

A defendant has been charged with tax evasion. The government alleges that the defendant created numerous sham trusts to hide his income and, over the course of several years, made thousands of wire transfers to those trusts. During discovery, the government produced a summary of the wire transfer statements and notified the defendant of its intent to introduce the summary to prove the contents of the statements. The government also made the authenticated wire transfer statements available for inspection at its office.

At trial, the government called the investigating IRS agent to testify. After laying a proper foundation, the government sought to introduce the summary of the wire transfer statements as substantive evidence of the defendant's tax evasion. The defendant has objected to its introduction.

Should the court admit the summary?

- A. No, because the summary cannot be admitted as substantive evidence.
- B. No, because the wire transfer statements must be produced in court.
- C. Yes, because the government made the original wire transfer statements available before trial.
- D. Yes, because the summary is a business record.

Explanation:

Summaries to prove content

(FRE 1006)

Proponent of writings, recordings, or photographs may use summary, chart, or calculation to prove contents if proponent establishes:

originals are voluminous & cannot be conveniently examined in court

originals would be admissible

originals or duplicates were made available for other parties to examine/copy *and*

summary is fair & accurate

FRE = Federal Rule of Evidence.

The **best evidence rule** (ie, original document rule) applies when a witness relies on a document's contents while testifying or when the contents of a document are at issue. This rule generally requires that an **original or reliable duplicate** of a recording, writing, or photograph (referred to as "document") be produced to ***prove its contents***.

However, under FRE 1006, a party may instead use a **summary, chart, or calculation** to prove the content of documents that are **too voluminous** to be conveniently examined in court. The proponent must make the **originals or duplicates available** to other parties **for examination, copying, or both**, at a reasonable time and place. But **originals or duplicates need not be produced** in court **unless ordered** by the court (**Choice B**).

Since FRE 1006 summaries are **admitted substantively** in lieu of the underlying voluminous documents, the underlying documents (not the summary) must be admissible—eg, under the hearsay exception for **business records (Choice A)**.

Here, the government sought to introduce a summary of the defendant's voluminous wire transfer statements and, after providing the defendant a copy of the summary, made the originals available for inspection before trial. The government was not ordered to produce the statements in court, so the requirements of FRE 1006 were satisfied. And since the statements qualify as business records, the court should admit the summary as substantive evidence of the defendant's tax evasion.

(Choice D) The summary is not a business record because it was created in anticipation of trial—not as a regular practice in the course of regular business activities. However, the summary derives its admissibility as substantive evidence from the fact that the wire transfer statements are business records.

Educational objective:

A summary, chart, or calculation may be used to prove the contents of the documents it summarizes if the contents are too voluminous to be conveniently examined in court. The originals or duplicates must be made available to an adverse party for examination or copying, but they need not be produced in court unless ordered by the court.

References

Fed. R. Evid. 1006 (summaries).

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