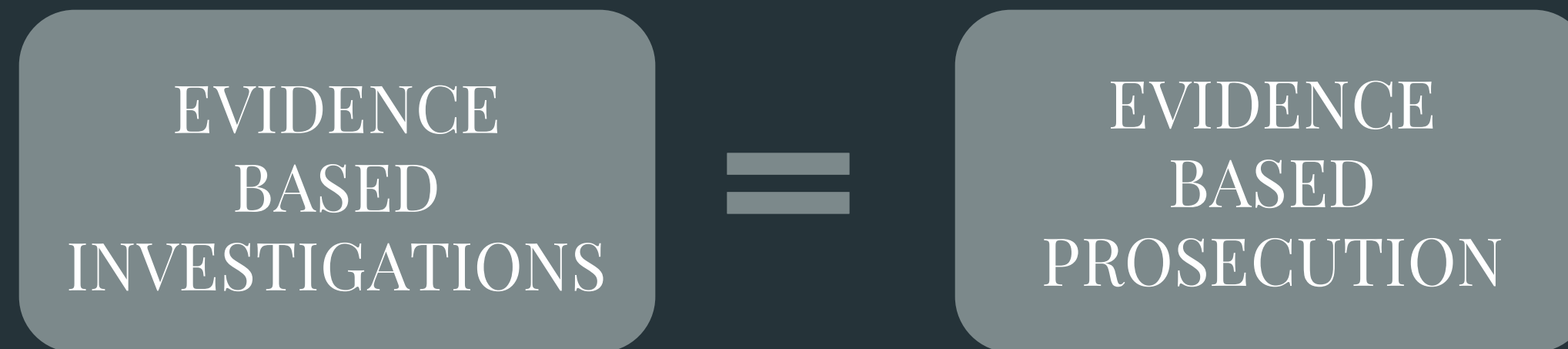


WHY IT MATTERS



Knowing the admissibility of the information collected helps focus on conducting evidence-based investigations.

Information becomes evidence when it holds legal admissibility.



Just like in a homicide case, prosecutors can seek justice even when a victim is unable to participate.



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