

16. Examine Exhibits Outside the Presence of the Jury

TO THE COURT AND THE PROSECUTION PLEASE TAKE NOTICE that Defendant moves the Court for an order directing a pretrial review of the prosecution's charts, exhibits, demonstrative evidence, and physical evidence.

This motion is made on the grounds that a defendant's rights to a fair trial, due process, present evidence, confront evidence, and effective counsel require a reasonable notice of the evidence being offered against him. Pretrial discussion regarding the prosecution's presentation and review of the evidence will allow the defense to lodge objections, reduce interruptions of the trial, and avoid improper presentation to the jury.

Date:

Attorney for Defendant

POINTS, AUTHORITIES, AND ARGUMENT

The defense believes that the Prosecution intends to present various witness statements, statements attributed to defendant, real evidence, demonstrative exhibits, and/or other exhibits. Defendant requests a designation of all such exhibits and an opportunity to review them with the Court and make appropriate objections outside the presence of the jury.

Evidence Code §402(b) holds that "The court may hear and determine the question of the admissibility of evidence out of the presence or hearing of the jury; but in a criminal action, the court shall hear and determine the question of the admissibility of a confession or admission of the defendant out of the presence and hearing of the jury if any party so requests."

The Prosecution has the burden of proof of the preliminary facts upon which admission of evidence depends (*Evidence Code §405*). Foundational facts must be established prior to introduction of evidence; otherwise, the evidence is neither admissible or relevant. (*People v. Herrera* (2000) 83 Cal. App. 4th 46, 61).

Evidence Code §310 states it is a question of law whether the evidence is admissible.

This Court has the power to "Provide for the orderly conduct of proceedings before it" (*Code of Civil Procedure §128(a)(3)*) and to "Control its process and orders so as to make them conform to law and justice" (*Id. §128(a)(8)*).

Based on the foregoing, Defendant requests that the Court require the Prosecution to present, outside the presence of the jury, any items it intends to display to the jury so that the same may be examined and marked and appropriate objections may be made.