

EXAMINERS' ANALYSIS OF QUESTION NO. 12

MRE 901(a) authentication requires the court to determine only whether the evidence is what its proponent claims it is.

MRE 901(a) provides that "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."

The Michigan Supreme Court explained in *People v Berkey*, 437 Mich 40, 50-52 (1991) that "authenticity of an exhibit . . . is to be determined in light of MRE 901," rather than under common law evidentiary tests that pre-dated MRE 901. See also, *People v McDade*, 301 Mich App 343, 353 (2013), quoting *Berkey* (Under 901, "[i]t is axiomatic that proposed evidence need not tell the whole story of a case, nor need it be free of weakness or doubt.") Authentication, however, does not equate with admissibility, and it may well be that a court may find an authenticated exhibit inadmissible under other rules. *Berkey*, 437 Mich at 53.

The deputy claims Dolan handed the note to him with instructions to give it to Gillian, which the deputy did after photographing it first. Because the deputy is a witness with knowledge that the actual note and the photo of the note are what the witness (the deputy) claims they are, that is sufficient to authenticate both, if necessary. It is not a disqualifier that the actual note was not found on Gillian until sometime later, after it left the deputy's possession, as the photograph duplicates the note and, in any event, "the admission of real evidence does not require a perfect chain of custody." *People v White*, 208 Mich App 126, 130-131 (1994).

MRE 801 does not preclude admission of the note because it is a party admission and it is not offered for the truth of the matter asserted.

MRE 801(d) (2) provides in pertinent part:

A statement is not hearsay if -

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The statement is offered against a party and is . . . the party's own statement, in either an individual or a representative capacity. . . .

The deputy will testify Dolan instructed him to give Gillian the note Dolan said he had written. That testimony is sufficient to admit the note as an admission by a party opponent under MRE 801(d)(2).

In addition, MRE 801(c) defines "'Hearsay' [as] a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

The note is not offered to prove the truth of the matter asserted. Rather, it is being offered to show Gillian's motive to falsely deny Dolan's guilt. See, e.g., *People v Flaherty*, 165 Mich App 113, 122 (1987) (statement offered to show effect on the recipient of the statement is not hearsay).